PRELIMINARY LIMITED OFFERING MEMORANDUM DATED [JANUARY__, 2019]

New Issue – Book-Entry Only

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Issuer (“Bond Counsel”), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series 2019 Pipeline Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Bond Counsel, interest on the Series 2019 Pipeline Bonds is not a specific preference item for purposes of the federal alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the Series 2019 Pipeline Bonds. See “TAX MATTERS”.

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

$____________*

Water Furnishing Revenue Refunding Bonds, Series 2019
(San Diego County Water Authority Desalination Project Pipeline)

Dated: Date of Delivery

Due Date: As shown in inside front cover

The California Pollution Control Financing Authority (the “Issuer”) is issuing the above-captioned bonds (the “Series 2019 Pipeline Bonds”) pursuant to a Trust Indenture dated [February 1, 2019] (the “Pipeline Indenture”) between the Issuer and MUFG Union Bank, N.A., as trustee (the “Pipeline Trustee”), to (i) current refund and redeem the Issuer’s outstanding Water Furnishing Revenue Bonds, Series 2012 (San Diego County Water Authority Desalination Project Pipeline) (the “Series 2012 Pipeline Bonds”), (ii) fund a debt service reserve for the Series 2019 Pipeline Bonds and (iii) pay costs of issuance of the Series 2019 Pipeline Bonds.

The Series 2019 Pipeline Bonds are limited obligations of the Issuer and, except to the extent payable out of the proceeds of the Series 2019 Pipeline Bonds or any income from the investment thereof, will be payable solely from, and secured solely by, a pledge of payments derived by the Issuer under a Pipeline Loan Agreement dated as of December 24, 2012, as amended (the “Pipeline Loan Agreement”), between the Issuer and the San Diego County Water Authority Financing Agency (the “Water Authority Financing Agency”). Pursuant to a Pipeline Installment Sale and Assignment Agreement dated as of December 24, 2012, as amended (the “Installment Sale and Assignment Agreement”), between the Water Authority Financing Agency and the San Diego County Water Authority (the “Water Authority”), the Water Authority makes installment payments to the Water Authority Financing Agency, which are the sole source of payment of the Water Authority Financing Agency’s payments to the Issuer under the Pipeline Loan Agreement. The proceeds of the Series 2012 Pipeline Bonds were used to pay the cost of constructing a pipeline to connect the Claude “Bud” Lewis Carlsbad Desalination Plant in Carlsbad, California (the “Plant”) to the existing water distribution system of the Water Authority (as further described herein, the “Pipeline” and, together with the Plant, the “Project”). Poseidon Resources (Channelside) LP (the “Company”) owns the Plant. The Water Authority is the sole purchaser of the potable water produced by the Plant (“Product Water”) and owns the Pipeline, which was constructed by the Company and began commercial operation on December 23, 2015. The Company must pay performance damages to the Water Authority for its failure to deliver Product Water to the Water Authority in accordance with the terms of their water purchase agreement dated December 20, 2012, as amended (the “Water Purchase Agreement”). The Water Authority’s obligations to make installment payments are reduced by the amount of such performance damages, whether or not paid. The Water Authority Financing Agency’s obligation to make loan repayments is reduced in turn by the amount of such performance damages, whether or not paid. The Water Authority has assigned its right to receive performance damages to the Water Authority Financing Agency to secure its obligations under the Installment Sale and Assignment Agreement, and the Water Authority Financing Agency has, in turn, assigned its rights to receive such performance damage payments to the Issuer, which has assigned such rights to the Pipeline Trustee. Concurrently with the issuance of the Series 2012 Pipeline Bonds, the Authority issued its Water Furnishing Revenue Bonds, Series 2012 (Poseidon Resources (Channelside) LP Desalination Project) (AMT) (the “Series 2012 Plant Bonds” and, together with the Series 2019 Pipeline Bonds, the “Project Bonds”), the proceeds of which were loaned by the Issuer to the Company, to pay a portion of the costs of constructing the Plant. The Company’s obligations under the loan agreement relating to the proceeds of the Series 2012 Plant Bonds and its obligations to make performance damage payments under the Water Purchase Agreement are secured on parity by the Collateral described herein. See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS”. The Water Authority’s obligations to make installment payments are unsecured and subordinate to its senior debt and certain other debt, but will have the benefit of certain covenants, including a rate covenant, made by the Water Authority in respect to obligations that are payable from its Net Water Revenues, as defined in the Water Authority’s General Resolution No. 89-21. See “PROJECT PARTICIPANTS – San Diego County Water Authority”.

The Series 2019 Pipeline Bonds will bear interest at the rates set forth on the inside front cover per annum from [__________. 2019] and be payable on January 1 and July 1 of each year commencing [July 1, 2019]. The Series 2019 Pipeline Bonds are subject to optional and mandatory redemption prior to maturity in the manner and at the times described in this Limited Offering Memorandum. The Series 2019 Pipeline Bonds will be issued as fully registered bonds in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York, which will act as the securities depository for the Series 2019 Pipeline

* Preliminary, subject to change.
Bonds pursuant to a book-entry system described herein. Beneficial ownership of the Series 2019 Pipeline Bonds may be acquired in denominations of $250,000 and multiples of $5,000 in excess of $250,000. The Series 2019 Pipeline Bonds are being offered and sold only to Qualified Institutional Buyers, as defined in Rule 144A under the Securities Act of 1933, and are subject to certain resale restrictions. See “TRANSFER RESTRICTIONS” herein.


MATURES, AMOUNTS, INTEREST RATES AND YIELDS
as shown on inside cover

The Series 2019 Pipeline Bonds are offered when, as and if issued by the Issuer and accepted by the Underwriters, subject to the approval of legality by Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Issuer, and certain other conditions. Certain legal matters will be passed upon for the Water Authority and the Water Authority Financing Agency by Mark J. Hattam, General Counsel; for the Issuer by the Honorable Xavier Becerra, Attorney General of the State of California; for the Company by Blank Rome LLP, special counsel to the Company, and Latham & Watkins LLP, local counsel to the Company; and for the Underwriters by Drinker Biddle & Reath LLP and eco(n)law LLC. Ponsinelli LLP serves as Disclosure Counsel and Special Counsel to the Water Authority. Montague DeRose and Associates, LLC and Acacia Financial Group, Inc. are serving as Co-Municipal Advisors to the Water Authority. The Series 2019 Pipeline Bonds are expected to be delivered to DTC on or about [February 6, 2019].
Maturities, Amounts, Interest Rates, Prices or Yields and CUSIPS†

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
WATER FURNISHING REVENUE REFUNDING BONDS, SERIES 2019
(SAN DIEGO COUNTY WATER AUTHORITY DESALINATION PROJECT PIPELINE)

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$_________ – ___% Series 2019 Term Bonds due [July 1] – Yield ____%, Price ___, CUSIP† No. ___

$_________ – ___% Series 2019 Term Bonds due [July 1] – Yield ____%, Price ___, CUSIP† No. ___

$_________ – ___% Series 2019 Term Bonds due [July 1] – Yield ____%, Price ___, CUSIP† No. ___

* Preliminary, subject to change.

† Copyright 2019, American Bankers Association. CUSIP® is a registered trademark of the American Bankers Association. CUSIP data in this Limited Offering Memorandum is provided by CUSIP Global Services (CGS), operated on behalf of the American Bankers Association by S&P Global Market Intelligence. This information is not intended to create a database and does not serve in any way as a substitute for the GCS database. CUSIP numbers have been assigned by an independent company not affiliated with the Issuer or the Underwriters and are included solely for the convenience of the registered owners of the applicable bonds. None of the Issuer, the Water Authority, the Underwriters or the Co-Municipal Advisors is responsible for the selection or use of these CUSIP numbers and no representation is made as to their correctness on the applicable bonds or as included in this Limited Offering Memorandum. The CUSIP number for a specific maturity is subject to being changed after the issuance of the bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the bonds.
NOTICE TO INVESTORS

No dealer, broker, salesperson or other person has been authorized by the Issuer, the Company, the Water Authority or the Underwriters of the Series 2019 Pipeline Bonds on the offering date, to give any information or to make any representations with respect to the Series 2019 Pipeline Bonds, other than those contained in this Limited Offering Memorandum in connection with the offer made hereby, and if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Limited Offering Memorandum nor any sale hereunder will under any circumstances create any implication that there has been no change in the matters described herein since the date hereof. This Limited Offering Memorandum does not constitute an offer to sell or the solicitation of an offer to buy, and no person is authorized by the Issuer to sell any of the Series 2019 Pipeline Bonds by any person, in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

The information set forth herein under the captions “THE ISSUER” and “LITIGATION – The Issuer” has been furnished by the Issuer. Neither the approval nor the authorization by the Issuer of the distribution of this Limited Offering Memorandum shall be construed as a representation that the Issuer or any of its board members, officers, agents, employees or representatives has reviewed, investigated or approved the accuracy or completeness of any statements, representations or information in this Limited Offering Memorandum other than the information under the captions “THE ISSUER” and “LITIGATION – The Issuer”. The Issuer’s board members, officers, agents, employees or representatives executing the Series 2019 Pipeline Bonds are not subject to personal liability by reason of the offering of the Series 2019 Pipeline Bonds.

The information set forth in Appendix D hereto has been furnished by DTC. Such information is believed to be reliable but is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Issuer. All other information set forth herein has been obtained from the Company or the Water Authority and other sources that are believed to be reliable, but such information is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Issuer. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Limited Offering Memorandum nor any sale of the Series 2019 Pipeline Bonds made pursuant hereto shall create under any circumstances any indication that there has been no change in the affairs of the Issuer since the date hereof.

The Series 2019 Pipeline Bonds have not been registered with, recommended by or approved by, the Securities and Exchange Commission (“SEC”) or any other federal or state securities commission or regulatory authority, nor has the SEC or any such state securities commission or regulatory authority passed upon the accuracy or adequacy of this Limited Offering Memorandum. Any representation to the contrary is a criminal offense.

The Series 2019 Pipeline Bonds are being offered and sold only to Qualified Institutional Buyers, as defined in Rule 144A under the Securities Act of 1933 (“QIBs”). Prospective purchasers are hereby notified that the Series 2019 Pipeline Bonds are subject to restrictions on transfer. Such restrictions include that no offer, sale, pledge, transfer or exchange may be made of Series 2019 Pipeline Bonds (a) except to investors that are QIBs and (b) in a denomination of less than the authorized denomination. Any offer, sale, pledge, transfer or exchange made of Series 2019 Pipeline Bonds to any person other than a QIB will be void and the purported transferor will remain the owner of record for such Project Bonds. See “TRANSFER RESTRICTIONS”.

Prospective purchasers should consult with their own advisors as to legal, tax, business, financial and related aspects of a purchase of the Series 2019 Pipeline Bonds. None of the Issuer, the Company, the Water Authority or the Underwriters is making any representation regarding the legality of an investment in the Series 2019 Pipeline Bonds.

The Issuer reserves the right to withdraw this offering of the Series 2019 Pipeline Bonds at any time. The Underwriters also reserve the right to reject any offer to purchase the Series 2019 Pipeline Bonds in whole or in part for any reason and to allot to any prospective investor less than the full amount of Series 2019 Pipeline Bonds sought by such investor.
Certain statements contained in this Limited Offering Memorandum reflect not historical facts but forecasts and “forward-looking” statements. In this respect, the words “estimate,” “project,” “anticipate,” “expect,” “intend,” “believe” and similar expressions are intended to identify forward-looking statements. All projections, forecasts, assumptions, expressions of opinions, estimates and other forward-looking statements, are not to be construed as representations of fact and are qualified in their entirety by the cautionary statements set forth in this Limited Offering Memorandum. The forward-looking statements are not guarantees of future performance. Actual results may vary materially from what is contained in a forward-looking statement.

The Underwriters have provided the following sentence for inclusion in this Limited Offering Memorandum: The Underwriters have reviewed the information in this Limited Offering Memorandum in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

The information set forth herein has been obtained from the Issuer, the Water Authority, the Company and from other sources and is believed to be reliable but is not guaranteed as to accuracy or completeness. The information and expressions of opinions herein are subject to change without notice and neither the delivery of this Limited Offering Memorandum nor any sale made hereunder will, under any circumstances, create any implication that there has been no change in the affairs of Issuer, the Water Authority, the Water Authority Financing Agency or the Company since the date hereof. This Limited Offering Memorandum is submitted in connection with the sale of the Series 2019 Pipeline Bonds and may not be reproduced or used, in whole or in part, for any other purpose. All summaries of the documents and laws are made subject to the provisions thereof and do not purport to be complete statements of any or all such provisions.

Brief descriptions of the Series 2019 Pipeline Bonds, the Pipeline Indenture, the Water Purchase Agreement, the Collateral Trust Agreement and certain other documents are included in this Limited Offering Memorandum and the appendices to this Limited Offering Memorandum. Such descriptions do not purport to be comprehensive or definitive. All references in this Limited Offering Memorandum to such documents and any other documents, statutes, laws, reports or other instruments described in this Limited Offering Memorandum are qualified in their entirety by reference to each such document, statute, law, report or other instrument. Information contained in this Limited Offering Memorandum has been obtained from officers, employees and records of the Company, the Water Authority and the Issuer and from other sources believed to be reliable.

The Water Authority, the Company and the Issuer maintain certain websites and social media accounts, the information on which is not part of this Limited Offering Memorandum, is not incorporated by reference in this Limited Offering Memorandum and should not be relied upon in deciding whether to invest in the Series 2019 Pipeline Bonds.

IN CONNECTION WITH THIS OFFERING OF THE SERIES 2019 PIPELINE BONDS, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF SUCH BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITERS MAY OFFER AND SELL THE SERIES 2019 PIPELINE BONDS TO CERTAIN DEALERS, INSTITUTIONAL INVESTORS AND OTHERS AT PRICES LOWER THAN THE PUBLIC OFFERING PRICES STATED ON THE INSIDE COVER PAGE HEREOF AND SUCH PUBLIC OFFERING PRICES MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITERS.
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SUMMARY STATEMENT

The following summary is qualified in its entirety by reference to the detailed information appearing elsewhere in this Limited Offering Memorandum, including the Appendices hereto, and to each of the documents referred to herein. Prospective investors should read the entire Limited Offering Memorandum, including the Appendices hereto, prior to making an investment decision. Unless otherwise indicated, capitalized terms used in this Limited Offering Memorandum are defined herein or in Appendix A — Certain Definitions.

Introduction

The California Pollution Control Financing Authority Water Furnishing Revenue Refunding Bonds, Series 2019 (San Diego County Water Authority Desalination Project Pipeline) (the “Series 2019 Pipeline Bonds”) are being issued to refund, in full, the Issuer’s outstanding Water Furnishing Revenue Bonds, Series 2012 (San Diego County Water Authority Desalination Project Pipeline) (the “Series 2012 Pipeline Bonds”). The Series 2012 Pipeline Bonds were issued concurrently with the Issuer’s Water Furnishing Revenue Bonds, Series 2012 (Poseidon Resources (Channelside) LP Desalination Project) (the “Series 2012 Plant Bonds” and, together with the Series 2019 Pipeline Bonds, the “Project Bonds”). The Series 2012 Plant Bonds funded the majority of the costs of acquiring, constructing and installing the Claude “Bud” Lewis Carlsbad Desalination Plant located in Carlsbad, California (the “Plant”) to supply desalinated potable water (“Product Water”) to the San Diego County Water Authority (the “Water Authority”). The Series 2012 Plant Bonds were issued pursuant to a Trust Indenture dated as of December 24, 2012 between the Issuer and MUFG Union Bank, N.A., as trustee for the Holders of the Series 2012 Plant Bonds (in such capacity, the “Plant Trustee”). The proceeds of the Series 2012 Plant Bonds were loaned by the Issuer to the Company pursuant to a Loan Agreement dated as of December 24, 2012 (the “Original Plant Loan Agreement”). The Plant consists of a 54 million gallon per day (“MGD”) reverse osmosis desalination plant. The Series 2012 Pipeline Bonds funded an approximately 10-mile pipeline that connects the Plant to the Water Authority’s existing distribution system and an interconnection pipeline and related improvements (the “Pipeline” and together with the Plant, the “Project”). The Project was developed as a public-private partnership between the Water Authority and Poseidon Resources (Channelside) LP (the “Company”) to augment and diversify the Water Authority’s water resources. The Company owns the Plant and the Water Authority owns the Pipeline. The Water Authority purchases all of the Plant’s Product Water pursuant to a Water Purchase Agreement dated December 20, 2012, as amended (the “Water Purchase Agreement”).

The Plant began commercial operations on December 23, 2015 (the “Commercial Operation Date”). The Water Authority owns, operates and maintains the Pipeline, and makes scheduled installment payments to San Diego County Water Authority Financing Agency (the “Water Authority Financing Agency”) which in turn has assigned such payments to the Issuer, which in turn has assigned such payments to MUFG Union Bank, N.A. (in such capacity, the “Pipeline Trustee”) for
the benefit of the holders of the Series 2019 Pipeline Bonds, to pay the
debt service on the Series 2019 Pipeline Bonds except in circumstances
described below. The obligations of the Water Authority Financing
Agency under the Pipeline Loan Agreement are limited obligations of the
Water Authority Financing Agency payable solely from payments made
by the Water Authority under the Installment Sale and Assignment
Agreement and the other assets pledged therefor under the Pipeline
Indenture, including Contracted Shortfall Payments as and when made
by the Company (as such terms are hereinafter defined).

The Issuer loaned the proceeds of its Series 2012 Pipeline Bonds to the
Water Authority Financing Agency pursuant to a Pipeline Loan
Agreement, dated as of December 24, 2012 (the “Original Pipeline
Loan Agreement”), by and between the Issuer and the Water Authority
Financing Agency. The Water Authority Financing Agency made such
proceeds available to the Water Authority pursuant to a Pipeline
Installment Sale and Assignment Agreement, dated as of December 24,
2012 (the “Original Installment Sale and Assignment Agreement”) to
finance the costs of developing, designing, acquiring and constructing
the Pipeline.

When and if the Company fails to deliver required amounts and/or
quality of Product Water, the Water Authority’s water purchase
payments are reduced, and the Company is required to pay to the Water
Authority performance damages (“Contracted Shortfall Payments”) that
have been assigned by the Water Authority ultimately to the Pipeline
Trustee for the benefit of the holders of the Series 2019 Pipeline Bonds
to pay a portion of the debt service payments on the Series 2019 Pipeline
Bonds. The Water Authority Financing Agency’s and the Water
Authority’s obligations to make payments pursuant to the Pipeline Loan
Agreement and the Installment Sale and Assignment Agreement,
respectively, are correspondingly reduced whether or not the Company
makes the Contracted Shortfall Payments. The Company’s obligation to
make Contracted Shortfall Payments is secured on a parity basis with its
obligation to pay debt service on the Series 2012 Plant Bonds. The
Company has obtained performance and financial guarantees from the
Plant operator and is required to maintain certain operating reserves.

The Company has paid Contracted Shortfall Payments aggregating
[$3,585,537.60] since the Commercial Operation Date. See “PROJECT
OPERATION – Operation and Maintenance of the Plant” and “THE
PROJECT – Construction of the Project and – Intake System
Modifications” and Appendix G – Summary of the Water Purchase
Agreement.

MUFG Union Bank, N.A. MUFG Union Bank, N.A. serves in three capacities relating to the
Project Bonds: as Pipeline Trustee; as Plant Trustee; and as collateral
agent (in such capacity, the “Collateral Agent”) under the Collateral
Trust Agreement, dated as of December 24, 2012 among the Company,
the Plant Trustee, the Pipeline Trustee, any holders of Additional Plant
Senior Debt and the Collateral Agent (the “Original Collateral Trust Agreement”).

Plan of Refunding ...................... In order to refinance the costs of developing, designing, acquiring and constructing the Pipeline, the Issuer will issue the Bonds pursuant to the Pipeline Indenture and will apply the proceeds of the Series 2019 Pipeline Bonds, together with other legally available funds, to refund and redeem the outstanding Series 2012 Pipeline Bonds. On December 18, 2017, the Issuer redeemed $2,610,000 of the Series 2012 Pipeline Bonds from excess proceeds after completion of construction of the Pipeline. Additionally, to reference the Pipeline Bonds and to update references to the Series 2019 Pipeline Bonds in light of the refunding of the Series 2012 Pipeline Bonds, the Issuer, the Water Authority, the Water Authority Financing Agency, the Company, the Plant Trustee and the Pipeline Trustee will enter into an Omnibus Refunding Amendment Agreement, dated as of February 1, 2019 (the “Omnibus Amendment”), amending, supplementing and restating certain terms of (i) the Original Pipeline Loan Agreement (as so amended, supplemented and restated, the “Pipeline Loan Agreement”); (ii) the Original Installment Sale and Assignment Agreement (as so amended, supplemented and restated, the “Installment Sale and Assignment Agreement”); and (iii) the Original Plant Loan Agreement (as so amended, supplemented and restated, the “Plant Loan Agreement”). For the same reasons, the Company, the Pipeline Trustee, the Plant Trustee and the Collateral Agent will enter into a Collateral Documents Master Refunding Amendment dated as of [February 1, 2019] (the “Collateral Documents Master Refunding Amendment”) supplementing and amending certain terms of (x) the Original Collateral Trust Agreement (as supplemented and amended, the “Collateral Trust Agreement”), (y) the Pledge and Security Agreement among Poseidon Resources Channelside GP, Inc. (“Poseidon GP”), as Pledgor, the Company and the Collateral Agent and (z) the Pledge and Security Agreement among Poseidon Resources Channelside Holdings LLC (the “Limited Partner”), the Company and the Collateral Agent, and the Water Authority and the Company have entered into [Contract Administration Memoranda (“CAMs”) Nos. 009 and 010, and Amendment Nos. 004 and 005 of, the Water Purchase Agreement (“WPA Amendment No. 004” and “WPA Amendment No. 005”, respectively) relating to completion of construction of the Plant and sizing the Contracted Shortfall Payments to the payments on the Series 2019 Pipeline Bonds, respectively.

Collateral Trust Agreement.......................... The Company’s obligations under the Plant Loan Agreement, its obligation to make Contracted Shortfall Payments and its obligations with respect to any Additional Plant Senior Debt (collectively, “Plant Senior Debt”) are secured on a parity basis under the Collateral Trust Agreement. The Issuer has pledged its rights under the Plant Loan Agreement (including the right to receive Plant Loan Repayments but excluding certain Plant Retained Rights) to the Plant Trustee as part of the Plant Trust Estate pledged under the Plant Indenture. The Plant
Trustee, in turn, has pledged those rights to the Collateral Agent. Any Additional Plant Senior Lender will pledge its rights under the Plant Financing Documents for the related Additional Plant Senior Debt (excluding any rights identified therein as reserved to such Additional Plant Senior Lender) to the Collateral Agent.

The Collateral Agent holds in trust for the Secured Parties all of the Collateral Agent’s right, title and interest in, to and under the Collateral. The Collateral includes, among other things, the Plant Trust Estate, including the right to receive Plant Loan Repayments; the right to receive Plant Revenues; and the funds and accounts held under the Collateral Trust Agreement and the monies and instruments held therein.

The net proceeds of the Series 2012 Plant Bonds were, and the net proceeds of any Additional Plant Senior Debt and all Plant Revenues are and will be, deposited into funds and accounts held and disbursed by the Collateral Agent, including various reserve funds. The Collateral Agent receives all revenues under the Water Purchase Agreement, and any damages payments from IDE Americas, in its capacity as operator of the Plant. The Company expects to incur Additional Plant Senior Debt in connection with the Intake System Modifications (as defined herein).

If the Debt Service Coverage Ratio (as defined below) for the Project falls below 1.25, all of the Company’s net revenues from the sale of Product Water are required to be retained by the Collateral Agent in trust for the benefit of the holders of the Project Bonds (and any additional senior debt incurred by the Company) until the debt service coverage requirement is achieved. The price the Water Authority pays to the Company for Product Water is calculated to cover debt service on the Series 2012 Plant Bonds, pay the operating costs of the Plant and provide an equity return to the Company’s investors, so long as the Company meets its obligation to deliver Product Water.

See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS”, “THE PROJECT – Intake System Modifications” and the summary of the Collateral Trust Agreement in Appendix E.

**Collateral Agent’s Remedies Agreement**

The Water Authority has entered into a Collateral Agent’s Remedies Agreement in which, among other things, it provides the Collateral Agent with an opportunity to cure defaults by the Company under the Water Purchase Agreement. See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS”.

**Pipeline Loan Agreement**

The Water Authority Financing Agency’s obligation to make Pipeline Loan Repayments pursuant to the Pipeline Loan Agreement is payable solely from the Installment Sale Payments made by the Water Authority as described below and from Contracted Shortfall payments as and when made. The Water Authority Financing Agency’s obligation to make Pipeline Loan Repayments will be reduced by the amount of Contracted
Shortfall Payments payable by the Company, whether or not paid. See the summary of the Water Purchase Agreement in Appendix G.

Installment Sale and Assignment Agreement

The Water Authority Financing Agency made the proceeds of the Series 2012 Pipeline Bonds available to the Water Authority under the Original Installment Sale and Assignment Agreement. A portion of the proceeds of the Series 2019 Pipeline Bonds will be applied to refinance the costs of construction of the Pipeline by refunding the Series 2012 Pipeline Bonds. The Water Authority Financing Agency is selling the Pipeline to the Water Authority and the Water Authority is paying for the Pipeline by making Installment Sale Payments to the Water Authority Financing Agency pursuant to the Installment Sale and Assignment Agreement ("Installment Sale Payments"), which are used to make Pipeline Loan Repayments which will be applied to the payment of debt service on the Series 2019 Pipeline Bonds.

The Water Authority’s obligation to make Installment Sale Payments will be reduced by the amount of Contracted Shortfall Payments payable by the Company, whether or not paid. See the summary of the Water Purchase Agreement in Appendix G.

The Water Authority’s obligation to make Installment Sale Payments is unsecured and payable after payments on its secured debt and other payment obligations. However, the Water Authority has covenanted in the Installment Sale and Assignment Agreement to comply with the covenants it has made in its General Resolution (as defined below) for the benefit of the holders of the Water Authority’s secured debt, including its rate covenant.

Debt Service Reserve Fund

A Debt Service Reserve Fund will be funded initially from a portion of the proceeds of the Series 2019 Pipeline Bonds, and subsequently from moneys transferred by the Pipeline Trustee from the Revenue Fund pursuant to the Pipeline Indenture and/or moneys transferred by the Collateral Agent pursuant to the Collateral Trust Agreement as Contracted Shortfall Payments. The Pipeline Indenture requires that the amount on deposit in the Debt Service Reserve Fund be equal to the principal and interest payments due on the Series 2019 Pipeline Bonds in the following 12-months.

The Water Authority

The San Diego County Water Authority (the “Water Authority”) is a county water authority organized and existing under the County Water Authority Act, California Statutes 1943, Chapter 545, as amended. The Water Authority was organized on June 9, 1944 for the primary purpose of supplying water to San Diego County for wholesale distribution to the Water Authority’s 24 member agencies which deliver water to approximately 97% of San Diego County’s approximately 3.3 million residents. These member agencies include six cities, five water districts, three irrigation districts, eight municipal water districts, one public utility district and one federal agency. The Water Authority’s water facilities
include approximately 310 miles of water conveyance pipelines, storage capacity in several regional reservoirs and 136 MGD (152,340 acre-feet per year (“AFY”)) of water treatment capacity through a Water Authority-owned water treatment plant and capacity in a plant owned by a member agency.

The Company Poseidon Resources (Channelside) LP, a Delaware limited partnership (the “Company”), was formed for the purpose of financing, constructing, owning, permitting and operating the Plant and constructing the Pipeline. The Company is managed pursuant to a management agreement with, and partially owned indirectly by, Poseidon Water LLC, a Delaware limited liability company (“Poseidon Water”), the predecessor of which was founded in 1995, which specializes in developing and financing water infrastructure projects, primarily seawater desalination and water treatment plants. Poseidon Water is headquartered in Boston, Massachusetts, with offices in Carlsbad and Huntington Beach, California and, together with its affiliates, has implemented a desalination facility in Tampa, Florida, a wastewater treatment plant in Cranston, Rhode Island and five wastewater treatment facilities in Mexico. Poseidon Water is currently developing the Huntington Beach, California seawater desalination facility and is actively exploring other projects across North America. The management of Poseidon Water has collectively structured, arranged and closed over $10 billion of project and corporate financings in the private infrastructure market, including the electric power, water treatment and natural gas supply and transportation industries. See “PROJECT PARTICIPANTS — Poseidon Resources (Channelside) LP”.

Project Construction The Plant was developed, designed, constructed and tested pursuant to the Water Purchase Agreement and a Desalination Facility Engineering, Procurement and Construction Agreement (the “Plant EPC Contract”) between the Company and Kiewit Shea Desalination, a joint venture of Kiewit Infrastructure West Co. and J.F. Shea Construction Company, in a joint and several capacity (the “EPC Contractor”). The Pipeline was designed, constructed and tested pursuant to a Pipeline Design-Build Agreement for Product Water Pipeline Improvements Relating to the Carlsbad Seawater Desalination Project between the Company and the Water Authority dated as of December 24, 2012 (the “Pipeline DBA”) and a Product Water Delivery System Engineering, Procurement and Construction Contract for the design, engineering, procurement, construction, start-up, commissioning and testing of the Pipeline between the Company and the EPC Contractor (the “Pipeline EPC Contract”). The Project achieved Commercial Operation on December 23, 2015. The Pipeline achieved final completion on August 17, 2017, and certain requirements for final completion of the Plant are in progress. The remaining obligations of the EPC Contractor under the Plant EPC Contract and the Pipeline EPC Contract are guaranteed by Kiewit Infrastructure Co. See “THE PROJECT – Construction of the Project”. 
The EPC Contractor’s liability under the Plant EPC Contract may not exceed $200 million, less damages incurred and paid by the EPC Contractor under the Pipeline EPC Contract in excess of $29,382,000. Excluding certain warranty claims, no claims for damages have been asserted under the Plant EPC Contract or the Pipeline EPC Contract.

Water Purchase Agreement

The company sells Product Water to the Water Authority pursuant to the Water Purchase Agreement. The Water Authority is the sole purchaser of Product Water. The initial term of the Water Purchase Agreement expires 30 years after the Commercial Operation Date, on December 22, 2045, unless earlier terminated including by reason of the Water Authority’s exercise of its option to purchase the Plant as described herein. Since execution of the Water Purchase Agreement, the Water Authority and the Company have entered into [five] amendments to the Water Purchase Agreement. Additionally, under the Water Purchase Agreement, the Water Authority and the Company established a mechanism for documentation of routine matters of interpretation and application which do not constitute formal amendments to the Water Purchase Agreement, referred to as Contract Administration Memoranda, or “CAMs”. See Appendix G – Summary of the Water Purchase Agreement.

Under the Water Purchase Agreement the Water Authority is obligated to purchase or pay for 48,000 AFY of Product Water that meets the requirements of the Water Purchase Agreement and may request up to 56,000 AFY. The Water Authority pays a per-acre-foot charge for delivered or deliverable water calculated to be sufficient to pay debt service on the Series 2012 Plant Bonds, an equity return and variable and fixed operating costs. The Company is obligated to make Operating Period Shortfall Payments (“Operating Period Shortfall Payments”) to the Water Authority for the failure to deliver Product Water as required under the Water Purchase Agreement. In the Installment Sale and Assignment Agreement, the Water Authority has assigned its rights to receive Operating Period Shortfall Payments to the Water Authority Financing Agency, which has further assigned them to the Issuer, which, in turn, has assigned them to the Pipeline Trustee. If the Company defaults on its obligations to make Operating Period Shortfall Payments, the Water Authority may terminate the Water Purchase Agreement, and the Water Authority would have no obligation to make any Installment Sale Payments pursuant to the Installment Sale and Assignment Agreement, and the Company would be obligated to pay the entire debt service on the Series 2012 Plant Bonds, the Series 2019 Pipeline Bonds and any Additional Plant Senior Debt or Additional Pipeline Bonds. The Company’s obligation to make Contracted Shortfall Payments is secured on a parity with the Company’s obligations to make payment on the Series 2012 Plant Bonds by all revenues and assets pledged to the Collateral Agent for that purpose.

The Water Authority has an option to purchase the Plant at any time following the 10th anniversary of the Commercial Operation Date for a
price sufficient to redeem or defease the Series 2012 Plant Bonds and any Additional Plant Senior Debt incurred for the construction and modification of the Plant and which constitutes Permitted Debt under the Water Purchase Agreement plus a return to equity. The Water Authority will also have an option to purchase the Plant for the same price if financing is unavailable to pay for modifying or reinstating the Plant under the circumstances described under “PROJECT OPERATION — The Water Purchase Agreement — Financing — Compensation Adjustment Event Capital Costs”. The Water Authority may also purchase the Plant for the aggregate outstanding principal and accrued interest on the Series 2012 Plant Bonds and any Additional Plant Senior Debt incurred for the construction and modification of the Plant and which constitutes Approved Permitted Debt under the Water Purchase Agreement upon a termination for the Company’s default.

THE WATER AUTHORITY IS UNDER NO OBLIGATION TO PURCHASE THE PLANT UPON A TERMINATION OF THE WATER PURCHASE AGREEMENT OR AS A RESULT OF A TERMINATION BY THE COMPANY FOR A DEFAULT BY THE WATER AUTHORITY. CALIFORNIA LAW PROVIDES CERTAIN RIGHTS WITH RESPECT TO THE PRIVATE USE OF WATER CONVEYANCE FACILITIES OWNED BY PUBLIC AUTHORITIES, SUCH AS THE WATER AUTHORITY, BUT THERE CAN BE NO ASSURANSES THAT THE COMPANY OR A SUCCESSOR COULD MAKE USE OF THE PIPELINE OR THE REST OF THE WATER AUTHORITY’S DISTRIBUTION SYSTEM FOLLOWING A TERMINATION OF THE WATER PURCHASE AGREEMENT. SEE “INVESTMENT RISKS”.

O&M Agreement .................The Company has entered into an Operation, Maintenance, Repair and Replacement Agreement, dated December 24, 2012, with IDE Americas, for the operation, maintenance, repair and replacement of the Plant (the “O&M Agreement”). The term of the O&M Agreement is 30 years from December 23, 2015, which was the date on which the Plant was turned over to IDE Americas for operation, such that the O&M Agreement will expire on December 22, 2045.

IDE Americas is entitled to receive monthly payments under the O&M Agreement consisting of a fixed fee and a variable fee per thousand gallons of Product Water delivered. The O&M Agreement contains an energy adjustment whereby IDE Americas will be responsible for the cost of energy consumption above a guaranteed amount and IDE Americas and the Company will share in cost savings if energy consumption is below the guaranteed amount. IDE Americas will be liable for liquidated damages for shortfalls in Product Water production and failure to meet the O&M Agreement’s quality standards. The Company and IDE Americas disagree as to responsibility for certain Product Water delivery shortfalls occurring primarily during the second and third quarters of 2017 principally as a result of an algal bloom described in “PROJECT OPERATION -- Operation and Maintenance of the Plant — Plant Operations”. The amount in controversy is
approximately $7 million, which could be subject to increase depending upon the outcome. See “PROJECT OPERATION — Operation and Maintenance of the Plant – O&M Agreement with IDE Americas”, Appendix B – Company Audited Financial Statements for year ended December 31, 2017 and the summary of the O&M Agreement in Appendix H.

The EPC Contractor and IDE Americas have provided certain guarantees and performance and payment bonds described herein, to assure that their obligations are met, and the Collateral Agent is the assignee or beneficiary of those third-party assurances. However, the liabilities of the EPC Contractor and IDE Americas are subject to overall limitations and they are excused in certain circumstances where the Company is not entitled to relief under the Water Purchase Agreement or the Pipeline DBA.

Ground Lease .......................... Under the Second Amended and Restated Ground Lease and Easement Agreement, dated April 7, 2010, as amended (the “Ground Lease”), Cabrillo Power I, LLC (“Cabrillo”) has granted the Company a leasehold in property on the premises of Cabrillo’s Power Station, and appurtenant easements over Cabrillo’s property, to construct and operate the Plant. The initial term of the Ground Lease expires 35 years after the Commercial Operation Date, with two 10-year renewal options at market price.

The Ground Lease grants the Company access to the Power Station’s existing intake and discharge facilities. Cabrillo must use reasonable efforts to operate its once-through cooling system (the “Pumps”) at the flow needed for the Plant. Cabrillo has given notice to the Company that Cabrillo intends to permanently shut down the Pumps and the Company is preparing to undertake intake modifications to support stand-alone operations of the Plant, as contemplated in the Water Purchase Agreement. The Company and Cabrillo entered into an amendment of the Ground Lease on February 16, 2018 to facilitate construction of the Intake System Modifications. Additionally, the Company and Cabrillo are negotiating a memorandum of understanding addressing the commercial terms associated with Cabrillo’s continued operation and maintenance of its existing intake facilities (including cooling water pumps, screens and bar racks) pending completion of the interim intake improvements. See “THE PROJECT – Intake System Modifications”, “PROJECT SITE –Ground Lease” and Appendix H – Summaries of Certain Project Contracts”.

Certain Investment Risks........ An investment in the Series 2019 Pipeline Bonds involves the assumption of certain risks. See “INVESTMENT RISKS”.

Restrictions on Transfer......... The Series 2019 Pipeline Bonds are being offered and sold only to Qualified Institutional Buyers, as defined in Rule 144A under the Securities Act of 1933 (“QIBs”). Prospective purchasers are hereby notified that the Series 2019 Pipeline Bonds are subject to restrictions on transfer. Such restrictions include that no offer, sale,
pledge, transfer or exchange may be made of Series 2019 Pipeline Bonds (a) except to investors that are QIBs and (b) in a denomination of less than the authorized denomination. Any offer, sale, pledge, transfer or exchange made of Series 2019 Pipeline Bonds to any person other than a QIB will be void and the purported transferor will remain the owner of record of such Series 2019 Pipeline Bonds. See “TRANSFER RESTRICTIONS” herein.

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LIMITED OFFERING MEMORANDUM

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

[$____________]

Water Furnishing Revenue Refunding Bonds, Series 2019
(San Diego County Water Authority Desalination Project Pipeline)

INTRODUCTION

This Limited Offering Memorandum is provided to furnish information relating to [$____________*] aggregate principal amount of California Pollution Control Financing Authority Water Furnishing Revenue Refunding Bonds, Series 2019 (San Diego County Water Authority Desalination Project Pipeline) (the “Series 2019 Pipeline Bonds”).

The Series 2019 Pipeline Bonds are being issued to (i) current refund and redeem the Issuer’s outstanding Water Furnishing Revenue Bonds, Series 2012 (San Diego County Water Authority Desalination Project Pipeline) (the “Series 2012 Pipeline Bonds”), (ii) fund a debt service reserve for the Series 2019 Pipeline Bonds and (iii) pay costs of issuance of the Series 2019 Pipeline Bonds. The Series 2012 Pipeline Bonds were issued concurrently with the Issuer’s Water Furnishing Revenue Bonds, Series 2012 (Poseidon Resources (Channelside) LP Desalination Project) (AMT) (the “Series 2012 Plant Bonds” and, together with the Series 2019 Pipeline Bonds, the “Project Bonds”). The Series 2012 Plant Bonds funded the majority of the costs of acquiring, constructing and installing the Claude “Bud” Lewis Carlsbad Desalination Plant located in Carlsbad, California (the “Plant”) to supply potable water (“Product Water”) to the San Diego County Water Authority (the “Water Authority”). The Plant consists of a 54 million gallon per day (“MGD”) reverse osmosis desalination plant. The Series 2012 Pipeline Bonds funded an approximately 10-mile pipeline that connects the Plant to the Water Authority’s existing distribution system and an interconnection pipeline and related improvements (the “Pipeline” and together with the Plant, the “Project”). The Project was developed as a public-private partnership between the Water Authority and Poseidon Resources (Channelside) LP (the “Company”) to augment and diversify the Water Authority’s water resources.

The Water Authority is the public wholesale water provider in the populous Western portions of San Diego County (the “County”). The County is a semi-arid region where historically the natural occurrence of water from rainfall and groundwater provides a firm water supply for only a small portion of the water needs of the current population. The Plant was designed to assist the Water Authority in meeting its water supply needs by augmenting the Water Authority’s rainfall, groundwater, recycled and purchased water supplies as well as its conservation efforts. The Water Authority purchases the majority of its supplies from the Metropolitan Water District and the Imperial Irrigation District. Those supplies ultimately come from the Colorado River and from the California State Water Project, the latter of which distributes water from the San Joaquin Delta in the north-central area of the State. These supplies have been severely impacted by environmental restrictions in the San Joaquin Delta, a long-term decline in rainfall throughout the Southwestern United States prior to late 2016, and increased demands for usage of Colorado River water. In response, the Water Authority is implementing long-term strategies to diversify the region’s water supply and reduce reliance on a single water supplier. A key component of the Water Authority’s supply diversification strategy is increasing seawater desalination which includes the Project. See Appendix C, Water Authority Information.

* Preliminary, subject to change.
The Series 2019 Pipeline Bonds are being issued pursuant to the provisions of the California Pollution Control Financing Authority Act (Chapter 1 (commencing at Section 44500) of Division 27 of the Health and Safety Code of the State of California), as amended or supplemented (the “Act”), and pursuant to a Trust Indenture, dated as of [February 1, 2019] (the “Pipeline Indenture”), between the Issuer and MUFG Union Bank, N.A. (in such capacity, the “Pipeline Trustee”). In order to refinance the costs of developing, designing and constructing the Pipeline, the Issuer will apply the proceeds of the Series 2019 Pipeline Bonds, together with other legally available funds, to refund the outstanding Series 2012 Pipeline Bonds. In connection therewith, the Issuer, the Water Authority, the Water Authority Financing Agency, the Company, the Plant Trustee, the Pipeline Trustee, the Collateral Trustee and other affected parties will enter into amendments to existing documents executed in connection with the issuance of the Project Bonds, to reflect references to the Series 2019 Pipeline Bonds and the Pipeline Indenture.

Pursuant to the Installment Sale and Assignment Agreement, the Water Authority is paying the purchase price of the Pipeline in installments (“Installment Sale Payments”) in such amounts and at such times as required to satisfy the Water Authority Financing Agency’s obligations under the Pipeline Loan Agreement which will, in turn, satisfy the Issuer’s obligations to pay debt service on the Series 2019 Pipeline Bonds except as described in the following paragraph and in the summary of the Installment Sale and Assignment Agreement in Appendix F.

The Company and the Water Authority have entered into a Water Purchase Agreement, as amended (the “Water Purchase Agreement”) pursuant to which the Company sells water produced by the Plant (“Product Water”) to the Water Authority. The Company and the Water Authority also entered into the Pipeline DBA, under which the Company constructed the Pipeline. Under the Water Purchase Agreement, the Company generally is responsible for making payments to compensate the Water Authority for failure to deliver required amounts and/or quality of Product Water (“Operating Period Shortfall Payments”) and must pay the Water Authority an amount equal to the principal amount of the Outstanding Series 2019 Pipeline Bonds, plus accrued and unpaid interest thereon and any related fees and expenses of the Collateral Agent, the Pipeline Trustee, the Issuer and the Rating Agencies then rating the Series 2019 Pipeline Bonds if the Water Authority terminates the Water Purchase Agreement upon the occurrence of a Project Company Event of Default (“Termination Operating Period Shortfall Payments”, and, collectively with the Operating Period Shortfall Payments, “Contracted Shortfall Payments”). Since the Commercial Operation Date the Company has made approximately $3,585,537.60 in Contracted Shortfall Payments as a result of certain unexcused shortfalls in Product Water deliveries. All of such payments constitute Operating Period Shortfall Payments because the Water Purchase Agreement is in effect and has not been terminated. See “PROJECT OPERATION – Water Purchase Agreement – Product Water Quantity and Quality Shortfalls and – Operation and Maintenance of the Plant”.

The Plant is located on an approximately six-acre parcel (the “Plant Site”) adjacent to the existing Encina Power Station (the “Power Station”), immediately south of the Agua Hedionda Lagoon on the Pacific Ocean (the “Lagoon”), in the City of Carlsbad, in northern San Diego County. The Company leases the Plant Site from Cabrillo Power I LLC (“Cabrillo”), which is the owner and operator of the Power Station and an indirect wholly owned subsidiary of NRG Energy Inc., pursuant to a Second Amended and Restated Lease and Easement Agreement, as amended (the “Ground Lease”). The Power Station draws seawater from the Lagoon for its cooling water system. The Plant processes a portion of seawater from the Power Station’s cooling water discharge canal and returns the resulting concentrated seawater to the discharge canal, where it is commingled with other discharged cooling water and discharged into the Pacific Ocean. [TO BE UPDATED RE PLANT SHUTDOWN: Effective ________, 2018, Cabrillo discontinued operation of the Pumps, and the Company is continuing to operate the Pumps]
at the Company’s expense on a temporary standalone basis pursuant to the terms of the Ground Lease.] See “THE PROJECT – Intake System Modifications”.

The Plant was designed, constructed and tested pursuant to the Water Purchase Agreement and a Desalination Facility Engineering, Procurement and Construction Agreement (the “Plant EPC Contract”) between the Company and Kiewit Shea Desalination, a joint venture of Kiewit Infrastructure West Co. and J.F. Shea Construction Company, in a joint and several capacity (the “EPC Contractor”). The Pipeline was developed, designed and constructed pursuant to the Pipeline DBA, and a Product Water Delivery System Engineering, Procurement and Construction Contract for the design, engineering, procurement, construction, start-up, commissioning and testing of the Pipeline between the Company and the EPC Contractor (the “Pipeline EPC Contract” and, together with the Plant EPC Contract, the “EPC Contracts”). The Pipeline and the Plant attained Commercial Operation on December 23, 2015, and Final Completion of the Pipeline under the Pipeline EPC Contract was achieved on August 17, 2017. Certain actions described herein remain to be completed for the Plant in order to attain Project Completion as defined in the Water Purchase Agreement and the Plant Loan Agreement, and the Completion Date as defined in the Collateral Trust Agreement. Kiewit Infrastructure West Co. and J.F. Shea Construction Company are jointly and severally liable for their remaining obligations under the Plant EPC Contract and their obligations thereunder are guaranteed by Kiewit Infrastructure Co. The obligations of the EPC Contractor are secured by certain performance bonds and guarantees. IDE Americas, Inc. (“IDE Americas”), a subsidiary of IDE Technologies, Ltd (“IDE”), provided the Plant’s main water processing equipment under a subcontract with the EPC Contractor (the “IDE Americas Subcontract”). Other than with respect to possible changes to the Plant’s backwash treatment system discussed below, IDE Americas has completed work under the IDE Americas Subcontract. See ‘THE PROJECT – Construction of the Plant’.

The Ground Lease permits Cabrillo to close its generating facility and permanently shut down the Pumps (a “Permanent Pump Shutdown”). [TO BE UPDATED RE PLANT SHUTDOWN: Cabrillo gave the Company 36 months’ notice of a Permanent Pump Shutdown and [has shut down the generating facility/ the Company expects the generating facility to be shut down in [month] 2019]). Beyond the intake and discharge system modifications that are required due to the Permanent Pump Shutdown and in order to transition to stand-alone operation of the Plant, additional intake and discharge system improvements will be required. These additional improvements are required in order to comply with an amendment to the Water Quality Control Plan for the Ocean Waters of California to address effects associated with the construction and operation of seawater desalination facilities (“Ocean Plan Amendment”) adopted by the SWRCB in May 2015. The modifications required by the closure of the Cabrillo generating facility and those required by the adoption of the Ocean Plan Amendment are referred to herein collectively as the “Intake System Modifications”. The Company anticipates that it will install new intake and discharge system pumps in the fourth quarter of 2019 and a new water intake in the first quarter of 2024.

The Company and IDE Americas have entered into a Facility Operation, Maintenance, Repair and Replacement Agreement (the “O&M Agreement”) pursuant to which IDE Americas operates and maintains the Plant, including periodic replacement of reverse osmosis membranes and certain other major equipment. IDE Americas is obligated to meet the Product Water delivery requirements of the Water Purchase Agreement both as to quantity and quality, and to perform its duties for a price consisting of certain fixed and variable fee components. In the event of shortfalls in meeting IDE Americas’ Product Water delivery obligations, the fixed fee will be reduced proportionately and IDE Americas will be obligated to pay liquidated damages to the Company. IDE Americas’ obligations under the O&M Agreement are secured by a $10 million performance bond and a parent guaranty from IDE. See “PROJECT OPERATION — Operation and Maintenance of the Plant” and the summary of O&M
Since the Commercial Operation Date, the Water Authority has (a) operated and maintained the Pipeline as a part of its system, (b) paid Installment Sale Payments under the Installment Sale and Assignment Agreement, and (c) purchased Product Water in accordance with the Water Purchase Agreement. Under the Water Purchase Agreement the Water Authority agrees to purchase a minimum of 48,000 acre-feet per year (“AFY”) of Product Water that meets the Water Authority’s quality standards. At the request of the Water Authority the Company must deliver up to 56,000 AFY of Product Water that meets the Water Authority’s quality standards. If the Company delivers the full amount of Product Water requested by the Authority annually, it is entitled to receive water purchase payments calculated to pay the fixed and variable Plant operating costs, debt service on the Series 2012 Plant Bonds and a negotiated return on equity to the Company’s investors. The Company has not met its full delivery obligations since commencement of operations, due in part to events that excused its performance and in part to events that the Company believes have been the responsibility of IDE Americas. See “PROJECT OPERATION – Operation and Maintenance of the Plant”.

The Water Authority has assigned its rights to receive Contracted Shortfall Payments to the Water Authority Financing Agency in the Installment Sale and Assignment Agreement; the Water Authority Financing Agency has further assigned such rights to the Issuer in the Pipeline Loan Agreement; and the Issuer in turn has assigned such rights to the Pipeline Trustee in the Pipeline Indenture. If the Series 2019 Pipeline Bonds go into default as a result of Poseidon’s failure to make Contracted Shortfall Payments when due, the Water Authority will not be in default under the Installment Sale and Assignment Agreement and the Water Authority Financing Agency will not be in default under the Pipeline Loan Agreement. If, as a result of any such failure, the Series 2019 Pipeline Bonds are accelerated, the obligations of the Water Authority under the Installment Sale and Assignment Agreement to make Installment Sale Payments will cease, and the Holders of the Series 2019 Pipeline Bonds will look solely to the property interests conveyed to the Pipeline Trustee pursuant to the Pipeline Indenture and the Collateral held by the Collateral Agent. The Company will have no payment obligations if the Series 2019 Pipeline Bonds are accelerated as a result of a failure by the Water Authority to make any payment required to be made by it under the Installment Sale and Assignment Agreement. See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS” and the summary of the Installment Sale and Assignment Agreement in Appendix F.

The Water Authority’s obligation to make Installment Sale Payments is unsecured and subordinate to its senior debt and other debt secured under the General Resolution; however in the Installment Sale and Assignment Agreement, the Water Authority agrees to comply with the covenants made by the Water Authority in the General Resolution for the benefit of the holders of the Authority Senior Lien Obligations and the Authority Subordinate Lien Obligations, including its rate covenant. See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS”.

The Issuer may, in the future, issue additional series of bonds under the Plant Indenture (“Additional Plant Bonds” and, together with the Series 2012 Plant Bonds, the “Plant Bonds”) secured on a parity with the Series 2012 Plant Bonds and the Contracted Shortfall Payments and lend the proceeds thereof to the Company pursuant to the Plant Loan Agreement. The Company may also incur additional debt other than pursuant to the Plant Loan Agreement that would be secured under the Collateral Trust Agreement on a parity basis with the Plant Bonds and the Contracted Shortfall Payments (such additional debt together with Additional Plant Bonds, “Additional Plant Senior Debt”). The Company expects to incur Additional Plant Senior Debt in connection with the Intake System Modifications (as defined herein) in an amount currently estimated at approximately $79 million. See “THE PROJECT – Intake System Modifications”. The issuance of Additional Plant Senior Debt is subject to the satisfaction of
certain conditions as described under “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS – Additional Plant Senior Debt”.

The Company’s obligations under the Plant Loan Agreement and its obligation to make Contracted Shortfall Payments are equally and ratably secured under the Collateral Trust Agreement. See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS — The Collateral Trust Agreement”.


THE WATER AUTHORITY FINANCING AGENCY’S OBLIGATIONS TO MAKE PIPELINE LOAN REPAYMENTS ARE LIMITED OBLIGATIONS OF THE WATER AUTHORITY FINANCING AGENCY PAYABLE SOLELY FROM PAYMENTS MADE BY THE WATER AUTHORITY UNDER THE INSTALLMENT SALE AND ASSIGNMENT AGREEMENT.

The Series 2019 Pipeline Bonds are being offered and sold only to QIBs. Prospective purchasers are hereby notified that the Series 2019 Pipeline Bonds are subject to restrictions on transfer. Such restrictions include that no offer, sale, pledge, transfer or exchange may be made of Series 2019 Pipeline Bonds (a) except to investors that are QIBs and (b) in a denomination of less than the authorized denomination. Any offer, sale, pledge, transfer or exchange made of Series 2019 Pipeline Bonds to any person other than a QIB will be void and the purported transferor will remain the owner of record for such Series 2019 Pipeline Bonds. See “TRANSFER RESTRICTIONS”.

This Limited Offering Memorandum contains brief descriptions of (a) the Issuer, the Company, the Water Authority, the Water Authority Financing Agency and certain other Project participants, (b) the Series 2019 Pipeline Bonds, the Pipeline Indenture, the Pipeline Loan Agreement and the Installment Sale and Assignment Agreement, and (c) the Series 2012 Plant Bonds, the Plant Loan Agreement, the Plant Indenture, the Collateral Trust Agreement, certain other Plant Financing Documents and certain Project Contracts. Such information and descriptions do not purport to be comprehensive or definitive and no part of such information is to be construed as a representation or guarantee of completeness by the Issuer, the Company, the Water Authority Financing Agency or the Water Authority.

THE ISSUER

The California Pollution Control Financing Authority (the “Issuer”) is a political subdivision and public instrumentality of the State of California created pursuant to the Act for the purpose of providing industry within the State with an alternative method of financing in providing, enlarging and establishing pollution control facilities to the mutual benefit of the people of the State and to protect their health and welfare. In furtherance of such purposes, the Issuer is authorized to issue revenue bonds and to make loans to lend financial assistance in the acquisition, construction or installation of pollution control facilities. The Issuer’s Board consists of three public officials who hold office ex officio: the State Treasurer, the State Controller and the State Director of Finance. Pursuant to the Act, the Issuer authorized (a) the issuance of Series 2012 Plant Bonds, the loan of the proceeds of the Series 2012 Plant Bonds to the Company and the securing of the Series 2012 Plant Bonds by a pledge and assignment to the
Plant Trustee of Plant Revenues pursuant to the Plant Indenture and (b) the issuance of Series 2019 Pipeline Bonds, for the purpose of refunding the Series 2012 Pipeline Bonds and the securing of the Series 2019 Pipeline Bonds by a pledge and assignment of the Pipeline Trust Estate (as defined below). The Issuer’s principal offices are located at 915 Capitol Mall, Room 457, Sacramento, California 95814.

THE FINANCING AGENCY

The San Diego County Water Authority Financing Agency is a joint powers entity duly organized and existing under the California Joint Exercise of Powers Act (Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, the “JPA Act”, and in particular Articles 1, 2, and 4 thereof) and an Agreement entitled “Joint Exercise of Powers Agreement” by and between the San Diego County Water Authority and the California Municipal Finance Authority creating the San Diego County Water Authority Financing Agency, dated December 17, 2009, for the purpose of assisting the financing of capital projects of the Water Authority. The Water Authority Financing Agency has the express power to “to hold or dispose of property, whether real or personal, tangible or intangible, wherever located; to issue bonds or otherwise incur debts, liabilities or obligations to the extent authorized by the JPA Act or any other applicable provisions of law and to pledge any property or revenues or rights thereto as security for such bonds and other indebtedness”. The Water Authority Financing Agency is authorized pursuant to the JPA Act to enter into and perform all obligations under the Pipeline Loan Agreement and the Installment Sale and Assignment Agreement. The Water Authority Financing Agency functions as an independent entity and its policies are determined by a governing board that consists of the Chair of the Board of Directors, Chair of the Administrative and Finance Committee, General Manager, General Counsel and Director of Finance of the Water Authority. The Water Authority Financing Agency has no employees and all staff work is done by the Water Authority staff.

PLAN OF REFUNDING

The issuance of the Series 2019 Pipeline Bonds represents part of the continuing development of the combined plan of finance between the Water Authority and the Company that reflects their respective roles and responsibilities for the Project. The Water Authority owns, operates and maintains the Pipeline; while the Company constructed, owns and operates the Plant and constructed the Pipeline. In addition, the Water Authority funded the costs of acquiring the right of way for the Pipeline and certain improvements to its Aqueduct System and the Twin Oaks Valley Water Treatment Plant, from its own revenues.

The Series 2019 Pipeline Bonds are being issued to (i) current refund and redeem the outstanding Series 2012 Pipeline Bonds, (ii) fund a debt service reserve for the Series 2019 Pipeline Bonds and (iii) pay costs of issuance of the Series 2019 Pipeline Bonds. In order to refinance the costs of developing, designing, acquiring and constructing the Pipeline, concurrently with the issuance of the Series 2019 Pipeline Bonds, the Issuer will apply the proceeds of the Series 2019 Pipeline Bonds, together with other legally available funds, to refund the outstanding Series 2012 Pipeline Bonds in full.

In connection with the issuance of the Series 2019 Pipeline Bonds, the Issuer, the Water Authority, the Water Authority Financing Agency, the Company, the Pipeline Trustee and the Plant Trustee will enter into an Omnibus Refunding Amendment Agreement, dated as of [February 1, 2019] (the “Omnibus Amendment”), amending, supplementing and restating certain terms of (i) the Pipeline Loan Agreement with respect to the Series 2012 Pipeline Bonds (the “Original Pipeline Loan Agreement” and as so amended, the “Pipeline Loan Agreement”); (ii) the Original Installment Sale and Assignment Agreement (as so amended, the “Installment Sale and Assignment Agreement”); and (iii) the Plant Loan Agreement with respect to the Series 2012 Plant Bonds (the “Original Plant Loan Agreement” and as so amended, supplemented and restated, the “Plant Loan Agreement”), relating to
the payment of, and security for, the Series 2019 Pipeline Bonds as described herein. Additionally, the
Company, the Pipeline Trustee, the Plant Trustee and the Collateral Agent will enter into a Collateral
Documents Master Refunding Amendment dated as of [February 1, 2019] (the "Collateral Documents
Master Refunding Amendment") amending and restating certain terms of (x) the Original Collateral
Trust Agreement (as so amended, the “Collateral Trust Agreement”), (y) the Pledge and Security
Agreement among Poseidon Resources Channelside GP, Inc. (“Poseidon GP”), as Pledgor, the Company
and the Collateral Agent and (z) the Pledge and Security Agreement among Poseidon Resources
Channelside Holdings LLC (the “Limited Partner”), the Company and the Collateral Agent. The [Water
Authority and the Company will enter into CAMs Nos. 009 and 010, WPA Amendment No. 004 and
WPA Amendment No. 005; and the] Collateral Agent will enter into amendments to various consents to
assignments previously delivered by parties to Project documents assigned as collateral. The
aforementioned documents generally address updating references to Series 2019 Pipeline Bonds in light
of the refunding of the Series 2012 Pipeline Bonds, and affirmation of continuing obligations.

ESTIMATED SOURCES AND USES OF FUNDS

On the date of issuance of the Series 2019 Pipeline Bonds, the proceeds received, shall be
deposited into the Gross Proceeds Fund established under the Pipeline Indenture, which the Pipeline
Trustee shall establish and maintain until making the deposits shown in the following table, whereupon
the Gross Proceeds Fund shall be closed. The following table sets forth the estimated sources and uses of
the funds with respect to the Series 2019 Pipeline Bonds:

| SOURCES: | |
| Principal Amount | $[
| TOTAL: | $[

| USES: | |
| Deposit to Bond Fund for Series 2012 Pipeline Bonds | $[
| Deposit to Debt Service Reserve Fund | $[
| Costs of Issuance(1) | $[
| TOTAL: | $[

Includes legal fees, underwriters’ discount, trustee fees, municipal advisory fees, consultant fees, rating agencies’ fees, printing
costs and other costs of issuance.

THE SERIES 2019 PIPELINE BONDS

General

The Series 2019 Pipeline Bonds will be issued in the aggregate principal amount of
$[_____________] and will mature, subject to prior redemption as described herein, as set forth on the
inside cover page hereof. The Series 2019 Pipeline Bonds will bear interest at the rate or rates of interest
per annum as set forth on in front inside cover of this Limited Offering Memorandum from the date of
original issuance until maturity and be payable on January 1 and July 1 of each year commencing on [July
1, 2019]. Interest on Series 2019 Pipeline Bonds will be computed on the basis of a 360-day year,
consisting of twelve 30-day months.

* Preliminary, subject to change
The Series 2019 Pipeline Bonds will be issued as fully registered bonds without coupons in the denominations of $250,000 and $5,000 and integral multiples of $5,000 in excess of $250,000. The Series 2019 Pipeline Bonds will be issued originally solely in book-entry form to DTC or its nominee, Cede & Co., to be held in DTC’s book-entry-only system. Purchases of Series 2019 Pipeline Bonds may be made only in book-entry form in Authorized Denominations. Except as described under “Book-Entry System” below, Beneficial Holders of the Series 2019 Pipeline Bonds will not receive or have the right to receive physical delivery of Series 2019 Pipeline Bonds and will not be or be considered to be registered owners of Series 2019 Pipeline Bonds. So long as DTC or its nominee is the registered owner of the Series 2019 Pipeline Bonds, references in this Limited Offering Memorandum to Bondholders, Registered Owners or Holders of the Series 2019 Pipeline Bonds will refer to DTC or its nominee and not to the Beneficial Owners of the Series 2019 Pipeline Bonds, and payment of principal of, premium, if any, and interest on and the purchase price for Series 2019 Pipeline Bonds will be paid through the facilities of DTC. See the description of the Book-Entry System in Appendix D.

Redemption of Series 2019 Pipeline Bonds

Optional Redemption

The Series 2019 Pipeline Bonds are subject to optional redemption by the Issuer prior to maturity beginning on [____________, ______] at the written direction of the Water Authority, in whole or in part, from time to time on any date, at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any, to the redemption date.

Mandatory Redemption

The Series 2019 Pipeline Bonds are subject to mandatory redemption, in whole, at any time, at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any, to the redemption date, not more than twelve months after the occurrence of the following event: as a result of any changes in the Constitution of the State or in the Constitution of the United States of America or of legislative or administrative action (whether state or federal), or by final, nonappealable decree, judgment or order of any court or administrative body (whether state or federal) entered after the contest thereof by the Water Authority in good faith, the Pipeline Loan Agreement or the Installment Sale and Assignment Agreement becomes impossible to perform in accordance with the intent and purposes of the parties as expressed in the Pipeline Loan Agreement or the Installment Sale and Assignment Agreement, as applicable.

Mandatory Sinking Fund Redemption

The Series 2019 Pipeline Bonds maturing on the dates listed below will be redeemed in part on July 1 in each of the years listed below from amounts deposited in the Bond Fund (“Bond Fund”), at a redemption price equal to 100% of the principal amount redeemed plus accrued interest thereon to the redemption date, in the principal amount set forth below next to such year:

| Series 2019 Pipeline Bonds Due [July 1, 20__] |
|-----------------|-------------|
| Year | Amount |

* Preliminary, subject to change.
Credit for Non-Mandatory Redemption

The requirements under “– Mandatory Sinking Fund Redemption” are subject, however, to the provision that any partial redemption under “– Optional Redemption” or “– Mandatory Redemption” of the Series 2019 Pipeline Bonds maturing on any one date shall reduce the mandatory sinking fund redemption requirements scheduled for the Series 2019 Pipeline Bonds maturing on such date under “– Mandatory Sinking Fund Redemption” as provided in this paragraph. In the event of a partial redemption under “– Optional Redemption” or “– Mandatory Redemption” of the Series 2019 Pipeline Bonds maturing on any one date, the Pipeline Trustee shall allocate the redeemed principal amount of the Series 2019 Pipeline Bonds maturing on such date against the next Series 2019 Pipeline Bonds maturing on such date to be redeemed under “– Mandatory Sinking Fund Redemption” above.

Purchase in Lieu of Redemption

In lieu of redemption of Series 2019 Pipeline Bonds, at the written direction of the Water Authority, the Issuer will purchase Series 2019 Pipeline Bonds on the date set for redemption with moneys provided by the Water Authority at a price (including accrued interest, but excluding any brokerage or other charges) equal to the applicable redemption price of such Series 2019 Pipeline Bonds. Such Series 2019 Pipeline Bonds so purchased will be delivered to the Pipeline Trustee for transfer to the designee of the Water Authority, and thereafter delivered to the designee of the Water Authority, all as the Pipeline Trustee is instructed in writing by an Authorized Representative of the Water Authority.

Notice of Redemption
Notice of the call for any redemption of Series 2019 Pipeline Bonds or any portion thereof (which shall be in Authorized Denominations) pursuant to “– Optional Redemption,” “– Mandatory Redemption” or “–Mandatory Sinking Fund Redemption” identifying the Series 2019 Pipeline Bonds or portions thereof to be redeemed, specifying the redemption date, the redemption price, the place and manner of payment, any conditions to such redemption and that from the redemption date interest will cease to accrue, will be given by the Pipeline Trustee by mailing a copy of the redemption notice by first class mail to the Holder of each Series 2019 Pipeline Bond to be redeemed in whole or in part at the address shown on the registration books. Such notice will be given at least 30 days prior to the date fixed for redemption to the Holders of Series 2019 Pipeline Bonds to be redeemed; provided, however, that failure to duly give such notice, or any defect therein, will not affect the validity of any proceedings for the redemption of Series 2019 Pipeline Bonds with respect to which no such failure or defect occurred.

With respect to any notice of redemption of Series 2019 Pipeline Bonds at the option of the Issuer, unless upon the giving of such notice such Series 2019 Pipeline Bonds will be deemed to have been paid within the meaning of the Pipeline Indenture, such notice may state (if so directed by the Water Authority in writing) that such redemption will be conditional upon the receipt by the Pipeline Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, and premium, if any, and interest on such Series 2019 Pipeline Bonds to be redeemed, and that if such moneys shall not have been so received said notice shall be of no further force and effect and the Issuer will not be required to redeem such Series 2019 Pipeline Bonds. In the event that such notice of redemption contains such a condition and such moneys are not so received, the redemption will not be made and the Pipeline Trustee will within five days thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

Any notice mailed as provided under “– Notice of Redemption” will be conclusively presumed to have been duly given, whether or not the Holder receives the notice.

**Selection of Bonds for Redemption**

If less than all of the Series 2019 Pipeline Bonds are called for redemption, the particular Series 2019 Pipeline Bonds or portions thereof to be redeemed will be selected on a pro rata basis in Authorized Denominations or such other method as the Pipeline Trustee in its discretion deems appropriate, and in accordance with the applicable Securities Depository procedures. The Pipeline Trustee will promptly notify the Water Authority in writing of the Series 2019 Pipeline Bonds or portions thereof selected for redemption, provided that, in connection with any redemption of Series 2019 Pipeline Bonds, the Issuer, at the written direction of the Water Authority, or the Pipeline Trustee, as the case may be, must first select for redemption any Series 2019 Pipeline Bonds held by the Pipeline Trustee for the account of the Water Authority or held of record by the Water Authority and that if, as indicated in a certificate of an Authorized Representative of the Water Authority delivered to the Pipeline Trustee, the Water Authority has offered to purchase all such Series 2019 Pipeline Bonds then Outstanding and less than all such Series 2019 Pipeline Bonds have been tendered to the Water Authority for such purchase, the Issuer, at the written direction of the Water Authority, or the Pipeline Trustee, will select for redemption all such Series 2019 Pipeline Bonds that have not been so tendered. If the Holder of any such Series 2019 Pipeline Bond fails to present such Series 2019 Pipeline Bond to the Pipeline Trustee for payment and exchange as so described, such Series 2019 Pipeline Bond will, nevertheless, become due and payable, and interest will cease to accrue, on the date fixed for redemption to the extent of the principal amount called for redemption (and to that extent only).
Limited Obligations


THE WATER AUTHORITY FINANCING AGENCY’S OBLIGATIONS TO MAKE PIPELINE LOAN REPAYMENTS ARE LIMITED OBLIGATIONS OF THE WATER AUTHORITY FINANCING AGENCY, PAYABLE SOLELY FROM PAYMENTS MADE BY THE WATER AUTHORITY UNDER THE INSTALLMENT SALE AND ASSIGNMENT AGREEMENT.

SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS

General

Under the Pipeline Indenture, the Issuer will pledge to the Pipeline Trustee all of the Issuer’s right, title and interest (except for the Pipeline Retained Rights) in the Pipeline Loan Agreement, including, the right to receive Pipeline Loan Repayments and Contracted Shortfall Payments from the Water Authority under the Installment Sale and Assignment Agreement, and all moneys on deposit under the Pipeline Indenture (other than the Rebate Fund and the Cost of Issuance Fund, each established under the Pipeline Indenture) and all earnings thereon (collectively, the “Pipeline Trust Estate”).

Pipeline Loan Agreement

The Issuer loaned the proceeds of its Series 2012 Pipeline Bonds to the Water Authority Financing Agency pursuant to the Original Pipeline Loan Agreement. The Water Authority Financing Agency made such proceeds available to the Water Authority pursuant to the Original Installment Sale and Assignment Agreement to finance the costs of developing, designing, acquiring and constructing the Pipeline. In order to refinance the costs of developing, designing, acquiring and constructing the Pipeline, the Issuer will apply the proceeds of the Series 2019 Pipeline Bonds to refund the Series 2012 Pipeline Bonds. In connection therewith, pursuant to the Omnibus Amendment, the Issuer and the Water Authority Financing Agency will supplement, amend and restate certain terms of the Original Pipeline Loan Agreement to refer to the Series 2019 Pipeline Bonds and the Pipeline Indenture.

In the Pipeline Loan Agreement, the Water Authority Financing Agency agrees to repay the loan of the proceeds of the Series 2019 Pipeline Bonds by depositing, on or before any date upon which any amounts payable with respect to the Series 2019 Pipeline Bonds shall become due, whether upon redemption (including without limitation sinking fund redemption), acceleration, maturity, or otherwise (each a “Pipeline Bond Payment Date”) with the Pipeline Trustee a sum equal to the amount payable on the next Pipeline Bond Payment Date as principal of and premium, if any, and interest on the Series 2019 Pipeline Bonds as provided in the Pipeline Indenture, together with any such amount as shall be necessary to increase the amount on deposit in the Debt Service Reserve Fund to the Debt Service Reserve Requirement, and certain amounts relating to Pipeline Trustee Fees and Expenses (as defined in the Pipeline Indenture) (collectively, the “Pipeline Loan Repayments”); provided that the amount of any Pipeline Loan Repayment coming due and payable will be reduced by the amount of any Contracted Shortfall Payment that the Company becomes obligated to pay on such date (whether or not such...
Contracted Shortfall Payment is made on such date); and provided further that the obligations of the Water Authority Financing Agency under the Pipeline Loan Agreement are limited obligations of the Water Authority Financing Agency payable solely from payments made by the Water Authority under the Installment Sale and Assignment Agreement. See the summary of the Pipeline Loan Agreement in Appendix F.

**Installment Sale and Assignment Agreement**

The Water Authority Financing Agency made the proceeds of the 2012 Pipeline Bonds available to the Water Authority under the Original Installment Sale and Assignment Agreement, and proceeds of the Series 2019 Pipeline Bonds will refinance the costs of construction of the Pipeline through their application to refund the Series 2012 Pipeline Bonds. In connection therewith, pursuant to the Omnibus Amendment, the Water Authority and the Water Authority Financing Agency will supplement, amend and restate certain terms of the Original Installment Sale and Assignment Agreement, to properly reference the Series 2019 Pipeline Bonds and make other conforming changes.

The Installment Sale Payments are in amounts equal to the sum of the principal installment of the Installment Sale Payment due on such date, if any, the interest installment of the Installment Sale Payment due on such date, and the amount necessary to increase the amount on deposit in the Debt Service Reserve Fund to the Debt Service Reserve Requirement, and will be payable on or before the Business Day (as defined in the Pipeline Indenture) immediately preceding each date on which Series 2019 Pipeline Bond debt service payments are payable, provided that the Water Authority’s obligation to make Installment Sale Payments will be reduced by the amount of Contracted Shortfall Payments payable by the Company, whether or not paid. The Company’s obligation to make Contracted Shortfall Payments is secured by the Collateral held by the Collateral Agent on a parity basis with the Series 2012 Plant Bonds and any Additional Plant Senior Debt. See the summary of the Water Purchase Agreement in Appendix G.

**General Resolution and Rate Covenant**

Installment Sale Payments are payable only from the General Reserve Fund maintained by the Water Authority pursuant to the General Resolution. Monies are deposited into the General Reserve Fund only after payments of Maintenance and Operation Costs and payments in respect of Authority Senior Lien Obligations and Authority Subordinate Lien Obligations have been made. The Water Authority covenants in the Installment Sale and Assignment Agreement to comply with the covenants made by the Water Authority in the General Resolution, including its covenant to at all times fix, prescribe and collect or cause to be collected rates, fees and charges for water service which are reasonably fair and nondiscriminatory and which will be at least sufficient to yield, during its next succeeding fiscal year, Net Water Revenues sufficient for the payment of all amounts payable from Net Water Revenues and at least equal to 120 percent of the Water Authority’s payments with respect to Authority Senior Lien Obligations for such fiscal year. The Water Authority may make adjustments from time to time in such rates, fees and charges and may make such classification thereof as it deems necessary, but will not reduce the rates, fees and charges then in effect unless the Net Water Revenues from such reduced rates, fees and charges will at all times be sufficient to meet the requirements of such covenant. See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS,” the summary of the Installment Sale and Assignment Agreement in Appendix F and the description of the General Resolution in Appendix C.

**Revenue Fund**

Unless all the Series 2019 Pipeline Bonds have been accelerated and such acceleration has not been rescinded, the Pipeline Trustee will deposit all Pipeline Loan Repayments made by the Water Authority Financing Agency in the Debt Service Reserve Fund on such date, and the amount necessary to increase the amount on deposit in the Debt Service Reserve Fund to the Debt Service Reserve Requirement, and will be payable on or before the Business Day (as defined in the Pipeline Indenture) immediately preceding each date on which Series 2019 Pipeline Bond debt service payments are payable, provided that the Water Authority’s obligation to make Installment Sale Payments will be reduced by the amount of Contracted Shortfall Payments payable by the Company, whether or not paid. The Company’s obligation to make Contracted Shortfall Payments is secured by the Collateral held by the Collateral Agent on a parity basis with the Series 2012 Plant Bonds and any Additional Plant Senior Debt. See the summary of the Water Purchase Agreement in Appendix G.
Authority Financing Agency and Contracted Shortfall Payments made by the Company received by it into the Revenue Fund. On each Monthly Disbursement Date, all moneys in the Revenue Fund will be paid or transferred from the Revenue Fund established under the Pipeline Indenture by the Pipeline Trustee in the following order of priority:

(i) to the Pipeline Trustee, an amount equal to all Fees and Expenses of the Pipeline Trustee due and payable before the next Monthly Disbursement Date;

(ii) to the Issuer, an amount equal to all Fees and Expenses of the Issuer due and payable before the next Monthly Disbursement Date;

(iii) to the Bond Fund, an amount equal to the unfunded portion of one-sixth of the interest payment due and owing on the Series 2019 Pipeline Bonds on the next succeeding Interest Payment Date;

(iv) to the Bond Fund, an amount equal to one-twelfth of the principal payment due and owing on the Series 2019 Pipeline Bonds on the next succeeding Interest Payment Date on which a principal payment is due; and

(v) to the Debt Service Reserve Fund, the amount necessary, if any, to increase the balance therein to an amount equal to the Debt Service Reserve Requirement (as defined herein).

Any remaining funds in the Revenue Fund will be transferred to the Bond Fund.

**Debt Service Reserve Fund**

The Pipeline Indenture established the Debt Service Reserve Fund, which is required to be funded at all times in an amount equal to the Debt Service Reserve Requirement. “Debt Service Reserve Requirement” means, on any Monthly Disbursement Date, an amount equal to the principal, premium, if any, and interest due with respect to the Series 2019 Pipeline Bonds during the 12-month period succeeding such Monthly Disbursement Date.

On the Closing Date, the Pipeline Trustee will deposit a portion of the proceeds of the Series 2019 Pipeline Bonds into the Debt Service Reserve Fund in the amount of the Debt Service Reserve Requirement. If the amount in the Debt Service Reserve Fund does not equal the Debt Service Reserve Requirement, the Debt Service Reserve Fund will subsequently be funded by moneys transferred on each Monthly Disbursement Date by the Pipeline Trustee from the Revenue Fund pursuant to the Pipeline Indenture and/or moneys transferred by the Collateral Agent pursuant to the Collateral Trust Agreement. The Pipeline Trustee shall calculate the Debt Service Reserve Requirement on each Monthly Disbursement Date.

If, on the last Monthly Disbursement Date before any Interest Payment Date, moneys in the Revenue Fund are insufficient to make the transfers required to be made on such date pursuant to the Pipeline Indenture, the Pipeline Trustee will transfer the amount of the deficiency from the Debt Service Reserve Fund to the Bond Fund. On each Monthly Disbursement Date, the Pipeline Trustee will transfer to the Revenue Fund any moneys in the Debt Service Reserve Fund in excess of the Debt Service Reserve Requirement. See the summary of the Pipeline Indenture in Appendix F.
Collateral Trust Agreement

To secure the Company’s obligations to make payments under the Plant Loan Agreement with respect to the Plant Bonds and to make Contracted Shortfall Payments, the Company, the Plant Trustee and the Pipeline Trustee have entered into the Collateral Trust Agreement with the Collateral Agent. The Collateral Trust Agreement also secures, on a parity basis with the Series 2012 Plant Bonds and the Contracted Shortfall Payments, any Additional Plant Senior Debt, if and when issued. The Collateral Trust Agreement also secures the Company’s obligations to make certain payments to the Issuer with respect to the Issuer’s Plant Retained Rights and to make timely payments to the EPC Contractor under the Plant EPC Contract. As used in the Collateral Trust Agreement, “Secured Parties” means the Plant Trustee, the Pipeline Trustee, any lender of Additional Plant Senior Debt (an “Additional Plant Lender”) and any bond insurer for such Additional Plant Senior Debt and, for the limited purposes described in the previous sentence, the Issuer and the Plant EPC Contractor.

The Collateral Agent holds in trust for the Secured Parties all of the Company’s and the Collateral Agent’s right, title and interest in, to and under the following, among other things (collectively, the “Collateral”):

- the Plant Trust Estate, consisting primarily of the right to receive Loan Repayments and the funds and accounts held under the Plant Indenture and the monies and instruments held therein;
- the Company’s interests in the Project Contracts, including the right to receive Plant Revenues, which are pledged by the Company to the Collateral Agent in the Security Agreement;
- the funds and accounts held under the Collateral Trust Agreement and the monies and instruments held therein;
- Capital Proceeds, which include insurance proceeds and performance damages payable pursuant to the Plant EPC; and
- Performance shortfall payments payable by IDE Americas pursuant to the O&M Agreement.

The Collateral secures the Company’s obligations to the Secured Parties on a pari passu basis except as follows:

- the Plant Debt Service Reserve Fund and all cash, investments and securities and any proceeds thereof at any time on deposit therein secure the Series 2012 Plant Bonds only; and
- until transferred to another Account, or the earlier delivery of the Contractor Security Termination Certificate (as defined in Section 3.4(e)(ii)(C) of the Collateral Trust Agreement), the Plant Contractor Security Account and all cash, investments and securities and any proceeds thereof at any time on deposit therein secure the Company’s obligation to pay Past Due EPC Payments only.

Collateral Trust Agreement Funds and Accounts
The following funds and accounts have been established and maintained under the Collateral Trust Agreement, and where applicable, the balances of such accounts are shown below as of [December 31, 2018]:

[TABLE BELOW PROVIDED BY MUFG – TO BE UPDATED AND RECONCILED]

<table>
<thead>
<tr>
<th>Collateral Trust Agreement Funds and Accounts as of [October 11, 2018]</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Fund and, within it, the Construction Account, Contracted Interest Account, Contractor Security Account and the Poseidon Project Account</td>
<td>$5,444,417.71</td>
</tr>
<tr>
<td>Plant Revenue Fund</td>
<td>$2,331.02</td>
</tr>
<tr>
<td>Plant Operating Fund</td>
<td>$4,591,019.04</td>
</tr>
<tr>
<td>Plant Debt Service Reserve Fund</td>
<td>$26,530,843.20 (Letter of credit, $4,030,767.52 C/P, $75.68 cash)</td>
</tr>
<tr>
<td>Permanent Account of the Working Capital Reserve Fund</td>
<td>$6,459,634.32 (Cash)</td>
</tr>
<tr>
<td>Project Reserve Account of the Working Capital Reserve Fund</td>
<td>$12,072,640.02 (Cash)</td>
</tr>
<tr>
<td>Wetlands Mitigation Reserve Fund</td>
<td>$18,659,561.69 (Liquid, $18,599,435.25 C/P)</td>
</tr>
<tr>
<td>REC/VER Reserve Fund</td>
<td>$0.00</td>
</tr>
<tr>
<td>Ground Lease Restoration Reserve Fund</td>
<td>$0.00</td>
</tr>
<tr>
<td>Plant Restoration Fund and, within it, the Permanent Pump Shutdown Reserve Account</td>
<td>$35,694,537.00 (Letter of Credit) + $574.54 cash</td>
</tr>
<tr>
<td>Distribution and Stabilization Fund</td>
<td>$8,087,205.46 (Liquid, $8,086,365.56 C/P)</td>
</tr>
<tr>
<td>Prepayment Fund</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

[COMPARE/UPDATE THE FOLLOWING CHART FROM POSEIDON]
Balances as of 9/30/2018

<table>
<thead>
<tr>
<th>Account Name</th>
<th>Bank Statement Balances</th>
<th>Target Balances</th>
<th>(under)/over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor Security Account</td>
<td>5,436,003.68</td>
<td>5,362,565.64</td>
<td>73,438.04</td>
</tr>
<tr>
<td>Revenue Fund</td>
<td>2,080.17</td>
<td>-</td>
<td>2,080.17</td>
</tr>
<tr>
<td>Operating Fund</td>
<td>4,392,064.42</td>
<td>-</td>
<td>4,392,064.42</td>
</tr>
<tr>
<td>Plant Debt Service Reserve Fund</td>
<td>26,517,253.36</td>
<td>26,517,250.00</td>
<td>3.36</td>
</tr>
<tr>
<td>Plant Bond Fund</td>
<td>6,629,531.66</td>
<td>6,629,312.49</td>
<td>219.17</td>
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<tr>
<td>Working Capital Reserve Fund- Permanent Account</td>
<td>6,452,953.32</td>
<td>6,430,511.00</td>
<td>22,442.32</td>
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<tr>
<td>Working Capital Reserve Fund- Project Reserve Account</td>
<td>12,058,792.21</td>
<td>12,013,975.00</td>
<td>44,817.21</td>
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<tr>
<td>Wetlands Account Balance</td>
<td>18,627,563.50</td>
<td>18,627,563.50</td>
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<tr>
<td>WPA Reserve Balance</td>
<td>5,141,265.67</td>
<td>5,141,265.67</td>
<td>-</td>
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<tr>
<td>Permanent Pump Shutdown Reserve Fund</td>
<td>35,695,110.64</td>
<td>35,694,537.00</td>
<td>573.64</td>
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<tr>
<td>Train 5 Repair Account</td>
<td>1,718.90</td>
<td>-</td>
<td>1,718.90</td>
</tr>
<tr>
<td>Distribution and Stabilization Fund</td>
<td>4,562,280.74</td>
<td>-</td>
<td>4,562,280.74</td>
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</tbody>
</table>

The Company is in compliance with the funding requirements of the Collateral Trust Agreement with respect to each of these accounts and funds, and such accounts are utilized and if applicable replenished from time to time in accordance with the Collateral Trust Agreement. Below is additional information with respect to the Working Capital Reserve Fund, Wetlands Mitigation Reserve Fund and the Distribution and Stabilization Fund, and the Special Maintenance Reserve Fund that may be established in the future pursuant to the Collateral Trust Agreement. In addition, see “THE PROJECT – Environmental Regulation Matters – Wetlands Mitigation” for additional information with respect to the Wetlands Mitigation Reserve Fund, and “INVESTMENT RISKS – Permanent Pump Shutdown” for additional information with respect to the Permanent Pump Shutdown Reserve Account.

**Working Capital Reserve Fund**

The Working Capital Reserve Fund contains two Accounts: the Permanent Account and the Project Reserve Account. The Permanent Account is funded with Plant Revenues in amounts sufficient to cause the balance therein to equal one month’s budgeted O&M Costs. Funds on deposit in the Permanent Account will be transferred to the Plant Revenue Fund in the event of certain deficiencies therein. The Project Reserve Account was funded on the Commercial Operation Date as required pursuant to the Collateral Trust Agreement, and the current balance of such account is [$____ million]. Funds on deposit in the Project Reserve Account may be used to fund Capital Projects and will be transferred to the Plant Revenue Fund in the event of certain deficiencies therein. The Company has existing reserves of approximately [$_________] in the Permanent Account of the Working Capital Reserve Fund and [$_________ ] in the Project Reserve Account of the Working Capital Reserve Fund, all of which are available to fund payments to IDE Americas as “O&M Costs” under the Collateral Trust Agreement. If, at any time, the Debt Service Coverage Ratio for the preceding 12 months was at least 1.35 and the projected Debt Service Coverage Ratio for the following 12 months is at least 1.35, the Collateral Agent will transfer to the Revenue Fund all amounts then on deposit in the Project Reserve Account in excess of the greater of (a) $11.5 million and (b) the aggregate Fixed O&M Costs for the immediately following six-month period as set forth in the then-current Operating Budget (the “Required Project Reserve Account Balance”). Thereafter, the Project Reserve Account will be funded from Plant Revenues to the level of the Required Project Reserve Account Balance.
**Special Maintenance Reserve Fund**

The Collateral Agent will establish a Special Maintenance Reserve Fund if, on the first Calculation Date occurring on or after December 22, 2025, which will be the 10th anniversary of the Commercial Operation Date with respect to which the determination of the Debt Service Coverage Ratio is based on Fiscal Years (a “Fiscal Year Calculation Date”), (a) the Debt Service Coverage Ratio for each of the two immediately preceding Fiscal Year Calculation Dates was less than 1.35 and (b) the Debt Service Coverage Ratio for four or more out of the six immediately preceding Fiscal Year Calculation Dates (including the Fiscal Year Calculation Dates described in clause (a)) was less than 1.35 (a “10-Year Coverage Shortfall”). The Special Maintenance Reserve Fund will be funded from Plant Revenues to a level of $10 million (Escalated), provided that Plant Revenues deposited in any Fiscal Year will not exceed $5 million. Funds on deposit in the Special Maintenance Reserve Fund will be transferred to the Plant Revenue Fund in the event of certain deficiencies therein. On the first Fiscal Year Calculation Date following the occurrence of a 10-Year Coverage Shortfall with respect to which (a) the Debt Service Coverage Ratio for the two immediately preceding Fiscal Years was at least 1.35 and (b) the projected Debt Service Coverage Ratio for the remaining term of the then Outstanding Senior Debt (as defined in the Collateral Trust Agreement) is at least 1.35 (the “Special Maintenance Reserve Release Date”), the Collateral Agent will transfer the balance in the Special Maintenance Reserve Fund to the Revenue Fund. Prior to the Special Maintenance Reserve Release Date, amounts disbursed from the Special Maintenance Reserve Fund will be replenished from Plant Revenues.

**Wetlands Mitigation Reserve Fund**

Pursuant to the Collateral Trust Agreement, on the Commercial Operation Date, a Wetlands Mitigation Reserve Fund was established and funded in an amount equal to $20.2 million, the Company’s then current estimate of the cost to complete the wetlands restoration work. As security to assure completion of the Company’s wetlands mitigation obligations, under the State Lands Commission Lease, the Company has provided performance bonds in the amount of $4.7 million. The Company withdraws funds from this Fund periodically to pay for its wetlands mitigation activities. The current balance of the Wetlands Mitigation Reserve Fund is $[UPDATE IN JANUARY, CURRENTLY APPROXIMATELY 18.5] million, and the Company believes that such account balance will be sufficient to fund implementation of the Marine Life Mitigation Plan that was established by the Company in connection with obtaining permits for the construction of the Plant. On October 19, 2018, the Regional Director of the Pacific Southwest Region of the United States Department of Fish and Wildlife signed a Record of Decision (“ROD”) for the Otay River Estuary Restoration Project Final Environmental Impact Statement, which identifies Alternative B (Intertidal Alternative) for implementation. A Notice of Availability (“NOA”) informing the public of the availability of the ROD was published in the Federal Register on October 31, 2018. The California Coastal Commission issued a determination that the Coastal Development Permit application for the wetlands restoration project is complete. Coastal Commission, Port of San Diego, United States Army Corps of Engineers and California Regional Water Quality Control Board permitting is expected to be completed in 2019, and construction of the project is expected to commence in 2020 and be completed in 2021.

**Reserve Sureties**

The Company may deliver to the Collateral Agent a Reserve Surety issued by an Acceptable Credit Provider in lieu of all or a portion of the amounts on deposit in the Permanent Account or the Project Reserve Account in the Working Capital Reserve Fund, the Plant Debt Service Reserve Fund, the Ground Lease Restoration Reserve Fund or the Permanent Pump Shutdown Reserve Account. All other reserve funds must be funded with cash. Currently, Reserve Sureties are in place to fund [a portion
of][PENDING CONFIRMATION OF RESERVE FUND ACCOUNTS] the Plant Debt Service Reserve Fund and all of the Permanent Pump Shutdown Reserve Account.

**Distribution and Stabilization Fund**

Pursuant to the Collateral Trust Agreement, on each Monthly Disbursement Date, after all other payments and transfers from the Revenue Fund have been made, the balance in the Revenue Fund is transferred to the Distribution and Stabilization Fund. On each Monthly Disbursement Date, occurring in January and July that is six or more months after the Commercial Operation Date (each, a **Calculation Date**), the Collateral Agent will make the following disbursements from Funds Available for Distribution (as defined below), if any, on such date, from the Distribution and Stabilization Fund established in the Collateral Trust Agreement, in the following priority:

1. first, to the Water Authority an amount equal to sum of all accrued obligations to pay annual true-up charges to the Water Authority under the Water Purchase Agreement, together with interest thereon; and

2. second, to the Company from the Distribution and Stabilization Fund all Funds Available for Distribution on such date;

but, in each case, only if certain conditions are met, including the following:

1. no Plant Financing Default or Plant Financing Event of Default then exists;

2. the Debt Service Coverage Ratio for the preceding 12-month period was at least equal to 1.25;

3. the projected Debt Service Coverage Ratio for the following 12-month period is at least 1.25; and

4. if Cabrillo has delivered a Shutdown Notice, the Permanent Pump Shutdown Reserve Account has been funded in an amount equal or greater than the Permanent Pump Shutdown Reserve Amount.

The condition described in 4. above has been met.

**“Funds Available for Distribution”** means:

(a) “Funds Available for Distribution” means (A) on any Calculation Date occurring in the month of January, an amount equal to (1) the amount then on deposit in the Distribution and Stabilization Fund minus (2) Semi-Annual Supply Commitment True-Up Accrual for the Semi-Annual Accrual Period ending on the last day of the month prior to the month in which the Calculation Date occurs, minus (3) the Semi-Annual Shortfall True-Up Accrual for the Semi-Annual Accrual Period ending on the last day of the month prior to the month in which the Calculation Date occurs, and

(b) on any Calculation Date occurring in the month of July, the amount then on deposit in the Distribution and Stabilization Fund.

See the summary of the Collateral Trust Agreement in Appendix E for additional defined terms and descriptions of the Plant Revenue Fund and reserve funds thereunder. See the summary of the Water Purchase Agreement in Appendix G and defined terms therein.
Since the Commercial Operation Date, Funds Available for Distribution aggregating [$38,750,281] have been paid to the Company. See “SUMMARY FINANCIAL INFORMATION” regarding prior disbursements of Funds Available for Distribution.

**Remedies; Senior Debt Majority**

Under the Collateral Trust Agreement, the Pipeline Trustee (i) grants to a Senior Debt Majority the sole right to direct the exercise of remedies under the Pipeline Indenture if an event of default occurs under the Pipeline Indenture as a result of the Company’s failure to make a Contracted Shortfall Payment (a “Contracted Shortfall Payment Default”), (ii) grants to the Collateral Agent the sole right to enforce such remedies, including an acceleration of the Series 2019 Pipeline Bonds if a Contracted Shortfall Payment Default occurs and (iii) agrees that it will not pursue any remedy under the Pipeline Indenture with respect to a Contracted Shortfall Payment Default except as directed by a Senior Debt Majority. A Senior Debt Majority also has the right to give certain approvals under the Plant Financing Documents including the sole right to direct the exercise of remedies under Plant Financing Documents. Each of the Plant Trustee and the lender of any Additional Plant Senior Debt also agrees that it will not pursue any remedy under any Plant Financing Document to which it is a party with respect to a Plant Financing Event of Default, and grants to the Collateral Agent the sole right to enforce such remedies including an acceleration of the Plant Senior Debt. Any exercise of remedies by the Collateral Agent will be for the benefit of all holders of Plant Senior Debt and the Collateral Agent must accelerate all Plant Senior Debt if it accelerates any Plant Senior Debt. A “Senior Debt Majority” means at any time, a majority in interest of the Outstanding Senior Debt based on the outstanding principal amount of such Senior Debt, including for these purposes the outstanding principal amount of the Series 2019 Pipeline Bonds, acting by written notice to the Collateral Agent.

**Other Collateral Documents**

The following agreements provide further security for Plant Senior Debt:

- the Deed of Trust pursuant to which the Company has granted and assigned its interest in the Ground Lease and all improvements, easements and rights-of-way, machinery, equipment and fixtures at the Plant Site to the Collateral Agent;

- a policy of leasehold title insurance issued by Fidelity in the amount of $726,224,400 with respect to the Company’s interest under the Ground Lease and $7,335,600 with respect to the State Lands Commission Lease;

- the Security Agreement in which the Company has granted to the Collateral Agent a security interest in, among other things, the Plant Revenues and the Company’s interests in the Project Contracts;

- a Pledge Agreement from each of Poseidon GP and the Limited Partner, pledging to the Collateral Agent a continuing security interest in and to their partnership interests in the Company and all of their rights to receive income, dividends and other distributions on account of such partnership interests; and

- the Collateral Agent’s Remedies Agreement with the Water Authority and the Consents from the counterparties to the other Principal Project Contracts in which, among other things, the Water Authority and such counterparties grant to the Collateral Agent certain rights to cure an event of default by the Company under their respective Principal Project Documents.
See the summaries of the Collateral Documents in Appendix E and the summary of the Plant Indenture in Appendix I.

**Additional Plant Senior Debt**

Pursuant to the terms of the Collateral Trust Agreement, the Company may not incur Additional Plant Senior Debt except as provided therein. Subject to the terms of the Collateral Trust Agreement described under “–Additional Debt Permitted in Special Circumstances” and “–Other Additional Debt” below, so long as no Plant Financing Event of Default occurred and is continuing, the Company may incur Additional Plant Senior Debt if the proceeds thereof are to be used to:

1. refund all or a portion of Plant Senior Debt, Pipeline Bonds that have been accelerated, or subordinated indebtedness of the Company ("Refunding Debt");

2. finance the costs of the development, design engineering, permitting, construction, financing, start-up and testing of a Capital Project (A) consisting of a relocation of water connections and other equipment and facilities in connection with a Permanent Pump Shutdown ("Water Connection Debt") or (B) required to comply with Applicable Law or any Principal Project Contract, including the performance of any obligations of the Company under the Water Purchase Agreement ("Compliance Debt");

3. finance the costs of the development, design engineering, permitting, construction, financing, start-up and testing of other Capital Projects undertaken by the Company in compliance with the provisions of the Collateral Trust Agreement;

4. finance the short-term cash flow requirements of the Company for payment of O&M Costs pursuant to any bank or other working capital credit facility; provided that the total amount of Debt permitted to be incurred under any such working capital credit facility, together with the total amount of reimbursement obligations of the Company under any letter of credit and reimbursement facility described in Item 6 below, may not exceed the sum of (A) $15 million (Escalated) in the aggregate plus (B) if a Facility Letter of Credit Issuer agrees that its Facility Letter of Credit can be drawn on to pay the Company’s obligations under Project Contracts, the amount available to be drawn thereon.

5. finance letters of credit to secure the Company’s obligations under Project Contracts pursuant to any bank or other letter of credit and reimbursement facility; provided that the total amount of reimbursement obligations of the Company permitted to be incurred under any such letter of credit and reimbursement facility, together with the total amount of Debt under any working capital credit facility described in Item 5 above, may not exceed the sum of (A) $15 million (Escalated) in the aggregate plus (B) if a Facility Letter of Credit Issuer agrees that its Facility Letter of Credit can be drawn on to pay the Company’s obligations under Project Contracts, the amount available to be drawn thereon; or

6. with a Favorable Opinion of Bond Counsel, finance facilities ancillary to the operation of the Plant.

**Additional Debt Permitted in Special Circumstances.** The Company may incur Debt under Interest Hedging Arrangements entered into in connection with any Additional Plant Senior Debt as required by the terms of the Plant Financing Documents for such Additional Plant Senior Debt. The Company may also incur (i) Completion Debt in the amount of $50 million (subject to escalation –
currently $53,929,542), (ii) Water Connection Debt in an aggregate amount not to exceed $25 million (subject to escalation – currently $[26,964,771](calculated as of 1/16/19)) and (ii) Compliance Debt in an aggregate amount not to exceed $25 million (subject to escalation – currently $[26,964,771](calculated as of 1/16/19)), so long as, in each case, (A) the Company has delivered to the Collateral Agent updated Current Case Financial Projections that (1) give effect to the issuance of such Debt and (2) show a minimum projected Debt Service Coverage Ratio for each Fiscal Year of the remaining term of the then Outstanding Plant Senior Debt of not less than 1.00 and, (B) if the Debt Service Reserve Requirement for any such Additional Plant Senior Debt is different than the Debt Service Reserve Requirement for any then Outstanding Plant Senior Debt, the condition for rating confirmation set forth in Item 4 in the next paragraph is satisfied. A portion of the Additional Plant Senior Debt expected to be issued in connection with the Permanent Pump Shutdown and Ocean Plan Amendment will constitute Water Connection Debt and Compliance Debt. Any remaining portion of the debt financing for these improvements will be required to qualify as Other Additional Debt described below or be subordinated to the Series 2019 Pipeline Bonds. See “THE PROJECT – Intake System Modifications”.

Other Additional Debt. Except as described under “–Additional Debt Permitted in Special Circumstances” with respect to Permitted Debt under Interest Hedging Arrangements, Completion Debt, Water Connection Debt and Compliance Debt, the Company may incur Additional Plant Senior Debt only if all of the following conditions have been satisfied:

1. the balance of each Plant Debt Service Reserve Account (other than, in the case of Refunding Debt, the Plant Debt Service Reserve Account in respect of the Plant Senior Debt that is to be refunded) is at least equal to the related Debt Service Reserve Requirement and the balances of the Permanent Account and the Project Reserve Account of the Working Capital Reserve Fund are at least equal to the Working Capital Reserve Requirement and the Required Project Reserve Account, respectively, after giving effect to the issuance of such debt;

2. the Debt Service Coverage Ratio for the last completed Budget Year or Fiscal Year preceding the issuance of Additional Plant Senior Debt was at least 1.35;

3. the Company delivers Current Case Financial Projections that (A) give effect to the proposed issuance of such Debt and (B) show projected Debt Service Coverage Ratio for each Fiscal Year of the remaining term of the then Outstanding Plant Senior Debt of not less than 1.35 after giving effect to issuance of such Additional Plant Senior Debt;

4. the Company delivers a confirmation from the two rating agencies that initially rated the Series 2012 Plant Bonds that the issuance of such Additional Plant Senior Debt will not result in the lowering of their then-current respective ratings, and in any event not lower than a rating of BBB- by Fitch Ratings or its equivalent, on the Series 2012 Plant Bonds and any previously issued Additional Plant Senior Debt;

5. if such Additional Plant Senior Debt is to be issued for the purpose of refunding any Plant Senior Debt then Outstanding, conditions described in Items 2, 3 and 4 will not apply so long as the Company delivers Current Case Financial Projections showing Debt Service for the current and each succeeding Budget Year that, after giving effect to the issuance of the Additional Plant Senior Debt, is not greater than the Debt Service for the remaining term of the refunded Plant Senior Debt; and

6. the terms of the Plant Financing Documents regarding Additional Plant Senior Debt, except for Refunding Debt that will refinance all Plant Senior Debt then Outstanding, are
reasonably satisfactory to the Senior Debt Majority and contain no right of acceleration in conflict with the Collateral Trust Agreement and impose no other covenants or events of default which would conflict with any other provision of the Collateral Trust Agreement.

The Issuer has no obligation to issue Additional Plant Bonds. The Company currently expects to arrange for the issuance of Additional Plant Senior Debt in connection with upcoming modifications to the Plant. See “THE PROJECT – Intake System Modifications”.

PROJECT PARTICIPANTS

San Diego County Water Authority

The Water Authority is a county water authority organized and existing under the County Water Authority Act, California Statutes 1943, Chapter 545, as amended (the “Water Authority Act”). The Water Authority was organized on June 9, 1944 for the primary purpose of supplying water to San Diego County for wholesale distribution to the Water Authority’s member agencies in order to meet their respective needs for beneficial uses and purposes. The Water Authority is authorized to acquire water and water rights within or outside the State of California; to develop, store and transport such water; to provide, sell and deliver water for beneficial uses and purposes and to provide, sell and deliver water of the Water Authority not needed or required for beneficial purposes of its member agencies to areas outside the boundaries of the Water Authority. The Water Authority has 24 member agencies, consisting of 6 cities, 17 special districts, and the Pendleton Military Reservation. See Appendix C for additional information about the Water Authority.

General Resolution. On May 11, 1989, the Water Authority adopted its Resolution No. 89-21, entitled “A Resolution of the Board of Directors of the San Diego County Water Authority Providing for the Allocation of Water System Revenues and Establishing Covenants to Secure the Payment of Obligations Payable from Net Water Revenues” (as thereafter amended and supplemented, the “General Resolution”). The General Resolution requires the Water Authority to pay Maintenance and Operation Costs (which include water purchase payments under the Water Purchase Agreement) prior to the payment of any other expenses. See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS”.

The Water Authority covenants in the General Resolution to at all times fix, prescribe and collect or cause to be collected rates, fees and charges for Water Service that will be at least sufficient to yield Net Water Revenues sufficient for the payment of all amounts payable from Net Water Revenues and at least equal to 120% of amounts payable in respect of all Authority Senior Lien Obligations. The Installment Sale Payments are payable from Net Water Revenues. The Water Authority’s obligations under the Installment Sale and Assignment Agreement are not secured by the General Resolution and do not constitute Authority Senior Lien Obligations or Authority Subordinate Lien Obligations; however, the Water Authority covenants in the Installment Sale and Assignment Agreement to comply with the covenants made by the Water Authority in the General Resolution. See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS”.

A description of the General Resolution is included in Appendix C.

Financial Information. Below are the statements of net assets of the Water Authority for the fiscal years ended June 30, 2018 and June 30, 2017 as well as the statements of revenues, expenses and changes in net assets of the Water Authority for the fiscal years ended June 30, 2018 and June 30, 2017. See Appendix C for additional Water Authority financial information and the full version of the Comprehensive Annual Financial Report of the Water Authority for the fiscal year ended June 30, 2018.
San Diego County Water Authority  
Statement of Net Position  
June 30, 2018  
(with comparative data as of June 30, 2017)

<table>
<thead>
<tr>
<th>ASSETS</th>
<th>2018</th>
<th>2017</th>
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<tbody>
<tr>
<td><strong>Current assets:</strong></td>
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<td>$56,840,335</td>
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<td>Cash and investments (Note 2)</td>
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<tr>
<td>Restricted cash and investments (Note 2)</td>
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<td>Water receivables</td>
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<td>Interest receivable</td>
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<tr>
<td>Taxes receivable</td>
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<tr>
<td>Other receivables</td>
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<td>Prepaid expenses (Note 4)</td>
<td>96,334,231</td>
<td>96,983,153</td>
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<tr>
<td>Inventories (Note 3)</td>
<td>398,016</td>
<td>650,477</td>
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<td><strong>Total current assets</strong></td>
<td>454,606,259</td>
<td>425,988,030</td>
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<td><strong>Noncurrent assets:</strong></td>
<td>107,746,039</td>
<td>135,072,833</td>
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<td>Cash and investments (Note 2)</td>
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<td>23,411,934</td>
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<tr>
<td>Restricted cash and investments (Note 2)</td>
<td>217,594</td>
<td>217,594</td>
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<tr>
<td>Retention receivable</td>
<td>19,147,304</td>
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<td>Net OPEB asset (Note 13)</td>
<td>795,852</td>
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<td>Capital assets (Note 6):</td>
<td>118,295,114</td>
<td>151,945,443</td>
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<td>Non-Depreciable</td>
<td>3,346,284,374</td>
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<tr>
<td>Depreciable, net</td>
<td>7,071,746,039</td>
<td>7,071,746,039</td>
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<td><strong>Total noncurrent assets</strong></td>
<td>3,616,424,664</td>
<td>3,657,147,790</td>
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<tr>
<td><strong>Total assets</strong></td>
<td>4,071,030,923</td>
<td>4,083,135,820</td>
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<table>
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<tr>
<th>DEFERRED OUTFLOWS OF RESOURCES</th>
<th>2018</th>
<th>2017</th>
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<tr>
<td>Deferred loss on refunding</td>
<td>61,113,716</td>
<td>72,294,728</td>
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<tr>
<td>Pension contributions subsequent to measurement date (Note 12)</td>
<td>4,240,681</td>
<td>16,163,814</td>
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<tr>
<td>OPEB contributions subsequent to measurement date (Note 13)</td>
<td>366,591</td>
<td>324,982</td>
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<td>Deferred actuarial amounts related to pensions (Note 12)</td>
<td>12,733,072</td>
<td>8,560,959</td>
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<td>Deferred actuarial amounts related to OPEB (Note 13)</td>
<td>84,422</td>
<td>275,965</td>
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<tr>
<td><strong>Total deferred outflows of resources</strong></td>
<td>78,538,482</td>
<td>97,620,448</td>
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<thead>
<tr>
<th>LIABILITIES</th>
<th>2018</th>
<th>2017</th>
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<tr>
<td><strong>Current liabilities:</strong></td>
<td>104,266,238</td>
<td>85,111,259</td>
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<td>Accounts payable and other liabilities</td>
<td>20,430,541</td>
<td>20,806,003</td>
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<tr>
<td>Interest payable</td>
<td>450,476</td>
<td>429,144</td>
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<tr>
<td>Construction deposits</td>
<td>345,000,000</td>
<td>345,000,000</td>
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<tr>
<td>Short-term liabilities (Note 10)</td>
<td>54,165,278</td>
<td>57,293,370</td>
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<tr>
<td><strong>Total current liabilities</strong></td>
<td>524,224,902</td>
<td>508,639,776</td>
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<td><strong>Noncurrent liabilities:</strong></td>
<td>1,975,170,555</td>
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<tr>
<td>Long-term liabilities (Note 11)</td>
<td>70,106,317</td>
<td>71,135,027</td>
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<tr>
<td>Net pension liability (Note 12)</td>
<td>362,845</td>
<td>299,144</td>
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<tr>
<td>Net OPEB liability (Note 13)</td>
<td>-</td>
<td>-</td>
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<tr>
<td><strong>Total noncurrent liabilities</strong></td>
<td>2,045,276,872</td>
<td>2,113,238,835</td>
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<tr>
<td><strong>Total liabilities</strong></td>
<td>2,569,501,774</td>
<td>2,621,878,611</td>
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<table>
<thead>
<tr>
<th>DEFERRED INFLOWS OF RESOURCES</th>
<th>2018</th>
<th>2017</th>
</tr>
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<tr>
<td>Deferred actuarial amounts related to pensions (Note 12)</td>
<td>2,528,360</td>
<td>2,561,555</td>
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<tr>
<td>Deferred actuarial amounts related to OPEB (Note 13)</td>
<td>581,562</td>
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<tr>
<td><strong>Total deferred inflows of resources</strong></td>
<td>3,109,922</td>
<td>2,561,555</td>
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<thead>
<tr>
<th>NET POSITION</th>
<th>2018</th>
<th>2017</th>
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<tr>
<td>Net investment in capital assets</td>
<td>1,154,718,703</td>
<td>1,123,928,892</td>
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<tr>
<td>Restricted for construction projects</td>
<td>119,984,952</td>
<td>147,352,064</td>
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<tr>
<td>Restricted for debt service</td>
<td>377,929</td>
<td>235,337</td>
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<tr>
<td>Unrestricted</td>
<td>301,876,125</td>
<td>284,799,809</td>
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<tr>
<td><strong>Total net position</strong></td>
<td>$1,576,957,709</td>
<td>$1,556,316,102</td>
</tr>
</tbody>
</table>
San Diego County Water Authority  
Statement of Revenues, Expenses, and Changes in Net Position  
For the Fiscal Year Ended June 30, 2018  
(with comparative data for the Fiscal Year Ended June 30, 2017)

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>OPERATING REVENUES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water sales</td>
<td>$591,809,280</td>
<td>$579,057,028</td>
</tr>
<tr>
<td>Other revenues</td>
<td>4,053,221</td>
<td>3,727,332</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>$595,862,501</td>
<td>$582,784,360</td>
</tr>
<tr>
<td>OPERATING EXPENSES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of sales</td>
<td>442,369,171</td>
<td>430,560,992</td>
</tr>
<tr>
<td>Operations and maintenance</td>
<td>24,219,304</td>
<td>19,097,518</td>
</tr>
<tr>
<td>Planning</td>
<td>9,179,960</td>
<td>9,040,200</td>
</tr>
<tr>
<td>General and administrative</td>
<td>16,914,642</td>
<td>14,487,899</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>62,842,596</td>
<td>67,086,517</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>$555,525,673</td>
<td>$540,273,126</td>
</tr>
<tr>
<td>Operating income</td>
<td>40,336,828</td>
<td>42,511,234</td>
</tr>
<tr>
<td>NONOPERATING REVENUES (EXPENSES):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property taxes and in-lieu charges</td>
<td>13,753,714</td>
<td>12,913,313</td>
</tr>
<tr>
<td>Infrastructure access charges</td>
<td>32,482,290</td>
<td>31,144,704</td>
</tr>
<tr>
<td>Investment income</td>
<td>4,342,461</td>
<td>2,237,947</td>
</tr>
<tr>
<td>Other income</td>
<td>19,253,393</td>
<td>11,408,632</td>
</tr>
<tr>
<td>Intergovernmental</td>
<td>10,665,858</td>
<td>11,452,308</td>
</tr>
<tr>
<td>Gain (Loss) on sale/retirement of capital assets</td>
<td>131,308</td>
<td>(727,294)</td>
</tr>
<tr>
<td>Interest expense</td>
<td>(99,915,662)</td>
<td>(95,533,730)</td>
</tr>
<tr>
<td>Debt issuance costs</td>
<td>(227,212)</td>
<td>(352,544)</td>
</tr>
<tr>
<td>Other expenses</td>
<td>(39,453,750)</td>
<td>(17,143,705)</td>
</tr>
<tr>
<td>Total nonoperating revenues (expenses)</td>
<td>(58,967,600)</td>
<td>(44,600,369)</td>
</tr>
<tr>
<td>Income before capital contributions</td>
<td>(18,630,772)</td>
<td>(2,089,135)</td>
</tr>
<tr>
<td>CAPITAL CONTRIBUTIONS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacity charges</td>
<td>28,153,768</td>
<td>21,080,540</td>
</tr>
<tr>
<td>Water standby availability charges</td>
<td>11,102,611</td>
<td>11,091,285</td>
</tr>
<tr>
<td>Contributions in aid of capital assets</td>
<td>16,000</td>
<td>219,325</td>
</tr>
<tr>
<td>Total capital contributions</td>
<td>39,272,379</td>
<td>32,391,150</td>
</tr>
<tr>
<td>Changes in net position</td>
<td>20,641,607</td>
<td>30,302,015</td>
</tr>
<tr>
<td>NET POSITION AT BEGINNING OF YEAR, AS RESTATED (Note 18)</td>
<td>1,556,316,102</td>
<td>1,526,014,087</td>
</tr>
<tr>
<td>NET POSITION AT END OF YEAR</td>
<td>$1,576,957,709</td>
<td>$1,556,316,102</td>
</tr>
</tbody>
</table>

See accompanying notes to the financial statements.
Poseidon Resources (Channelside) LP

The Company is a special purpose limited partnership entity that was created to finance, construct, own and operate the Plant and to construct the Pipeline. The Company’s general partner is Poseidon GP. The Company’s sole limited partner is the Limited Partner, Poseidon Resources Channelside Holdings LLC. The Limited Partner owns all the equity interests in Poseidon GP. Orion Water Partners, LLC (“Orion”) owns all of the equity interests of the Limited Partner. Orion’s members are Poseidon Carlsbad LLC (“Poseidon Carlsbad”) and Orion Water Acquisitions LLC (“Orion Water Acquisitions”). Poseidon Carlsbad is a direct subsidiary of Poseidon Water LLC (“Poseidon Water”) which, together with its affiliates, developed a desalination facility in Tampa, Florida, a wastewater treatment plant in Cranston, Rhode Island and five wastewater treatment facilities in Mexico. The management team at Poseidon Water has operated several large and successful projects in the private infrastructure market, including the electric power, water treatment and natural gas supply and transportation industries. The management of Poseidon Water has collectively structured, arranged and closed over $10 billion of project and corporate financings.

Poseidon Water is 75% owned by entities comprising Brookfield Infrastructure Fund III (“BIF III”), a private fund managed by an affiliate of, and indirectly controlled by, Brookfield Asset Management Inc. Brookfield Infrastructure Partners L.P., (“BIP”), a publicly traded limited partnership, is the largest limited partner in BIF III. Brookfield Infrastructure Group, including its private funds and publicly-traded affiliates, BIP and Brookfield Renewable Partners, has invested more than $39 billion of equity capital in more than 100 infrastructure investments since 2000 (which includes equity invested and committed as of August 2018), and owns and operates utilities, transport, energy, renewable power and data infrastructure assets in North and South America, Asia Pacific and Europe. Poseidon Water has offices in Boston, Massachusetts and in Huntington Beach and Carlsbad, California. [POSEIDON: TO BE UPDATED] Orion Water Acquisitions is an indirect subsidiary of Stonepeak Partners LP, an independent investment firm that, together with its affiliates, specializes in investing in North American infrastructure assets with approximately $7.3B in assets under management as of December 31, 2018. Its founding partners, Trent Vickie and Michael Dorrell, each have over 15 years of infrastructure investing experience.

IDE Americas; IDE Technologies Ltd.

IDE Americas, Inc. headquartered in Carlsbad, California, is a wholly owned subsidiary of IDE Technologies Ltd (“IDE”). Established in 1965, IDE is engages the turnkey delivery of advanced water treatment solutions, including large seawater desalination projects. IDE specializes in research and development of saline water desalination processes, concentration and purification, and treatment and reuse of wastewater, for both industrial and municipal streams. In addition, IDE provides technical support for plants delivered to its customers as well operation and maintenance services. Its clients include government agencies, process industries, power utilities, refineries, hotel developers, municipal, and defense authorities. IDE has designed and constructed over 400 desalination facilities in nearly 40 countries worldwide. IDE has designed, built, financed and is currently operating, under long term P3 agreements with the State of Israel, the three largest reverse osmosis seawater desalination facilities in the world: (a) the 165 MGD (approximately 184,822 AFY) Sorek, Israel reverse osmosis desalination facility, in operation since 2013, (b) the 139MGD (approximately 155,700 AFY) Hadera, Israel, reverse osmosis facility, in operation since 2009 and (c) the 105 MGD (approximately 117,615 AFY) Ashkelon, Israel reverse osmosis facility, in operation since 2005. In California IDE designed and currently operates the Carlsbad desalination plant, developed and owned by Poseidon Water, and also designed, built and currently operates the Santa Barbara Desalination plant. IDE Technologies is headquartered in Kadima, Israel.
Cabrillo Power I LLC

Cabrillo owns the Power Station and is the lessor under the Ground Lease. Cabrillo is an indirect wholly owned subsidiary of NRG Energy, Inc. (“NRG”), a New York Stock Exchange-listed integrated wholesale power generation and retail electricity company.

Kiewit Shea Desalination

Kiewit Shea Desalination, the Plant EPC Contractor, is a joint venture between Kiewit Infrastructure West Co. (“Kiewit Infrastructure West”) and J.F. Shea Construction, Inc. (“J.F. Shea”).

Kiewit Infrastructure West is a wholly owned, direct subsidiary of Kiewit Infrastructure Group Inc. (“Kiewit Infrastructure Group”). Kiewit Infrastructure West focuses on constructing complex infrastructure projects throughout the western United States. Kiewit Infrastructure Co. (the “EPC Guarantor”), a wholly owned, direct subsidiary of Kiewit Infrastructure Group, is guaranteeing the obligations of the EPC Contractor under the EPC Contracts. The EPC Guarantor performs construction services for a broad range of public and private customers throughout the United States.

J.F. Shea Construction, Inc. J.F. Shea is a wholly owned subsidiary of J.F. Shea Co., Inc., which is one of the oldest and largest privately held construction companies in the United States. J.F. Shea is now in its fourth generation of family leadership starting out as a plumbing company and expanding its scope into pipelines, sewers, tunnels and other major infrastructure projects.

THE PROJECT

The Plant

The Plant produces desalinated water through the use of a reverse osmosis (“RO”) system provided by IDE. The Plant operates continuously, subject to expected maintenance, as described below. Normally, the Plant operates continuously, 24 hours per day, seven days per week. The design capacity of the Plant is up to 163 acre-feet per day (“AFD”) of Product Water and 56,000 AFY. The actual operating capacity may vary from time to time due to regulatory, maintenance, climatic and other factors. See “INVESTMENT RISKS”. The delivery requirements of the Water Purchase Agreement are based on an expectation of a maximum of 350 hours (or about 15 days) of maintenance and downtime per year. For a discussion of Plant operations since the Commercial Operation Date, see “PROJECT OPERATION – Operation and Maintenance of the Plant”.

The Plant consists of pretreatment facilities, the RO system, post-treatment facilities, connections to Cabrillo’s existing seawater intake and outfall facilities and the Product Water pumps. The diagram below provides a high-level overview of the seawater desalination process.
UPDATE RE PLANT SHUTDOWN: The Power Station has five gas-fired generators which are cooled by a once-through seawater flow system. The Power Station draws cooling water from the Lagoon and discharges cooling water effluent to the Pacific Ocean. The Company draws salt water intake for the Plant from the cooling water effluent channel of the Power Station. From an intake of approximately 104 MGD, the Plant produces an average daily flow of 50 MGD of Product Water and 54 MGD of concentrated effluent. These amounts are approximate and may vary. The Plant returns the concentrated effluent to the Power Station’s effluent channel where it is commingled with the remaining circulating cooling water. To achieve the dilution of concentrated effluent required under its permit prior to discharge to the ocean, the Plant needs at least 304 MGD of cooling water or an average daily flow of substantially less than 50% of the Power Station’s permitted circulating flow of 900 MGD. Certain obligations of Cabrillo and the Company relating to the Plant water flow are described under “Ground Lease” below and under “Ground Lease” in Appendix H.

The Plant’s pretreatment process consists of chemical addition, flocculation, and granular media filtration to remove particles and colloidal matter from raw seawater to prevent fouling of the downstream RO membranes. After pretreatment chemical injection and mixing, flocculation is provided to form larger particles, or “flocs,” which are readily removed through granular media filters. Pretreatment filtration is a critical step in the desalination process so that the downstream RO membranes are not fouled or plugged by particulate matter. The Plant pretreatment system consists of 18 deep bed, high capacity, low filtration rate dual media (anthracite over sand) filters, each with a filtration area of 1,223 square feet. These filters are capable of processing between 105.3 and 113.7 MGD of seawater. The granular media filters are cleaned periodically by reversing flow through the filters (backwashing) at an accelerated rate to remove particles accumulated in the filter media during the filtration cycle.

The RO system consists of the RO feed tank, filtrate booster pump, cartridge filters, high pressure feed pumps, RO membranes, and energy recovery devices. Filtrate from the pretreatment filters enters the RO feed tank and is pumped through the cartridge filters to the RO first pass high-pressure pumps and energy recovery devices. Cartridge filters protect the RO membranes from particles that may be present due to occasional process upsets in the pretreatment system. There are 16 cartridge filters, each with a loading rate of 4.4 gallons-per-minute per 10-inch equivalent length and a pore size rating of 20 microns.
High pressure pumps (three duty, one standby) then pressurize feed water to approximately 900 pounds per square inch to overcome the osmotic pressure of the seawater and drive 50% of the water (or RO permeate) through the RO membranes while salt and the remaining half of the water is rejected and discharged as the RO concentrate stream. There are 14 RO trains, followed by a four-stage RO membrane arrangement providing for further reduction of total dissolved solids and boron. Improvements in the production of the individual membrane elements resulted in the Plant being able to achieve full production with 10% fewer membranes. As a result, 10% of the membrane pressure vessels installed in the Plant have not been loaded with membrane elements. The energy recovery devices recover residual pressure from the RO brine concentrate stream to offset a portion of the energy required by the Plant.

The RO concentrate stream typically contains twice the salt content of raw seawater. This waste stream is disposed of by blending it with the Power Station’s cooling water discharge. The RO concentrate stream is diluted by the Power Station cooling water discharge to a salt level close to that in the Pacific Ocean.

Desalinated seawater is corrosive, as it lacks alkalinity and hardness. Thus, post-treatment is required to stabilize the desalinated seawater so that it is no longer corrosive to pipelines conveying the water to end users or corrosive to in-home plumbing of the water consumers. Post-treatment consists of calcite filter vessels, chemical addition to adjust the pH and alkalinity of the finished water, chlorine addition and subsequent storage in an on-site Product Water storage tank sufficient to comply with the potable water disinfection regulations of the State Water Resources Control Board (“SWRCB”) Division of Drinking Water (the “CDDW”). The on-site storage tank system has a capacity of approximately 2.5 million gallons of Product Water. The Product Water storage and the Pipeline conveyance system have the capability to drain desalinated seawater back to the ocean in the case of emergency or if the water does not meet the quality requirements for Product Water.

The Product Water pump station is designed to deliver a flow of 54 MGD of Product Water with a redundant pump out of service at a total dynamic head of 1173 feet of water column into the Pipeline. There are eight pumps (seven duty and one standby), one equipped with variable frequency drive (VFD). Each Product Water pump is capable of delivering a minimum total dynamic head of approximately 1,200 feet.

The graphic below provides an aerial view of the Plant schematic design.
The following diagram depicts the Plant’s water flow as currently configured. The parenthetical figures indicate the salt concentrations in parts per thousand at various locations on the diagram.

Source: Poseidon Resources (Channelside) LP.
The Pipeline

The Plant delivers Product Water via a 10-mile, 54-inch diameter welded steel Pipeline which is owned by the Water Authority and connects to Pipeline 3 and Pipeline 4 of the Water Authority’s Second Aqueduct. The Pipeline has been sized to convey the peak Plant output of 54 MGD. The Pipeline lining system is comprised of materials meeting national drinking water standards and provides a protective anti-corrosion barrier assuring the Pipeline operates in a continuous manner for the expected service life of the Project. The Pipeline passes through the cities of Carlsbad, Vista and San Marcos within the County. A diagram of the Pipeline route is shown below.

Source: San Diego County Water Authority.

Insurance

The Water Authority operates, maintains and insures the Pipeline. Under the Water Purchase Agreement, the Company is required to insure the Plant against property damage, casualty losses and business interruption. The Collateral Agent has the right to purchase insurance on behalf of the Company at the Company’s expense if the Company fails to do so. See the summary of the Collateral Trust Agreement in Appendix E. The Company provides and maintains at its own expense, or causes IDE Americas to provide and maintain, certain insurance coverages, including but not limited to, earthquake and earth movement coverage, property coverage, boiler and machinery coverage, business interruption coverage, workers’ compensation/employer’s liability, commercial general liability, automobile liability, business interruption, pollution liability, and directors and officers coverage. If an earthquake occurs, the Water Purchase Agreement also provides for the adjustment to the Unit Price as compensation for an Uninsurable Force Majeure Event for costs exceeding the policy coverage limits.

Environmental Regulation Matters

The Plant was designed and constructed, and is operated in accordance with applicable federal, state and local regulations, codes, standards, guidelines, policies and laws with respect to land use and environmental matters. The discretionary regulatory permits obtained by the Company for the Plant include several different land use and zoning permits, and in connection therewith the Company adopted an Energy Minimization and Greenhouse Gas Reduction Plan (the “GHG Plan”). The Coastal Commission approved the Company’s GHG Plan on August 6, 2008, and adopted findings to reflect such approval on December 10, 2008. Additionally, pursuant to the Company’s lease with the California State Lands Commission (the “State Lands Commission Lease”), the Company is required, at all times during the term of the Lease, to comply with the GHG Plan as adopted by the Coastal Commission.
Under the GHG Plan, the Company is required to offset all net indirect GHG emissions associated with the Project. To ensure that the Project’s emission reductions will be certain, verifiable, and reduced to zero, the GHG Plan requires (a) application of Climate Action Registry/California Air Resources Board methodology to calculate total indirect GHG emissions each year; (b) the implementation of carbon offset projects or the purchase of offsets/renewable energy credits to fully reduce Plant’s indirect net GHG emissions to zero; and (c) the submission of annual reports to the Coastal Commission and the California State Lands Commission to demonstrate compliance by describing and accounting for Poseidon’s annual and cumulative balance of verified net GHG emissions. The GHG Plan also requires implementation of state-of-the-art on-site energy efficiency measures, which may include green building design and on-site solar power generation, as well as the use of renewable resources. [TO BE UPDATED BASED ON GHG REPORT.] The Coastal Commission found that the GHG Plan will result in net carbon neutrality and fully mitigate any effects of the Plant’s indirect GHG emissions on coastal resources. The California State Lands Commission expressly relied upon these findings. At all times since the Commercial Operation Date, the Company has been in compliance with the GHG Plan in all material respects.

**Wetlands Mitigation**

The Project’s Marine Life Mitigation Plan (“MLMP”) was separately approved by the Coastal Commission, the California State Lands Commission, and the California Regional Water Quality Control Board, San Diego Region. The MLMP requires the Company to create or restore up to 55.4 and no less than 37 acres of estuarine wetlands. Developed as part of an inter-agency review that included staff from the Coastal Commission, California State Lands Commission, and the California Regional Water Quality Control Board, the MLMP is enforced by each of these agencies. The Company is in compliance with the MLMP in all material respects.

The MLMP requires the wetlands restoration sites to match a variety of habitat values of up to four existing and relatively undisturbed wetlands in the southern California region, with a 95% confidence level of success. The above-referenced agencies found that the MLMP will mitigate all marine life losses from entrainment and impingement attributable to the Plant’s intake of 304 MGD of seawater for desalination purposes, by providing habitat that will produce replacement marine life.

Coordination of approval of the permitting requirements among the various regulatory agencies has taken longer than initially anticipated by the Company. The Environmental Impact Statement for the wetlands restoration project has been certified by United States Department of Fish and Wildlife and on October 19, 2018, the Regional Director of the Pacific Southwest Region signed a ROD for the Otay River Estuary Restoration Project Final Environmental Impact Statement, which identifies Alternative B (Intertidal Alternative) for implementation. A NOA informing the public of the availability of the ROD was published in the Federal Register on October 31, 2018. The California Coastal Commission issued a determination that the Coastal Development Permit application for the project is complete. Coastal Commission, Port of San Diego, United States Army Corps of Engineers and California Regional Water Quality Control Board permitting is expected to be completed in 2019, and construction of the project is expected to commence in 2020 and be completed in 2021. See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS – Wetlands Mitigation Reserve Fund”.

**Regulation of Plant Seawater Intake and Concentrated Seawater Discharge**

The Plant currently draws raw seawater from and discharges concentrated seawater to the discharge canal of the [UPDATE RE PLANT SHUTDOWN: former/soon to be closed] Power Station owned by Cabrillo. Revised regulations adopted in 2010 by the SWRCB to implement federal Clean Water Act Section 316(b) in California led to a decision by Cabrillo to shut down the Power Station,
thereby obligating the Company to come into compliance with the Ocean Plan Amendment. See --
“Intake System Modifications”.

**Water Authority Improvements**

In connection with the construction of the Plant and the Pipeline, the Water Authority made significant capital improvements to its Aqueduct System and the Twin Oaks Valley Water Treatment Plant (the “**Water Authority Improvements**”). The Water Authority Improvements allow for delivery of Product Water northward to the Water Authority’s Twin Oaks Valley Water Treatment Plant, where 15 million gallons of storage is available to buffer daily demand fluctuations and allow for blending with other treated water sources. Delivery to the Twin Oaks Valley Water Treatment Plant also increases the service area that can be supplied with Product Water thereby increasing Plant utilization.

**Plant Power Supply**

The Company and San Diego Gas & Electric (“**SDG&E**”) entered into a Special Conditions Contract for Substation Modification and Circuit Extension (the “**Special Conditions Contract**”) in October 2009 under which SDG&E performed the work required to connect the Plant to SDG&E’s distribution system and supply it with power for the Plant’s normal and standby load from the nearby SDG&E Cannon Road Substation.

The cost of the work was $20.3 million. Because the work was classified by the California Public Utilities Commission ("**CPUC**") as “non-standard,” the Company paid for costs of the work during construction of the Plant. However, the Company is eligible for an annual refund for a portion of this cost over the first 10 years following the in-service date of the modified substation. For the $11.3 million associated with the modification work, the annual refund is calculated based on the Plant’s actual average annual demand, and for the balance of $7.5 million associated with the extension work, the refund is distributed according to annual distribution revenues generated from the sale of electricity to the Plant. For the portion of costs associated with the modification work, the refund will be reduced if actual annual average demand is less than the 31,000 kW benchmark established in the Special Conditions Contract. If actual annual average demand is equal to or greater than the benchmark, the refund will be equal to the maximum annual refund amount. The total amount refunded over the 10-year refund period cannot exceed the total installed cost payments made by the Company. Refunded amounts are deposited into the Revenue Fund held under the Collateral Trust Agreement. Refunded amounts are deposited into the Revenue Fund held under the Collateral Trust Agreement. During the first year of Plant operation, the Plant’s annual demand was approximately 35,555 kw, resulting in a refund of $1,005,593.54 calculated based on the revenue SDG&E earned and $1,128,275.00 based on the total kw draw during the year, for a total refund of $2,133,868.54 received under the Special Conditions Contract in January 2017. In addition, SDG&E paid the Company $353,548.00 at the same time, as a refund for overpayments during the year based on the year-end adjustment of the calculation of taxes included in the electricity tariff. In March 2018, SDG&E paid the Company $1,939,246.12.

As described in “**OPERATION AND MAINTENANCE OF THE PLANT – Water Purchase Agreement – Product Water Purchase Price**”, changes in the SDG&E tariff rate are passed through to the Water Authority under the Water Purchase Agreement.

**Construction of the Project**

**Overview and Status**

The Company undertook to design and construct the Plant to meet the requirements of the Water Authority under the Water Purchase Agreement, and it designed and constructed the Pipeline for the Water Authority pursuant to the Pipeline DBA. Achieving Commercial Operation of the entire Project
under both agreements was a condition to the obligations of the Water Authority (i) to purchase Product Water under the Water Purchase Agreement and (ii) to make installment payments under the Installment Sale and Assignment Agreement to pay debt service on the Pipeline Bonds. The Company engaged Kiewit Shea Desalination to construct the Plant under the Plant EPC Contract and to construct the Pipeline under the Pipeline EPC Contract. Initial construction of the Pipeline is complete, and initial construction of the Plant is substantially complete. The Water Authority accepted the Pipeline upon completion of the requirements for Acceptance under the Pipeline DBA, which included testing of the Pipeline and testing of the combined operation of the Plant, Pipeline and Water Authority Improvements under the EPC Contracts. The Plant and Pipeline achieved Commercial Operation on December 23, 2015; the Water Authority assumed operation of the Pipeline as a part of its water delivery system; and IDE Americas commenced regular operation of the Plant under the O&M Agreement. The Company has assigned all warranties provided by the EPC Contractor under the Pipeline EPC Contract, and provided by the EPC Contractor’s subcontractors, vendors, suppliers and other persons from whom the Company procured structures, improvements, fixtures, machinery, equipment and materials that were incorporated into the Pipeline to the Water Authority. Project Completion under the Pipeline EPC was achieved on August 17, 2017. For a period of ten years following the Commercial Operation Date, i.e., until December 22, 2025, under California law the Company will remain responsible for correction of any later discovered latent defects in construction of the Pipeline. The only pending repair work on the Pipeline that is the Company’s responsibility relates to certain road repairs, the cost of which is not expected to exceed $120,000 and a portion of which cost is expected to be covered by insurance.

Project Completion under the Plant EPC, and thus, Project Completion under the Water Purchase Agreement and the Completion Date under Collateral Trust Agreement, have not yet occurred principally because the backwash treatment system of the Plant pretreatment filter did not initially pass its acceptance tests. This system treats water used to periodically clean the pretreatment filter to allow the used water to be recycled as makeup water for desalination, and permits the Plant to operate at higher efficiency without exceeding discharge limitations. The Water Authority and the Company entered into CAM No. 006 dated January 5, 2017 regarding extension of time to upgrade this system without triggering a default under the Water Purchase Agreement, and complete performance testing procedures, with the goal of upgrading the backwash treatment system to permit the Plant to recycle backwash wastewater as additional source water without exceeding discharge limitations. As of the date of this Limited Offering Memorandum, the upgrade has not been completed, because the parties anticipate that the final permitting for the Intake System Modifications will include certain modifications that will accomplish the same objectives, in which case the Water Authority and the Company anticipate that the earlier contemplated upgrade to the backwash treatment system may no longer be necessary. Pursuant to CAM No. 009, the Company and the Water Authority have agreed to defer the deadline for Project Completion under the Water Purchase Agreement to December 31, 2019. The Company instructed the Collateral Agent to retain $4,500,000 of payments otherwise due to the EPC Contractor from the Contractor Security Account established under the Collateral Trust Agreement, together with other funds that were retained in connection with construction punchlist issues. Funds in the Contractor Security Account are expected be used to fund this capital project, or to be released upon Project Completion. [NOTE comment from Baird Brown: This should be clarified to the extent possible. If the EPC contractor’s responsibilities are reduced under a new permit, should reduce the construction price, and the funds should go to Poseidon.] Additional items required for Plant Completion consist of receipt of final lien waivers of the Plant EPC Contractor and subcontractors, delivery of final record drawings, delivery of a final statement of no outstanding claims and a final report confirming that all Work including punchlist items has been completed and delivery of associated notices and certificates.

**EPC Contractor Warranties**
The EPC Contractor warranted that its work under the EPC Contracts would be performed in accordance with contract standards and generally accepted industry and professional engineering standards and practices. The duration of these warranties were, for the Plant, one year after Provisional Acceptance, extended with respect to corrected work for one year from the date of correction or until the second anniversary of Plant Mechanical Completion, and for the Pipeline, for two years after Provisional Acceptance. Corrected work generally is warranted for one year from the date of the correction or, if earlier, until the third anniversary of Pipeline Mechanical Completion. The EPC Contractor obtained and assigned to the Water Authority any additional warranties from the EPC Contractor subcontractors, vendors and equipment suppliers under the Pipeline EPC Contract as are normally provided with respect thereto. The warranties under the Pipeline EPC Contract were assigned to the Water Authority effective as of the Commercial Operation Date. The EPC Contractor provided to the Company and the Collateral Agent, as co-obligees, payment and performance bonds issued by Travelers Casualty and Surety Company of America and covering all obligations under the Plant EPC Contract (subject to the same limitations of liability applicable to the EPC Contractor), including warranty work. Claims under the bonds must be made within one year after the achievement of Project Completion; provided that the Company or the Collateral Agent may commence a lawsuit to recover on the performance bond with respect to warranty work until six months after the expiration of the warranty periods specified in the Plant EPC described above. [WATER AUTHORITY PLEASE CONFIRM] Upon assignment of the Pipeline EPC warranties to the Water Authority, the Water Authority has been added as a co-obligee under the performance bonds related to the Pipeline EPC Contract.

The EPC Contractor has corrected and is engaged in correcting certain identified items, none of which, individually or in the aggregate, constitutes a violation of law or materially adversely impacts Plant or Pipeline operations. As of the date of this Limited Offering Memorandum, only two EPC Contractor warranty items are incomplete according to Company records. Warranty work undertaken or to be undertaken by the EPC Contractor to date on the Plant has included repairs to the surge tanks, coating repair in post-treatment tanks, various work on pumps and related seals, concrete repairs, corrosion repairs, limited pipe repairs and repair/replacement of supports to the baffle curtains in the Product Water tank. Warranty work on baffle curtains in the finished Product Water tank and certain leaks at the micronic filters expansion joints are expected to be completed during a scheduled outage in January 2019. To date, warranty repairs have been completed with minimal impacts on Plant production. The EPC Contractor bears all of the costs of such work, including any portion thereof that is not subject to IDE Americas’ warranty under the IDE Americas Subcontract. IDE Americas’ obligations under such warranty are guaranteed by IDE. The EPC Contractor is not responsible for any lost or decreased Product Water production related to the completion of warranty work.

Intake System Modifications

Current Plant Operations

The [UPDATE RE PLANT SHUTDOWN: former] Power Station’s once-through-cooling system pumps (the “Pumps”) currently provide the Plant with raw intake seawater and required dilution of Plant effluent prior to discharge. Under the Ground Lease, Cabrillo agreed to use reasonable efforts to ensure that the Pumps are operated at a minimum threshold that will provide sufficient intake water and required dilution of Plant effluent prior to discharge. However, Cabrillo is excused to the extent that it is affected by a force majeure event or the Power Station’s daily average intake flow is less than such threshold. If Cabrillo’s operation of the Pumps for the Power Station would reduce intake flow to less than the threshold, Cabrillo must use reasonable efforts to (a) give the Company advance notice of any reduced operation or shutdown and (b) operate the Pumps for the Company’s benefit at a higher level than is required for the Power Station to maintain the minimum threshold, provided that:
• the Pumps are operable and accessible and may be operated in accordance with law;
• the Company is not in default;
• the Company pays the costs of such operation that are in excess of the costs that Cabrillo would have otherwise incurred;
• the Company obtains all necessary permits or entitlements (other than those already granted in the Ground Lease); and
• operating the Pumps will not have a material adverse effect on Cabrillo.

Permanent Pump Shutdown

As permitted under the Ground Lease Cabrillo gave the Company notice of a Permanent Pump Shutdown (a “Shutdown Notice”) on May 4, 2014, for a Permanent Pump Shutdown as early as June 1, 2017. Upon the Permanent Pump Shutdown, Cabrillo may elect to continue to operate the Pumps for the Company’s benefit and at the Company’s cost or require the Company to relocate, at its own cost, the Plant’s connections to the Power Station’s cooling water discharge facilities (“Stand-Alone Operations”).

The original expiration of the Shutdown Notice would have required the Company to implement Stand-Alone Operations by June 1, 2017, though Cabrillo expected to continue operation through the end of 2017. However, in February 2017 the Statewide Advisory Committee on Cooling Water Intakes, which includes representatives from the California Energy Commission, California Coastal Commission (“Coastal Commission”), California State Lands Commission, California Air Resources Board, California Independent System Operator and the SWRCB, recommended that the SWRCB extend the operation of the Power Station through the end of 2018 due to the delays associated with construction of a replacement power plant (Carlsbad Energy Center), maintenance of electrical grid reliability and avoidance of disruption to the State’s electrical power supply. The SWRCB approved this request in August 2017. [UPDATE RE PLANT SHUTDOWN: The Power Station ceased operation on and Cabrillo is currently operating the pumps at the Company’s expense.]

Beyond the intake and discharge system modifications that are required due to the Permanent Pump Shutdown and in order to transition to Stand-Alone Operations, additional Intake System Modifications will be required. Due to the shutdown of the Power Station, the existing co-located operation and temporary Stand-Alone Operations of the Plant will be terminated. This has resulted in a need to permit and construct the Intake System Modifications.

The Ground Lease allows the Company to construct and operate new intake pumps and screens within the existing easement areas subject to the Ground Lease. The Company and Cabrillo have entered into an amendment to the Ground Lease that will allow the Plant to continue to operate pending completion of intake and discharge system modifications that reroute the flow of seawater so that it no longer flows through the Power Station and installation of new, fish-friendly intake and discharge pumps (the “Interim Intake Improvements”). [POSEIDON: TO BE UPDATED] The parties are negotiating an additional memorandum of understanding addressing the commercial terms associated with Cabrillo’s continued operation and maintenance of its existing intake facilities (including cooling water pumps, screens and bar racks) pending completion of the Interim Intake Improvements.] See “PROJECT SITE – Ground Lease” and Appendix H – Summaries of Certain Project Contracts”.

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The Company expects to finance and construct the Interim Intake Improvements in the summer of 2019 at a cost currently estimated at $35 million.

**Permitting the Intake System Modifications**

San Diego Regional Water Quality Control Board (“RWQCB”) Order No. R9-2006-0065 (the “Order”) establishes requirements for the discharge of reverse osmosis concentrate and pretreatment backwash flows from the Plant into the Pacific Ocean via the Power Station discharge channel.

In accordance with the requirements of the Order, Poseidon submitted a Report of Waste Discharge on March 29, 2011 in application for renewal of the Order. On March 15, 2011, the SWRCB announced its intent to develop and potentially adopt the Ocean Plan Amendment, to address effects associated with the construction and operation of seawater desalination facilities. The Ocean Plan Amendment was adopted by the State Water Board on May 6, 2015. Following the adoption of the Ocean Plan Amendment, Poseidon submitted an Amended Report of Waste Discharge dated September 4, 2015, an Addendum to the Amended Report of Waste Discharge dated August 16, 2016, and 58 technical appendices (collectively, the “ROWD”).

The ROWD describes proposed improvements to the Plant intake and discharge facilities to accommodate the transition of the Plant from co-located to permanent stand-alone operation in accordance with the Ocean Plan Amendment.

Over the past three years, the Company, the Water Authority, the Regional Water Board and the State Water Board have evaluated 21 different intake and discharge alternatives for the Plant. Based on this extensive, multi-year collaborative evaluation, and guided by the Ocean Plan Amendment, Regional Water Board staff, the Company and the Water Authority have concluded that Alternative 21 is best suited to comply with the requirements of the Ocean Plan Amendment.

As proposed, Alternative 21 intake and discharge modifications include, among other changes: (1) new intake screens and laterals located in the Lagoon, (2) a fish-friendly flow augmentation pump station, and (3) improvements to the existing Power Station intake and discharge tunnels.

In compliance with the Ocean Plan Amendment, the new wedge wire intake screens are designed to eliminate impingement mortality and reduce entrainment mortality using 1-millimeter (“mm”) slot openings with a through-screen velocity of 0.5 feet per second or less. The existing intake pump station will continue to deliver a portion of the screened seawater to the Plant for processing. The pretreatment backwash water and the reverse osmosis concentrate from the Plant will be transferred to the existing Power Station discharge tunnel where it will mix with the remaining portion of the screened seawater that will be pumped from the existing Power Station intake to the discharge tunnel by the fish-friendly flow augmentation pumps.

The Company filed an application with the RWQCB for amendment and renewal of the Plant’s National Pollutant Discharge Elimination System (“NPDES”) permit on September 4, 2015. The application addresses transition to Stand-Alone Operations, compliance with the Ocean Plan Amendment and a potential increase in the permitted output of the Plant to 60 MGD. The increased output limit would eliminate the need to use the backwash filter to achieve the levels of annual output of Product Water required by the Water Purchase Agreement. The planned intake configuration consists of intake screens located in the Lagoon. RWQCB staff [UPDATE: issued] a public review draft of (a) its determination that the Plant’s new intake configuration complies with the Ocean Plan Amendment and (b) the revised NPDES permit for the Plant. The draft is subject to public review for a [30]-day public comment period. Thereafter, staff of the RWQCB is expected to prepare responses to comments and a
final draft permit for RWQCB consideration, which final consideration is expected to occur in [March] 2019. [UPDATE RE PLANT SHUTDOWN:] The Power Station is scheduled to be decommissioned in the fourth quarter of 2018.

The transition to Stand-Alone Operation and the draft permit contemplate a 60-month transition to full compliance that includes will be completed in three phases: (i) Poseidon will contract with Cabrillo to use the existing Power Station screens and pumps to provide the source water for the Plant; (ii) during the second phase of Interim Intake Improvements, the Company will operate the Power Station screens in conjunction with new fish-friendly dilution pumps to provide the source water for the Plant; and (iii) permanent Stand-Alone Operations in which the Company will operate the fish-friendly dilution pumps in conjunction with the wedge wire screens installed underwater inside the Lagoon to provide the source water for the Plant. During the interim phase of Stand-Alone Operations, the Company will undertake a pilot-scale intake screen demonstration study to refine the design and maintenance requirements for the new intake system. Conforming amendments to City of Carlsbad and Coastal Commission permits, O&M Agreement, and Water Purchase Agreement are expected to be completed in parallel with the RWQCB approval.

**Financing the Intake System Modifications**

[SUBJECT TO WATER AUTHORITY REVIEW AND UPDATE BY WATER AUTHORITY AND POSEIDON:] The Company expects to finance and commence construction of the new intake structures in 2021 at a cost currently estimated at $24.3 million, which would lead to the completion of the transition to full Stand-Alone Operation in 2024. The Company currently estimates the cost of compliance with the Ocean Plan Amendment at $36.7 million and related to Compensation Adjustment Financing Costs under the Water Purchase Agreement at $16.2 million. The Company expects to finance the Interim Intake Improvements with $______ of private activity bonds (“PABs”) issued by the Issuer consisting of [________ of Water Connection Debt], [________ of Plant Completion Debt], and [____ of Compliance Debt] [and with an additional equity contribution of [____ from the Company’s owners]. The PABs are expected to be issued as additional bonds on parity with the Series 2012 Plant Bonds and the Company’s obligation to make Contracted Shortfall Payments. The Company is in the process of securing state tax-exempt volume cap supporting the issuance of such additional bonds. These additional bonds can be issued if, among other requirements, updated Current Case Financial Projections that give effect to the issuance of such bonds show a minimum projected Debt Service Coverage Ratio for each Fiscal Year of the remaining term of the then Outstanding Plant Senior Debt of not less than 1.00. See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS – Additional Plant Senior Debt – Additional Debt Permitted in Certain Circumstances”.

The Company expects to finance the remaining Intake System Modifications with a combination of [_______] Additional Plant Bonds issued by the Issuer, Water Infrastructure Finance and Innovation Act (“WIFIA”) debt and [_______] of additional equity [from the Company’s owners].

[The Company has obtained a letter of credit in favor of the Collateral Agent, to fund the Permanent Pump Shutdown Reserve Account, in the amount of $35,694,537.]

The Company submitted a Letter of Interest to the United States Environmental Protection Agency (“USEPA”) for WIFIA credit support for the balance of the Intake System Modifications on July 30, 2018. On October 30, 2018, the USEPA notified the Company it was invited to apply for this financing. Issuance of Additional Plant Bonds will require, among other things, the Company to demonstrate that (i) the Debt Service Coverage Ratio for the last completed Budget Year or Fiscal Year
preceding the issuance of Additional Plant Senior Debt was at least 1.35, and (ii) Current Case Financial Projections that give effect to the proposed issuance of such Debt show projected Debt Service Coverage Ratio for each Fiscal Year of the remaining term of the then Outstanding Plant Senior Debt of not less than 1.35 after giving effect to issuance of such Additional Plant Senior Debt.

The plan of financing for the Intake System Modifications remains under development and there can be no assurance that Additional Plant Bonds, WIFIA debt or additional equity investment will be available in the amounts and at the times the Company currently projects. Firmer estimates will be developed during the continued design and development of the Intake System Modifications, and the Company cannot assure bondholders that the actual cost of the Intake System Modifications or related increased operating costs will not exceed the Company’s entitlement to compensation relief under the Water Purchase Agreement.

See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS – Additional Plant Senior Debt”.

Treatment of the Intake System Modifications under the Water Purchase Agreement

Permanent Pump Shutdown constitutes a Change in Law Event under the Water Purchase Agreement and was anticipated at the time of execution of the Water Purchase Agreement. The adoption of the Ocean Plan Amendment is also considered a Change in Law Event. The Water Purchase Agreement outlines the procedures that the Company must follow to finance, design, construct, operate, and maintain the Intake System Modifications, along with the Water Authority’s rights to review and comment on the Company’s actions.

On August 25, 2016 the Water Authority certified a Supplemental Environmental Impact Report for the Stand-Alone Operations and approved a CAM which sets forth the understanding of the Water Authority and the Company regarding their respective rights and responsibilities, and process and procedures, to complete the transition to Stand-Alone Operations, including the procedures for financing of the Intake System Modifications. The Water Authority is preparing an addendum to the Project’s Environmental Impact Report to address the environmental review of the Lagoon-based intake screens pursuant to the California Environmental Quality Act (“CEQA”). Completion of this addendum, like most activities under CEQA, can be subject to uncertainties and delays. There can be no assurance regarding the timing or results of this environmental review process. [WATER AUTHORITY TO UPDATE BASED ON PROPOSED SUBMISSION TO THE SDCWA BOARD FOR THE JANUARY 2019 MEETING] The Water Authority and the Company are negotiating the terms of a new CAM and amendment to the Water Purchase Agreement which will address electricity and O&M Costs for temporary Stand-Alone Operations. Subsequent CAMs are expected to be entered into that will address operation with the Interim Intake Modifications and, at a later date, the operation of the new full Intake System Modifications.

The Company will be entitled to compensation relief for the cost of constructing and operating Intake System Modifications; provided that (a) the portion of the permitting and construction capital costs attributed to the Permanent Pump Shutdown, for which the Company is compensated, may not exceed $21,331,214 (Index-Linked to the Contract Year (as defined herein) in which the financing for such improvements closes), currently $24,342,220 and (b) the annual operating costs for which the Company is compensated, attributed to the Permanent Pump Shutdown, may not exceed $2,663,900 per year (escalated from the execution of the Water Purchase Agreement), currently $3,039,923. The Company currently estimates that annual operating costs will increase by approximately $9,633,618 per year during the first phase of Stand-Alone Operations, of which $3,129,304 is Closure Cost and $6,605,314 relates to
Change in Law. The Company will be obligated to bear any excess costs related to the Interim Intake Modifications.

Although there is no similar cap on expenses for the portion of the Intake System Modifications related to compliance with the Ocean Plan Amendment, the Water Purchase Agreement limits the amount the Company can increase the unit price of water to 10% annually and no more than a cumulative total of 30% for the term of the Water Purchase Agreement. See “PROJECT OPERATION – Water Purchase Agreement – Limitations on Increases in the Purchase Price Due to Uncontrollable Circumstances” and the definition of Baseline Unit Price Cap therein, and “INVESTMENT RISKS – Limitations on Increases in Water Purchase Price”. The Company will also be entitled to schedule and performance relief, but not compensation, to the extent that permits required for the Intake System Modifications have not been issued within 180 days of the Company submitting a complete application, which occurred in late 2015.

Set forth below are diagrams depicting the proposed configuration of the Project’s intake system following Permanent Pump Shutdown, and during Interim Stand-Alone Operations, which configurations have not received final approvals from regulatory agencies.

Source: Poseidon Resources (Channelside) LP.
PROJECT SITE

General

The Plant is located on an approximately six-acre parcel (the “Plant Site”) adjacent to the existing Encina Power Station (the “Power Station”), immediately south of the Lagoon. The Company leases the Plant Site from Cabrillo, the owner and operator of the Power Station and an indirect wholly owned subsidiary of NRG Energy Inc. pursuant to a Second Amended and Restated Ground Lease and Easement Agreement, as amended (the “Ground Lease”). The Power Station draws seawater from the Lagoon for its cooling water system. [UPDATE RE PLANT SHUTDOWN: Until TBD, 2018 when the Power Station ceased operation, the Plant processed seawater from the Power Station’s discharge canal and returned the resulting concentrated seawater to the discharge canal, where it is commingled with other discharged cooling water and discharged into the Pacific Ocean. See “THE PROJECT – Intake System Modifications” and the summary of the Ground Lease contained in Appendix H.

Because the Plant was initially designed to make use of the existing intake and outfall of the Power Station, environmental permitting issues were reduced. Nevertheless the Company was required to obtain, and obtained, numerous environmental permits from agencies that considered the environmental impact of the entire Project. At the time, the Company successfully litigated challenges to a number of those permits. The permits, as granted, require the Company to undertake substantial wetlands restoration and to purchase renewable energy certificates and carbon offsets to mitigate the environmental impacts of Plant operation. See “THE PROJECT – Environmental Regulatory Matters”.

Source: Poseidon Resources (Channelside) LP.
The Water Authority has the statutory authority to use existing public rights of way for its distribution system. Under the Pipeline DBA, the Company acted as the Water Authority’s agent for purposes of constructing the Pipeline within public rights of way. Construction of the Pipeline was completed under budget, and $2,610,000 of Series 2012 Pipeline Bonds were redeemed from excess proceeds on December 18, 2017.

**Ground Lease**

The Company and Cabrillo have entered into the Ground Lease for the lease of the Plant Site and the grant of easements necessary for construction and operation of the Plant and the Intake System Modifications.

In the Ground Lease, Cabrillo (a) grants to the Company a leasehold in the Plant Site and certain easements for water intake and discharge facilities, electrical and sewage facilities, access and parking and (b) agrees to use reasonable efforts to operate the Power Station’s water circulating pumps, subject to certain conditions.

The initial term of the Ground Lease expires 35 years after the Plant begins commercial operations. The Company and Cabrillo entered into an amendment of the Ground Lease on February 16, 2018 to facilitate construction of the Intake System Modifications. The Ground Lease modifications are necessary both due to the Permanent Pump Shutdown at the Power Station and to allow the Plant to comply with the Ocean Plan Amendment which addresses desalination facility intakes and brine discharges. The February 16, 2018 amendment to the Ground Lease clarifies Cabrillo’s obligation to continue operating its Pumps for the Company’s benefit after the Power Station ceases operation. [POSEIDON TO UPDATE: The Company and Cabrillo are negotiating an additional memorandum of understanding addressing the commercial terms associated with Cabrillo’s continued operation and maintenance of its existing intake facilities (including cooling water pumps, screens and bar racks) pending completion of the interim intake improvements.] See the discussion of executed and anticipated amendments and memoranda of understanding pertaining to the Ground Lease in Appendix H – Summaries of Certain Project Contracts.

The additional Plant facilities are expected to include, but are not necessarily limited to one or more new seawater intake structures in the middle of the Lagoon and return flow discharge system improvements. The Ground Lease modifications also clarify (a) the use of certain easements following Project Completion and (b) the term during which the Plant can continue to use the Power Station’s circulating water pumps after the Power Station ceases operations (which has been extended through December 31, 2019 or later). The modifications do not change the term of the Ground Lease, but they are expected to increase the base rent under the Ground Lease approximately in proportion to the increase in square footage occupied or used by the Plant and its appurtenances (including a portion of the Lagoon).

The Company initially paid a fixed rent of $340,000 per year, subject to adjustment based on the change in the Consumer Price Index from August 2009. The fixed rent was increased to $1,287,000 per year on June 30, 2017, and further increased to [$__________] per year by the amendment to the Ground Lease occurring February 16, 2018. On January 1, 2019 the fixed rent increased to [$__________] per year.

The Company must also pay additional rent, which includes (a) any costs that Cabrillo may incur under Section 316(b) of the Clean Water Act (which governs its permit to withdraw and discharge seawater) as a result of the operation of the Plant; (b) any increase in Cabrillo’s cost of maintaining or operating the Power Station resulting from the operation of the Plant; (c) a fee for usage of temporary construction easements during construction of the Intake System Modifications; and (d) dredging costs
for the outer portion of the Lagoon in the event of a Permanent Pump Shutdown (until the Company assumes this responsibility upon the shutdown of the Power Station). The Company does not anticipate that Cabrillo will incur any costs described in clause (a). The Company does not anticipate that any rent increase contained in the proposed Ground Lease amendment will have a material adverse effect on the Company’s finances. The rent increases are all expected to be passed through to the Water Authority pursuant to the Water Purchase Agreement as an increase to the Product Water price.

See the summary of the Ground Lease in Appendix H.

**Power Station Priority**

The operation, maintenance and use of the Power Station, including the new Power Station placed into service by Clearway Energy, the successor in interest to NRG with respect to the new power plant], has priority over the construction, operation, maintenance, use and alteration of the Plant, and Cabrillo is not obligated to alter, de-energize or shut down the Power Station or any component thereof in connection with the construction, operation or maintenance of the Plant.

**PROJECT OPERATION**

**General**

The Water Authority operates and maintains the Pipeline, makes scheduled loan payments to pay debt service on the Series 2019 Pipeline Bonds and purchases Product Water from the Company for the remaining term of the Water Purchase Agreement. At the request of the Water Authority, the Company must deliver up to 56,000 AFY of Product Water that meets the Water Authority’s water quality standards. The Water Authority agrees to purchase a minimum of 48,000 AFY of Product Water that meets the Water Authority’s water quality standards. If the Company delivers the full amount of Product Water requested by the Authority annually, it is entitled to receive water purchase payments calculated to pay the fixed and variable Plant operating costs, debt service on the Series 2012 Plant Bonds, and a return on equity to the Company’s investors. If the Company fails to deliver the required amounts of Product Water, the Company is required to pay liquidated damages in the form of Operating Period Shortfall Payments and certain Annual Adjusted Supply Commitment True-Up Payments and Annual Operating Period Shortfall Payment True-Up Payments, as described below under “Water Purchase Agreement — Product Water Quantity and Quality Shortfalls”. The Operating Period Shortfall Payments have been assigned to the Pipeline Trustee for the benefit of the holders of the Series 2019 Pipeline Bonds to be applied to debt service payable on the Series 2019 Pipeline Bonds. The Water Authority’s obligation to make Installment Sale Payments (and, in turn, the Water Authority’s obligation to make Pipeline Loan Repayments) are reduced by the amount of Contracted Shortfall Payments payable by the Company, whether or not paid.

The Company has entered into the O&M Agreement with IDE Americas. IDE Americas receives monthly payments consisting of certain fixed and variable components. IDE Americas is obligated to pay liquidated damages under the circumstances described below under “PROJECT OPERATION—Operation and Maintenance of the Plant — O&M Agreement with IDE Americas” and “PROJECT OPERATION—Operation and Maintenance of the Plant — Damages”. If an event or circumstance beyond its control occurs, IDE Americas may be entitled to additional compensation while the same event or circumstance would not entitle the Company to an increase in the purchase price for Product Water under the Water Purchase Agreement. In addition, the Water Purchase Agreement limits increases in the water purchase price resulting from Uncontrollable Circumstances as described below under “Water Purchase Agreement — Limitation on Increases in the Purchase Price Due to Uncontrollable Circumstances”. There is no corresponding limit on IDE Americas’ right to increased compensation.
The foregoing is intended to provide a brief overview of the contractual provisions discussed. Prospective investors are urged to read the other material under this heading “PROJECT OPERATION” and the summaries of the Water Purchase Agreement in Appendix G and of the O&M Agreement in Appendix H, including the complete definitions of Uncontrollable Circumstances, Uninsurable Force Majeure Events and Insurable Force Majeure and their consequences in the summary of the Water Purchase Agreement, and the definitions of Force Majeure Event and Change in Law in the summary of the O&M Agreement.

Water Purchase Agreement

The Company and the Water Authority have entered into the Water Purchase Agreement for construction and operation of the Plant and the sale and purchase of Product Water. The term of the Water Purchase Agreement ends on December 23, 2045, the 30th anniversary of the Commercial Operation Date. Since execution of the Water Purchase Agreement, the Water Authority and the Company have entered into [four] amendments to the Water Purchase Agreement. Additionally, under the Water Purchase Agreement, the Water Authority and the Company established a mechanism for documentation of routine matters of interpretation and application which do not constitute formal amendments to the Water Purchase Agreement, referred to as CAMs. Since execution of the Water Purchase Agreement, the Water Authority and the Company have entered into [ten] CAMs covering various matters. See Appendix G – Summary of the Water Purchase Agreement.

Delivery and Purchase Obligations

The Water Authority is obligated to purchase 48,000 acre-feet of Product Water per year (the “Minimum Annual Demand Commitment”), and the Company is obligated to supply up to 56,000 acre-feet of Product Water per Contract Year (the “Maximum Annual Supply Commitment”). Under the Water Purchase Agreement, “Contract Year” means the period from July 1 of each calendar year, through June 30th of the succeeding calendar year.

Within the band established by the Maximum Annual Supply Commitment and the Minimum Annual Demand Commitment, the Plant operates flexibly to meet the seasonal and daily requirements of the Water Authority. Each year, the parties establish a maximum supply commitment for each month of the Contract Year (the “Maximum Monthly Supply Commitment”) based on the Maximum Annual Supply Commitment and a minimum demand commitment for each month (the “Minimum Monthly Demand Commitment”) based on the Minimum Annual Demand Commitment. The Maximum Monthly Supply Commitment is expected to be similar each month, based on the maximum operating capacity of the Plant, except that the Company may establish ten days of downtime for scheduled maintenance, repair and component replacement, to the extent practicable, during the months of December, January, February and March. The Water Authority establishes the Minimum Monthly Demand Commitments not on a level operation basis, but reflecting substantially reduced demand in December through March, with the lowest demand typically in January and February. In any given month, the Water Authority is entitled to request delivery of Product Water in amounts as low as the Minimum Monthly Demand Commitment and as high as the Maximum Monthly Supply Commitment. The Water Authority establishes an estimated schedule of daily deliveries in advance of each month, but establishes the final daily schedule of Firm Daily Demand Orders for each day on the previous day. In addition, the Water Authority may request changes in flow rate as often as two times per day, six times during any seven consecutive days, and twelve times during any thirty consecutive days, provided that no modification to the flow rate shall be required to take effect less than eight hours after the modification is requested. The sum of the final daily requirements for each month establishes the “Adjusted Monthly Supply Commitment” for the month. As described further below, the payment obligations of the Water Authority and the performance obligations of the Company are generally determined by reference to the
Minimum Monthly Demand Commitment and the Adjusted Monthly Supply Commitment for each month.

A “Demand Shortfall” occurs when the Water Authority fails to order the Minimum Monthly Demand Commitment in any month, and a “Demand Exceedance” occurs when the Water Authority orders more than the Minimum Monthly Demand Commitment in any month. The Adjusted Monthly Supply Commitment is the lesser of the Demand Orders and the Maximum Supply Commitment. A “Supply Shortfall” occurs when the Company delivers less than the Adjusted Monthly Supply Commitment, but the effect of any particular Supply Shortfall depends on whether the undelivered units are classified as Unscheduled Outage Units, Excused Supply Shortfall Units or Unexcused Supply Shortfall Units which in turn depends on the circumstances leading to the Supply Shortfall.

Unplanned outage events can be categorized as “Unscheduled Outage Units” up to an annual allowance of 1,630 acre-feet for each Contract Year. The Water Purchase Agreement allows for payment of fixed costs for the Unscheduled Outage Units, but no variable costs are incurred or paid for the Unscheduled Outage Units because this water is not delivered. The Excused Supply Shortfall Units can be delivered during any Contract Year at the discretion of the Water Authority and the ability to make up delivery of the Unexcused Supply Shortfall Units is at the discretion of the Water Authority and limited to the Contract Year in which the Unexcused Supply Shortfall Units occur.

Within 60 days after the end of each Contract Year, the Company must provide to the Water Authority an annual settlement statement setting forth the actual aggregate water purchase payments payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by the Water Authority with respect to such Contract Year. The Water Authority or the Company, as appropriate, must pay all known and undisputed amounts within 60 days after receipt or delivery of the statement.

**Product Water Purchase Price**

The price per acre-foot of Product Water (the “Purchase Price”) delivered or deemed to have been delivered to the delivery point varies based on how much Product Water is delivered. The Purchase Price for Product Water delivered up to the Minimum Annual Demand Commitment is equal to the sum of: (a) the following fixed charges: the Debt Service Charge, the Equity Return Charge, the Fixed Operating Charge and the Fixed Electricity Charge (collectively, the “Fixed Unit Price”); and (b) the following variable charges: a Variable Operating Charge and Variable Electricity Charge (collectively, the “Variable Unit Price”). The Fixed Unit Price multiplied by the Minimum Annual Demand Commitment yields the Company’s “Fixed Annual Costs”. (The foregoing italicized terms are defined in the summary of the Water Purchase Agreement in Appendix G.) The Fixed and Variable Electricity Charges are structured so variations in electricity costs resulting from (i) the amount of electricity consumed are borne by the Company and (ii) changes in electricity prices are borne by the Water Authority. The Company will receive the Variable Unit Price for Product Water deliveries between the Minimum Annual Demand Commitment and the Maximum Annual Supply Commitment. Product Water deliveries in excess of the Maximum Annual Supply Commitment will receive the Variable Unit Price plus $195 per acre-foot (Index-Linked). The Company will also receive the Fixed Unit Price for Product Water to the extent the Company is unable to deliver the Minimum Annual Demand Commitment due to (A) the Water Authority not taking Product Water subject to certain exceptions for Water Authority emergencies or (B) unscheduled outages of the Plant up to 1,630 acre-feet per Contract Year. The result, subject to other requirements described below, is that by meeting or exceeding the Minimum Annual Demand Commitment, the Company expects to pay the entire fixed costs of operating the Plant for the Contract Year, including debt service on the Series 2012 Plant Bonds, and expects to receive its variable costs for each acre-foot of Product Water delivered.
The appropriate component of the Fixed or Variable Unit Price, as applicable, will be adjusted (a “Unit Price Adjustment”) under certain circumstances, including those described herein under “THE PROJECT – Intake System Modifications,” “Compensation Adjustment Event Capital Costs” and “Uncontrollable Circumstances”. Other circumstances under which a Unit Price Adjustment will be made are described in the summary of the Water Purchase Agreement in Appendix G.

Product Water Quantity and Quality Shortfalls

If the Company fails to deliver the Minimum Monthly Demand Commitment for a month, and such failure results in an aggregate shortfall or increases the aggregate shortfall in meeting the aggregate Minimum Monthly Demand Commitments to such point in the Contract Year, the Company owes the Water Authority an Operating Period Shortfall Payment equal to a proportionate amount of the Pipeline Debt Service Related Payments for such month. If the Water Authority terminates the Water Purchase Agreement due to the Company’s default, the Company will owe the Water Authority payments equal to the full monthly debt service on the Series 2019 Pipeline Bonds and, if the Series 2019 Pipeline Bonds are accelerated, the Company will owe the Water Authority a payment equal to the principal and accrued interest on the Series 2019 Pipeline Bonds. The obligation of the Company to make these Operating Period Shortfall Payments is secured on a parity basis with the Company’s obligations to make payments on the Plant Senior Debt. See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS”. In addition, if the sum of (i) the monthly delivered water units, (ii) the monthly excused supply or demand shortfall units, (iii) the monthly unexcused demand shortfall, and (iv) the monthly unscheduled outage shortfall units in any month during which the Water Authority has activated Stage 2 of its drought response plan is less than 90% of the Adjusted Monthly Supply Commitment, the Company must pay the Water Authority an amount equal to the Equity Return Charge for each unit of shortfall. The Company’s obligation to pay this amount, if incurred, will be senior to its obligations on the Plant Senior Debt, but does not constitute an Operating Period Shortfall Payment and does not reduce the Water Authority Financing Agency’s obligation to pay debt service on the Series 2019 Pipeline Bonds.

For each Contract Year in which the Company has failed to deliver the full amount of Product Water requested by the Water Authority up to the Maximum Annual Supply Commitment, the Company must also make two True Up payments to the Water Authority:

- a portion of the Pipeline Debt Service Related Payments proportionate to the excess of the shortfall against the sum of the Adjusted Monthly Supply Commitment over the shortfall against the Minimum Monthly Demand Commitments; and

- a payment to ensure that the Company only retains a portion of the Fixed Annual Costs proportionate to the amount of Product Water actually provided for such Contract Year.

These true-up payments are not Operating Period Shortfall Payments and are subordinated to Debt Service and failure to make such payments will not constitute an event of default under the Water Purchase Agreement.

The Company must deliver Product Water that complies with applicable law and the quality requirements set forth in the Water Purchase Agreement, and will be subject to deductions from the Purchase Price for Product Water that does not meet these requirements (or to non-payment if the water delivered is non-potable or poses a health or safety risk). If the CDDW issues a “boil water” notice with respect to the Product Water, the Company will be in breach of the Water Purchase Agreement (with 60 days to cure, to be extended up to 180 days if the Company is diligently pursuing a remedy), and the
Water Authority may require the Company to replace IDE Americas as the Plant’s operator and may either direct the Company to take necessary remedial actions or step in to take action itself.

See “—Operation and Maintenance of the Plant – Plant Operations” for a discussion of actual Product Water deliveries, shortfalls and Operating Period Shortfall Payments since the Commercial Operation Date.

Pricing and Performance on a Monthly Basis

Table A. below illustrates the operation of the delivery requirements and pricing provisions of the Water Purchase Agreement. The blue horizontal line represents an example of a month in which the level of credited deliveries is below the Minimum Monthly Demand Commitment.

A. Water Pricing, Delivery Credits, and Delivery Shortfall Components

Table B. below presents several examples of the operation of the Company’s obligation to make Operating Period Shortfall Payments and True Up payments depending on its level of performance in the context of the delivery and pricing provisions described in the previous table. In each example, the blue horizontal line represents the Company’s actual level of deliveries (plus the Unexcused Demand Shortfall and acre-feet lost to Unscheduled Outages, if any).
### B. Examples of Water Delivery Shortfalls and Exceedances

<table>
<thead>
<tr>
<th>Water Produced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Demand Commitment (48,000AFY)</td>
</tr>
<tr>
<td>Adjusted Supply Commitment</td>
</tr>
<tr>
<td>Maximum Supply Commitment (56,000AFY)</td>
</tr>
<tr>
<td>0</td>
</tr>
</tbody>
</table>

In Table B, Example 1 represents a failure by the Company to deliver the Minimum Demand Commitment, with the result that it incurs a potential obligation to make Operating Period Shortfall Payments and an additional potential obligation to make Annual True Up Payments for amounts not delivered that are in excess of the Minimum Demand Commitment. Example 2 represents a failure by the Company to meet the Adjusted Monthly Supply Commitment while the Company’s deliveries exceed the Minimum Monthly Demand Commitment. The excess over the Minimum Monthly Demand Commitment results in a reduction in the obligation to pay Operating Period Shortfall Payments, while an additional obligation to make Annual True Up Payments accrues. In Example 3 the Company produces Product Water in excess of both the Adjusted Monthly Supply Commitment and the Maximum Monthly Supply Commitment. The entire excess over the Minimum Monthly Demand Commitment will reduce the obligation to pay Operating Period Shortfall Payments to the extent arising from Excused Monthly Supply Shortfalls or Excused Monthly Demand Shortfalls. Amounts above the Adjusted Monthly Supply Commitment will reduce Annual True Up Payments based on Excused Monthly Supply Shortfalls and Excused Monthly Demand Shortfalls. Amounts above the Maximum Monthly Supply Commitment serve to reduce Unexcused Monthly Supply Shortfalls, both with respect to Operating Period Shortfall Payments and Annual True Up Payments.

### Financing

The Company is solely responsible for obtaining and repaying all financing necessary for the design, permitting and construction of the Plant at its own cost and risk and without recourse to the Water Authority. The Water Authority will have no obligation to provide financing for the Plant or for any Capital Modifications for any Uncontrollable Circumstances or for any other purpose, other than those undertaken at the direction of the Water Authority. However under certain circumstances the cost of Product Water is subject to a Unit Price Adjustment including those described herein under “THE PROJECT – Intake System Modifications,” “Compensation Adjustment Event Capital Costs” and “Uncontrollable Circumstances”. The Company may not issue any Additional Plant Senior Debt other than as described in “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE.”
BONDS – Additional Plant Senior Debt,” or any subordinated debt secured by the Plant (together with the Series 2012 Plant Bonds and Additional Plant Senior Debt, “Permitted Debt”), other than as described herein. The Company intends to incur Additional Plant Senior Debt in connection with the Intake System Modifications. See “THE PROJECT – Intake System Modifications”.

Pursuant to the Collateral Trust Agreement, the Company may incur Debt, secured by a subordinated pledge of all or any portion of the Collateral subject to Liens granted by the Company and the Partners, only if the following conditions are satisfied:

(a) the Company provides to the Senior Debt Majority Current Case Financial projections, reviewed by the Independent Engineer, that show Projected Debt Service Coverage Ratio of at least 1.35 for each Fiscal Year of the remaining life of then Outstanding Plant Senior Debt, treating for purposes of the calculation the proposed subordinated Debt and any outstanding subordinated Debt as Plant Senior Debt;

(b) the Company delivers a letter to the Collateral Agent and the Senior Debt Majority from at least two Rating Agencies then rating any Outstanding Plant Bonds confirming that each such Rating Agency will not lower, suspend or withdraw its then-current rating of such Plant Bonds if such proposed subordinated Debt is issued; and

(c) the terms of the subordination provisions contained in the documents pursuant to which such proposed Debt is to be issued substantially conform to the subordination provisions contained in the Collateral Trust Agreement, provided that any substantive differences from subordination provisions contained in the Collateral Trust Agreement are reasonably acceptable to the Senior Debt Majority.

The term of any Permitted Debt issued by the Company may not extend beyond the term of the Water Purchase Agreement. The Collateral Trust Agreement also restricts the Company’s ability to incur debt as described under “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS — Collateral Trust Agreement”.

The Water Authority will not be obligated to make any payment measured or calculated by or with reference to Permitted Debt (other than Plant Bonds), except (a) Permitted Debt issued to finance Compensation Adjustment Event capital costs and (b)(i) Permitted Debt issued to finance Project Costs, Project Completion, the capital costs of Uncontrollable Circumstances, the capital costs of Water Authority directed capital projects, and compliance with governmental approvals, and (ii) Permitted Debt with respect to which the Water Authority has agreed, in its discretion, to assume such an obligation (“Approved Permitted Debt”). Approved Permitted Debt will be factored into the purchase price to be paid by the Water Authority if it exercises its option to purchase the Plant. See “PROJECT OPERATION — Water Purchase Agreement — Purchase of the Plant”.

Compensation Adjustment Event Capital Costs. The Company must use reasonable efforts to finance the capital costs resulting from a Compensation Adjustment Event. A “Compensation Adjustment Event” is the occurrence of an Uninsurable Force Majeure Event, a Change in Law Event or an Other Uncontrollable Circumstance as defined in the Summary of the Water Purchase Agreement in Appendix G. Additional costs (including operation, maintenance, repair and replacement costs) resulting from a Compensation Adjustment Event will be paid by the Water Authority as an adjustment to the Purchase Price or in a lump sum. The Water Authority may, in its discretion, finance the capital costs of a Compensation Adjustment Event itself and, in such case no adjustment will be made to the Unit Price.
If the Company is completely unable to obtain required financing for Compensation Adjustment Event capital costs for any reason (including the insufficiency of the adjusted Monthly Water Purchase Payments to support such a financing or adverse conditions in the financial markets), and as a consequence thereof (a) the Company is unable to pay such Compensation Adjustment Event capital costs and make the modifications, improvements or reinstatements that are required to be made due to the Compensation Adjustment Event, and (b) the Water Authority is likely to be denied the benefits of the Water Purchase Agreement for a period of at least 365 days following the occurrence of the Compensation Adjustment Event:

- the Water Authority will have no obligation to make any payment or provide any financing with respect to such Compensation Adjustment Event capital costs;

- the Water Authority, by notice to the Company, may terminate the Water Purchase Agreement, without the obligation to make any termination payment;

- the Water Authority will have the option, exercisable in its discretion, to purchase the Plant under the terms described below under “— Purchase of the Plant;”

- the Company will not be in breach of its obligations under the Water Purchase Agreement and will not be subject to any damages or liability arising out of any failure to make required modifications, improvements or rectifications related to the Compensation Adjustment Event.

Financing will be deemed available on similar terms and conditions and under a similar financing plan, for purposes of financing Compensation Adjustment Event capital costs if (a) the debt-to-equity ratio of such financing is similar to the debt-to-equity ratio of the Series 2012 Plant Bond financing and, (b) the debt portion of the financing has an investment grade credit rating or, if the debt is unrated, would have an investment grade credit rating if it had been sought.

**Uncontrollable Circumstances**

An “Uncontrollable Circumstance” as defined in the Water Purchase Agreement includes (a) a force majeure event (of the type that would constitute a Force Majeure Event (as defined in the Water Purchase Agreement) if it affected the Project) that damages or destroys Cabrillo’s raw seawater intake system or any other property at the Cabrillo generating facility site that is necessary for the intake of raw seawater for the Plant or the discharge of process wastewater produced at the Plant from the Plant; or (b) the failure of a Cabrillo Entity to perform its obligations under the Ground Lease to operate the water circulating pumps of the Cabrillo raw seawater intake system for any reason, including a bankruptcy or insolvency of a Cabrillo Entity, but excluding a default by the Company under the Ground Lease.

If an Uncontrollable Circumstance occurs, the Company may be entitled to performance, schedule and/or compensation relief or it may not be entitled to any relief. If an Uncontrollable Circumstance prevents the Company from delivering Product Water, the Company may subsequently produce the amount of Product Water not delivered due to the Uncontrollable Circumstance for delivery to the Water Authority on a schedule agreed by the parties, and the term of the Water Purchase Agreement will be extended for up to three years to permit such deliveries.

See the summary of the Water Purchase Agreement in Appendix G.
Limitations on Increases in the Purchase Price Due to Uncontrollable Circumstances

The sum of the increases in the Fixed Unit Price and the Variable Unit Price described above under “THE PROJECT – Intake System Modifications,” or for “Uninsurable Force Majeure Events,” “Change in Law Events” and “Discriminatory or Specified Changes in Tax Law” and “Other Uncontrollable Circumstances” (occurring in the aggregate up to the time of any particular calculation) will not exceed an amount equal to 30% of the then current Purchase Price at any time, nor will the sum of such increases effective in any one Contract Year exceed an amount equal to 10% of the Unit Price effective in the immediately preceding Contract Year (such limitations together constituting the “Baseline Unit Price Cap”). The Company will not be entitled to any compensation on account of such event or circumstance to the extent the sum of any such increases would at any time cause the Baseline Unit Price Cap to be exceeded. See “INVESTMENT RISKS – Limitations on Increases in Water Purchase Price”.

Company Events of Default

Each of the following events will be an event of default by the Company under the Water Purchase Agreement for which there is no cure period:

- the Company delivers less than 75% of the Product Water ordered by the Water Authority in any 24 out of 36 consecutive months;
- CDDW issues a second “boil water” notice with respect to the Product Water;
- an exceedance of a primary drinking water standard maximum contaminant limit in 3 consecutive months or 4 times in any 12-month period;
- termination of the Ground Lease for default;
- a bankruptcy-related event occurs; and
- the due date for the payment of the principal amount of all outstanding Pipeline Bonds is accelerated as a result of the Company’s failure to make Operating Period Shortfall Payments;

In addition, each of the following events will be an event of default for which the Company will have a 60-day cure period (or such a longer period not to exceed 180 days so long as the Company is diligently pursuing a remedy):

- failure to pay amounts due and owing within 10 business days after notice from the Water Authority;
- Failure to repair, replace or restore the Plant following the occurrence of an Insurable Force Majeure Event;
- failure to take appropriate action in response to a notification by the Water Authority that a public health or safety emergency exists or is threatened due to the Company’s failure to comply with the Water Purchase Agreement; and
- a breach of the Water Purchase Agreement (other than a breach entitling the Water Authority to make deductions from the Monthly Water Purchase Payments) that has continued for 60 days or has occurred 4 or more times in the previous 12 months.
Other events of default, including customary defaults for prohibited assignments, abandonment of the project and failure to maintain required insurance, are described under “Water Purchase Agreement” in Appendix G.

If a Company event of default occurs, the Water Authority may terminate the Water Purchase Agreement subject to rights of the Collateral Agent under the Collateral Agent’s Remedies Agreement. The ability of the Company or a new owner of the Plant to profitably sell Product Water may be severely limited in the event of a termination of the Water Purchase Agreement. See “INVESTMENT RISKS—Remedies on Default” and – “Termination of the Water Purchase Agreement”.

**Water Authority Events of Default**

Each of the following events will be an event of default by the Water Authority under the Water Purchase Agreement for which there is no cure period:

1. failure to pay any undisputed amount due and owing within 45 days of its due date;

2. breach or series of breaches of any obligation to the Company or any representation or warranty made to the Company having been incorrect when made and as a result of which (a) a material and adverse effect on the Company’s performance under the Water Purchase Agreement or (b) any material provision of the Water Purchase Agreement being unenforceable against the Water Authority to the extent that the Company is reasonably likely to be deprived of the benefit of the Water Purchase Agreement;

3. the occurrence of a bankruptcy-related event, provided that the appointment of a financial control or oversight board for the Water Authority by the State of California will not be an event of default; and

4. the Water Authority assigns the Water Purchase Agreement in contravention of the terms thereof.

The Company may terminate the Water Purchase Agreement if (a) an event of default described in Item 1 is not cured within 10 days of notice from the Company, (b) an event of default described in Item 2 is not cured within a 60-day cure period or such longer period (not to exceed 180 days) so long as the Water Authority is diligently pursuing a remedy or (c) an event of default under Item 3 or Item 4 occurs.

The Water Authority is under no obligation to purchase the Plant or pay any compensation to the Company in the event of a termination of the Water Purchase Agreement for the Water Authority’s default. See “INVESTMENT RISKS — Water Sales Risks — Termination of the Water Purchase Agreement”.

**Other Rights of Termination**

In addition to the parties’ termination rights for an event of default, the Water Authority may terminate the Water Purchase Agreement prior to the expiration of its term:

1. in connection with the Company’s inability to finance the costs resulting from an Uncontrollable Circumstance for which the Company is entitled to compensation relief under the Water Purchase Agreement;
2. if the Ground Lease is terminated on account of condemnation or taking by eminent domain; or

3. if the Water Authority exercises its option to purchase the Plant, as discussed below.

**Purchase of the Plant**

The Water Authority has the option to purchase the Plant at the end of the term of the Water Purchase Agreement for one dollar. The Water Authority will also have an option to purchase the Plant before the end of term as follows:

- at any time after the 10th anniversary of the Commercial Operation Date at a purchase price equal to (a) the net present value of the Equity Return Charge that would have been payable through the remaining term of the Water Purchase Agreement plus (b) the aggregate principal amount of the outstanding Plant Bonds and the Approved Permitted Debt plus (c) costs incurred due to terminating current employees and IDE Americas’ breakage costs;

- if the Company is unable to obtain financing in connection with a Compensation Adjustment Event as described above under “Compensation Adjustment Event Capital Costs” at same price described in the preceding bullet point; and

- upon an event of default by the Company at a purchase price equal to (a) the aggregate principal amount of the outstanding Plant Bonds and Approved Permitted Debt minus (b) an amount equal to all amounts on deposit in the funds and accounts held under the Collateral Trust Agreement or the Plant Indenture (except amounts held in the Plant Contractor Security Account to the extent the EPC Contractor is entitled to receive such amounts under applicable law).

The Water Authority has no obligation to purchase the Plant under any circumstances. See the summary of the Water Purchase Agreement in Appendix G.

**Assignment and Change in Control**

The Company may not assign any interest in the Water Purchase Agreement except: (a) as security for the Plant Senior Debt; (b) in connection with the exercise of the rights of the Collateral Agent; or (c) with the prior written consent of the Water Authority (which may be given or withheld in the Water Authority’s sole discretion for the first two years after the Commercial Operation Date, and thereafter may not be unreasonably withheld or delayed) provided (with respect to clauses (b) and (c)) the assignee assumes all of the Company’s obligations under the Water Purchase Agreement.

The Water Purchase Agreement prohibits changes in control of the Company except (a) in connection with the exercise of rights of the Collateral Agent; (b) arising from any bona fide open market transaction in any securities of the Company or of any affiliate or shareholder on a recognized public stock exchange; (c) an assignment, sale or transfer of any direct or indirect interest in any shares or equity of the Company (or of any person who directly or indirectly owns shares or equity in the Company) to Stonepeak Partners Infrastructure Fund LP or any of its affiliates and any subsequent assignment by Stonepeak Partners Infrastructure Fund LP or any of its affiliates or any subsequent assignee, of all or part of any such transferred interest; or (d) with the prior written consent of the Water Authority (which may be given or withheld in the Water Authority’s sole discretion for the first two years after the Commercial Operation Date, and thereafter may not be unreasonably withheld or delayed).
The Water Authority must obtain the Company’s prior written consent (which may be given or withheld in the Company’s sole discretion) for an assignment of its interest in the Water Purchase Agreement other than to another governmental body assuming, and capable of discharging, all of the Water Authority’s obligations under the Water Purchase Agreement.

**Management Services Agreement**

The Company and Poseidon GP do not independently maintain all of the personnel and other internal resources necessary to perform the management and administrative functions relating to the Plant. Accordingly, they have entered into a Management Services Agreement with Poseidon Water for the performance of certain of such functions by Poseidon Water relating to operation of the Plant.

The Company pays Poseidon Water the following fees:

- a fixed annual fee of $600,000; and
- a performance-based management fee equal to the “Management Fees” paid by the Water Authority to the Company under the Water Purchase Agreement of up to $10 per AF of Product Water delivered to and accepted by the Water Authority in accordance with the Water Purchase Agreement.

The fixed annual fee and the performance-based management fee are each subject to annual escalation based on changes in a consumer price index. Poseidon Water is entitled to be reimbursed by the Company for any out of pocket expenses incurred by it related to its provision of services under the Management Services Agreement but only to the extent such expenses are incurred pursuant to an approved budget or are otherwise approved by Poseidon GP. All such expenses are paid from funds held by the Collateral Agent that are available for such purpose.

Poseidon Water indemnifies the Company for any loss resulting from Poseidon Water’s breach of the Management Services Agreement, or its gross negligence or willful misconduct, subject to a liability limitation equal to the aggregate amount of all fees paid to it pursuant to the Management Services Agreement. The Company will indemnify Poseidon Water for any loss incurred by Poseidon Water in providing services pursuant to the Management Services Agreement, other than any loss resulting from Poseidon Water’s breach of the Management Services Agreement, its negligence or its willful misconduct.

**Electricity**

Electricity is the largest operating cost of the Plant, accounting for approximately 50% of the operating budget. The Company purchases electricity from SDG&E under a standard non-interruptible SDG&E General Service Time of Use tariff program for large industrial users. Under the current SDG&E tariff structure, the tariff program includes SDG&E Schedule AL-TOU (>12 MW, Primary Substation) plus SDG&E Schedule EECC (Electric Energy Commodity Cost) plus any applicable taxes and DWR Bond Charges.

The Fixed Electricity Charge and Variable Electricity Charge under the Water Purchase Agreement are structured to compensate the Company for a guaranteed quantity of electricity at actual prices, so that the risk and benefit of over- or under-consumption of electricity is borne by the Company and the price risk of electricity is borne by the Water Authority. The guaranteed quantity varies with the volume, temperature and salinity of the intake water. Actual electricity consumption through October 31, 2018 has been approximately 95% of guaranteed energy consumption.
If energy consumption for the fourth year of operation is less than 90% of the guaranteed amount, the Company will thereafter be required to meet a reduced guaranteed amount. The reduction will be a percentage amount by which the actual energy consumption in the fourth year is less than the original guarantee minus 10%. As an example, if the consumption in the fourth year of operation is 86% of the guaranteed amount, the guarantee will be reduced by 4% to 96% of the original guarantee.

The Water Authority has the right to direct the Company to change electricity suppliers and to negotiate and establish electric rates with the replacement provider so long as the arrangement does not materially and adversely affect the ability of the Company to perform its obligations under the Water Purchase Agreement or the costs thereof.

**O&M Agreement with IDE Americas**

In order to support operation and maintenance of the Plant, the Company has entered into an Operation, Maintenance, Repair and Replacement Agreement for the operation, maintenance and repair of the Plant and replacement of components of the Plant (the “O&M Agreement”) with IDE Americas, pursuant to which IDE Americas operates and maintains the Plant and delivers Product Water to the Water Authority. The Company believes that IDE Americas’ continuing performance of its obligations under the O&M Agreement will be sufficient to allow the Company to perform its operation, maintenance and Product Water delivery obligations under the Water Purchase Agreement. The initial term of the O&M Agreement will expire 30 years after the Commercial Operation Date, contemporaneously with the scheduled expiration of the Water Purchase Agreement. The performance by IDE Americas of its obligations under the O&M Agreement is guaranteed by IDE. The obligations of IDE Americas under the O&M Agreement are intended to assure that the Plant is fully, properly and regularly maintained, repaired and the components thereof replaced in order to preserve its long-term reliability, durability and efficiency.

IDE Americas is required to operate the Plant so as to produce up to 18,250 million gallons (“MG”) per year (approximately 56,000 AFY) (the “Committed Annual Volume”), subject to a daily maximum flow rate of 54 MG (163 acre-feet).

IDE Americas must operate, maintain and repair the Plant, including without limitation repair or replacement of components, but excluding any items of work for which the EPC Contractor is responsible under its warranty obligations under the Plant EPC Contract. If a dispute arises as to whether the EPC Contractor or IDE Americas is responsible for such repair or component replacement and the replacement is of an item provided by IDE Americas under the IDE Americas Subcontract, IDE Americas must, at the request of the Company, commence such repair or replacement pending resolution of the dispute. If the dispute is resolved in favor of IDE Americas, the Company will reimburse it for the costs of the repair or component replacement.

The Company and IDE Americas disagree as to responsibility for certain Product Water delivery shortfalls occurring primarily during the second and third quarters of 2017 principally as a result of an algal bloom described in “Plant Operations”. IDE Americas has requested compensation for Product Water it believes should be deemed delivered under the O&M Agreement and the Company has reduced amounts of compensation otherwise payable to IDE Americas for certain fixed costs, energy adjustments and Liquidated Damages assessed to IDE Americas under the O&M Agreement related to what the Company views as unexcused delivery shortfalls. The Company and IDE Americas continue to discuss the issues, and no claim has been filed in court by either party. The Company believes its interpretation of the disputes under the O&M Agreement is correct and will defend itself vigorously in any formal dispute resolution proceeding that results from the disagreements with IDE Americas.
The Company has not paid any of the currently disputed amounts related to Product Water delivery shortfalls estimated at approximately $7 million. IDE Americas has also suggested that if it is not successful in its property insurance claims related to the Train 5 damage and repairs, it may seek additional compensation from the Company in excess of this $7 million. These amounts are not included in reported O&M Costs to date or the Company’s 2017 audited financial statements, and the Company is not holding any special reserve amount or contingency in the event it is required to pay any of these disputed and potentially disputed amounts. [UPDATE: The Company has existing reserves of approximately [$6,430,511] in the Permanent Account of the Working Capital Reserve Fund and [$12,013,975] in the Project Reserve Account of the Working Capital Reserve Fund, all of which are available to fund payments to IDE Americas as “O&M Costs” under the Collateral Trust Agreement.] The Company believes these reserves are adequate to respond to any potential liability to IDE Americas. As described in “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS – Collateral Trust Agreement – Collateral Trust Agreement Funds and Accounts,” the Company has additional reserve amounts available to it for various purposes.

Compensation. [TO BE UPDATED IN DECEMBER:] The Company is obligated to make monthly payments to IDE Americas consisting of a fixed fee, a variable fee, a chemical fee, and any flow rate change payments and, if applicable, the Excess Rate. The monthly fixed fee is an amount equal to $981,103.89, adjusted by increases in the consumer price index for the San Diego Metropolitan Statistical Area from July 2012, and is $1,131,138.30 per month as of October 31, 2018. The fixed fee will be reduced proportionately for shortfalls in meeting IDE America’s Product Water delivery obligations. The fixed fee will also be reduced every two years to reflect 50% of any savings in labor costs from a base amount set forth in the O&M Agreement.

The variable fee consists of $0.1425 per thousand gallons (“kgal”) of Product Water delivered, adjusted by increases in the consumer price index from July 1, 2012 (the adjusted fee was $0.1643 as of October 31, 2018). The chemical fee consists of $0.1758/kgal for Product Water delivered, adjusted by increases in the Producer Price Index (industry: chemical mfg; product: chemical mfg; series ID: PCU325---325---) published by the Bureau of Labor Statistics from July 1, 2012. The adjusted fee was $0.1970 as of October 31, 2018.

IDE Americas will receive an adjustment to its monthly fee to provide compensation for complying with the Water Authority’s blended water requirements.

The O&M Agreement contains an energy adjustment, pursuant to which increases in energy costs resulting from energy consumption above a stipulated guaranteed amount are borne by IDE Americas. IDE Americas receives the benefit of savings resulting from energy consumption below the guaranteed amount as follows: (a) for the first 36 months of operation, IDE Americas receives 75% of the first 10% of any savings and 50% of any additional savings and (b) after 36 months of operation, IDE will receive 50% of all such savings. The Electricity Charges included in the Purchase Price under the Water Purchase Agreement are based on this guaranteed energy consumption amount.

For each flow rate change outside of the O&M Agreement’s standard parameters, IDE Americas will receive a payment of $450, $900 or $1,350 per event (each adjusted for increases in the consumer price index from the date on which the O&M Agreement is executed and set at $515.24, $1,030.47 and $1,545.71 as of November 30, 2018), depending on the magnitude of the change in the Plant’s operating mode. Flow rate changes occur only as a result of Water Authority demand orders.

If the Company expands or modifies the Plant or a change in law occurs, including the Intake System Modifications, the O&M Agreement will be amended to reflect the consequences thereof, which
may include an equitable adjustment to the amounts payable to IDE Americas as a result of any increased capital or operational expenses.

**Damages.** In addition to the reduction in the fixed fee for Product Water shortfalls described above, IDE Americas is obligated to pay liquidated damages for shortfalls below 96% of the amount of Product Water it is required to deliver under the O&M Agreement. The level of such liquidated damages increases based on whether such shortfall occurs over a monthly, quarterly or semi-annual period. IDE Americas will also be subject to payment of liquidated damages (equal to 50% of the corresponding damages owed by the Company under the Water Purchase Agreement) for failure to deliver at least 90% of Product Water required during months in which the Water Authority has activated Stage 2 of its drought response plan (“Drought Shortfall Payments”). If IDE Americas delivers water that does not meet the Product Water quality standards in the O&M Agreement, the Company may elect either to deem such water not delivered or to deem the water delivered but impose liquidated damages equal to the Water Authority’s then-current Melded M&I Treatment Rate. Damages paid to date have pertained to quantity shortfalls, but not for failure to meet water quality standards or Drought Shortfall Payments.

**Aggregate Liability of IDE Americas.** IDE Americas’ aggregate liability to the Company under the O&M Agreement is limited to:

- For Drought Shortfall Payments in any Contract Year: $2 million (adjusted for changes in the consumer price index);
- for all other damages in any Contract Year: $3.5 million (adjusted for changes in the consumer price index); and
- upon the Company’s termination of the O&M Agreement for an event of default, $10 million (adjusted for changes in the consumer price index).

This limitation of liability is exclusive of and will not be reduced by any sums recoverable under any insurance carried by or on behalf of Operator in accordance with the O&M Agreement.

**Events of Default.** Each of following failures will be an event of default and permit the Company to terminate the O&M Agreement:

- An exceedance of any one primary drinking water standard maximum contaminant level in 2 consecutive months, or 3 times in any 12-month period;
- Issuance by the CDDW of a “boil water” notice to water customers on the basis of the quality of Product Water delivered to the Company;
- In any two consecutive Contract Years, delivery of less than 85% of the required amount of Product Water; and
- In any Contract Year, delivery of less than 70% of the required amount of Product Water.

Other events of default and provisions of the O&M Agreement are described under “The O&M Agreement” in Appendix H.

**Force Majeure Events.** IDE Americas is excused from performance due to events that affect its ability to perform its obligations under the O&M Agreement if such events are outside of the control of IDE Americas. IDE Americas is entitled to reimbursement for reasonable and documented increases in
the cost of producing Product Water due to a force majeure event, and for the reasonable and documented costs of maintaining the Plant during a force majeure event that prevents the production of Product Water.

**Performance Guaranty; O&M Performance Bond.** The O&M Agreement requires IDE Americas to deliver to the Company, and maintain throughout the initial term, a minimum of $10 million performance bond, adjusted for increases in the liability limitation of IDE Americas. If an event of default by IDE Americas occurs, and such event of default is not cured within three days after the Company delivers notice to IDE Americas, the Company may draw on such performance bond such amounts as may be necessary to cure the default by IDE Americas. IDE Americas will also provide and maintain a guaranty of its obligations from IDE.

See Appendix H – “Summary of Certain Project Contracts”.

**Operation and Maintenance of the Plant**

**Plant Operations**

The Company is obligated to operate and maintain the Plant and deliver Product Water to the Water Authority pursuant to the terms of the Water Purchase Agreement. Since the Commercial Operation Date the Plant has been operated on a continuous basis except for outages described herein. There can be no assurance that the Plant will not experience future outages. The Company reports on Plant operations on a Contract Year basis from July 1 through June 30, while the Project’s fiscal year for audited financial statements is the calendar year.

This section highlights Plant operational results from the Commercial Operation Date through the second full Contract Year ended June 30, 2018 and from July 1, 2018 through [December 31], 2018. All amounts in the tables below are presented on a cash, not accrual, basis. The following Selected Operating Information table depicts quarterly results except for the first partial quarter from the Commercial Operation Date through December 31, 2015.

As shown in Table A below, Product Water deliveries for the first three years of Plant operations met 91% of Water Authority requested deliveries for calendar year 2016; 68% of Water Authority requested deliveries for calendar year 2017, and [95% of Water Authority requested deliveries for calendar year 2018].

The largest shortfall was due to the mechanical coupling failure on reverse osmosis Train 5, which represented approximately [__]% of the combined shortfall. Corrective action taken to prevent recurrence of this event included inspection, repair, and replacement of all similar connections and adoption of a revised O&M protocol to capture the lessons learned.

Challenging source water conditions were responsible for approximately [__]% of the combined shortfall. High storm runoff events and algae blooms in 2017 resulted in the Plant being down for 22 days. The Plant was down for only three days due to challenging source water conditions in 2018, notwithstanding high storm runoff events and algae blooms in that year as well. The improvement in Plant performance over the prior year is attributable to the Company and IDE Americas having taken proactive steps to improve treatment and monitoring capabilities to address future source water challenges.

Regulatory permit limitations that represented approximately [__]% of the combined shortfall curtailed Plant operations even though the Plant was otherwise able to operate. The drinking water permit for the Plant was issued before the Plant commenced operation (as is required by applicable law). In the
absence of actual operating data, the CDDW included conservative assumptions in establishing a reverse osmosis membrane integrity alarm that did not take into consideration seasonal changes in seawater temperature. As a result, elevated seawater temperatures in the summer months frequently triggered false alarms and Product Water meeting all water quality requirements had to be dumped to the ocean. With the availability of actual operating data, the CDDW recently approved a revised membrane integrity alarm protocol that eliminated this operating constraint.

Warranty inspection and repairs and Plant improvements represented approximately [ ]% of the combined shortfall. This work is now complete (or is expected to be completed during the January 2019 scheduled shutdown).

SDG&E power outages were responsible for approximately [___]% of the combined shortfall. The Company has been working with SDG&E to eliminate such events, and failing that, to provide as much notice to IDE Americas as possible to minimize the disruption to Plant operations.

Shortfalls such as those we experienced in the early operations of the Plant are not unusual for large, complex water treatment facilities in the first few years of operation. We believe that the Company and its partners have taken appropriate steps to address these challenges and improve the resiliency of Plant operations. As a result of these corrective actions, the Plant met over 95% of the Water Authority demand in 2018, even though 7% of the reverse osmosis capacity of the Plant is offline until the final repairs associated with the mechanical coupling failure on Train 5 are completed (which is expected to occur during the first quarter of 2019).

Table A

<table>
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<th>Year</th>
<th>Actual Delivery (AF)</th>
<th>Requested Delivery (AF)</th>
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<tr>
<td>2017</td>
<td></td>
<td></td>
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<tr>
<td>2018 (Forecast)</td>
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</table>

Source: Poseidon Resources (Channelside) LP.

Tables B and C below depict actual Product Water deliveries since the Commercial Operation Date, through [October 31, 2018], in acre-feet and percentage of Adjusted Monthly Supply Commitment, respectively. [POSEIDON WILL PROVIDE NEW TABLES THROUGH DECEMBER 31, 2018.]
Table B

ACTUAL DELIVERIES VS. ADJUSTED MONTHLY SUPPLY COMMITMENT – ACRE-FEET

![Graph showing actual deliveries vs. adjusted monthly supply commitment.]

Source: Poseidon Resources (Channelside) LP.

Table C

ACTUAL DELIVERIES VS. ADJUSTED MONTHLY SUPPLY COMMITMENT – PERCENTAGE

![Graph showing actual deliveries vs. adjusted monthly supply commitment as percentage.]

Source: Poseidon Resources (Channelside) LP.

Selected Operating Information

<table>
<thead>
<tr>
<th>Supply Commitment</th>
<th>Product Water</th>
<th>Unscheduled Outages</th>
<th>Excused Shortfalls</th>
<th>Unexcused Shortfalls</th>
<th>Contracted Shortfall</th>
<th>Excused Supply</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Shortfall)/Surplus</td>
<td>AF (Actual Deliveries)</td>
<td>Supply Commitment</td>
<td>Supply (Shortfall)/Surplus</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

-69-
<table>
<thead>
<tr>
<th></th>
<th>AF</th>
<th>Deliveries AF</th>
<th>AF</th>
<th>AF</th>
<th>Payments(2) $</th>
<th>Shortfall Unit Tracking Account AF</th>
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<tr>
<td>Q1 2016</td>
<td>9,557.9</td>
<td>9,002.5</td>
<td>198.7</td>
<td>278.0</td>
<td>214.4</td>
<td>-</td>
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<tr>
<td>Q2 2016</td>
<td>14,022.7</td>
<td>11,915.0</td>
<td>649.7</td>
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<td>516.9</td>
<td>104,715</td>
</tr>
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<td>Q3 2016</td>
<td>13,881.6</td>
<td>12,527.9</td>
<td>804.2</td>
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<tr>
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<td>12,048.1</td>
<td>11,657.3</td>
<td>42.4</td>
<td>348.4</td>
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<td>73,053</td>
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<tr>
<td>Q1 2017</td>
<td>9,222.1</td>
<td>7,779.5</td>
<td>409.4</td>
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<td>374.0</td>
<td>106.7</td>
<td>5,316.4</td>
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<td>14,378.5</td>
<td>6,050.9</td>
<td>1,630.0</td>
<td>5,824.0</td>
<td>873.6</td>
<td>1,404,451</td>
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<td>Q4 2017</td>
<td>12,144.7</td>
<td>11,668.3</td>
<td>0.0</td>
<td>387.4</td>
<td>89.0</td>
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<td>10,530.1</td>
<td>10,100.6</td>
<td>0.0</td>
<td>429.5</td>
<td>0.0</td>
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<td>Q2 2018</td>
<td>14,718.0</td>
<td>13,071.9</td>
<td>0.0</td>
<td>452.8</td>
<td>1,193.3</td>
<td>340,726</td>
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<td>Q3 2018</td>
<td>13,147.5</td>
<td>12,914.4</td>
<td>0.0</td>
<td>188.9</td>
<td>49.6</td>
<td>50,419</td>
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</table>

Source: Poseidon Resources (Channelside) LP.

(1) Adjusted Monthly Supply Commitment
(2) Reflects Operating Period Shortfall Payments and annual settlement adjustments up to 2016-17 Water Contract Year

Subsequent to the Commercial Operation Date, the Company has made Operating Period Shortfall Payments in the aggregate amount of [$3,585,537.60]. These payments arose from Unscheduled Outages involving certain repairs and replacements at the Plant and service outages and tunnel cleanings at the Power Station, and the associated days needed to test the efficacy of the repairs and replacements, that resulted in reduced water deliveries.

On August 17, 2017, there was a failure of a mechanical coupling on the high-pressure line leading to reverse osmosis Train 5 in the Plant (one of 14 reverse osmosis trains in the Plant). Train 5 has been isolated from the remainder of the Plant and has been under repair since the incident. The costs of the initial isolation of Train 5 (approximately $2 million) were borne by IDE Americas and are the subject of a property insurance claim. Through November 19, 2018, the insurer has advanced [2.6] million toward this claim, and that amount was approved by the Independent Engineer and paid by the Company. As of November 19, 2018, permanent repair of Train 5 is expected to cost approximately an additional $3.9 million. Procurement and repairs are expected to be completed by the first quarter of 2019. The permanent repairs of Train 5 remain the subject of a property insurance claim.
The Plant has produced approximately 40 billion gallons of Product Water since it commenced operations. The Plant remains an important component of the Water Authority’s supply diversification strategy. It is expected to continue to help meet long-term local water needs. The Company and the Water Authority believe that the Plant and their public-private partnership on the overall Project are successfully meeting their objectives.

All Annual True Up Payments and Operating Period Shortfall Payments must be paid by the Company before the Company can make distributions from the Distribution and Stabilization Fund. Contracted Shortfall Payments were made in connection with incidents that have been resolved (other than the above-referenced Train 5 repair which is in progress) and are not expected to recur; however, events may occur in the future that limit or reduce the Company’s ability to produce water at the Plant, and may result in the Company being required to pay Contracted Shortfall Payments in future Contract Years.

**Operation and Maintenance of the Pipeline**

The Water Authority operates and maintains the Pipeline as an integral part of its water system, at its own cost and, under its General Resolution, the cost thereof is payable prior to the payment of any other expenses, including debt service payments, of the Water Authority.
SUMMARY FINANCIAL INFORMATION

[UPDATE PRIOR TO PRINTING] The following summary financial information table has been provided by the Company. The Company has experienced net losses during the periods referenced below. The information for the fiscal years ended December 31, 2016 and December 1, 2017 is derived from the Company’s audited financial statements. The information for the [nine] months ended [September 30, 2018] is derived from unaudited Company-prepared financial statements and, in the opinion of the Company, in accordance with Generally Accepted Accounting Principles (“GAAP”), is prepared on a basis consistent with the Company’s audited financial statements, subject to annual year-end adjustments and accruals. Also, see Appendix B – Company Audited Financial Statements for Year Ended December 31, 2017, including the notes there to which are an integral part thereof.

COMPANY OPERATING STATEMENT

<table>
<thead>
<tr>
<th></th>
<th>Fiscal year ended December 31,</th>
<th>[Nine months ended September 30, 2018]*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2016</td>
<td>2017</td>
</tr>
<tr>
<td>Operating Revenue</td>
<td>103,681,664</td>
<td>81,687,293</td>
</tr>
<tr>
<td>Operating Expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operation expenses</td>
<td>60,329,609</td>
<td>57,001,700</td>
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<tr>
<td>General and administrative expenses</td>
<td>139,722</td>
<td>194,760</td>
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<tr>
<td>Depreciation expense</td>
<td>20,981,352</td>
<td>20,931,581</td>
</tr>
<tr>
<td>Total Operating Expenses</td>
<td>81,450,683</td>
<td>78,128,041</td>
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<tr>
<td>Net operating income</td>
<td>22,230,981</td>
<td>3,559,252</td>
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<tr>
<td>Other income</td>
<td></td>
<td></td>
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<tr>
<td>Investment income, net of capitalized</td>
<td>212,092</td>
<td>706,973</td>
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<tr>
<td>Income before interest expenses</td>
<td>22,443,073</td>
<td>4,266,225</td>
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<tr>
<td>Interest expense, net of capitalized</td>
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<td></td>
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<tr>
<td>Interest on long-term debt</td>
<td>26,012,625</td>
<td>26,012,370</td>
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<tr>
<td>Interest on land restoration costs</td>
<td>147,750</td>
<td>158,667</td>
</tr>
<tr>
<td>Amortization of deferred financing costs</td>
<td>601,388</td>
<td>634,347</td>
</tr>
<tr>
<td>Total interest expense</td>
<td>26,761,763</td>
<td>26,805,384</td>
</tr>
<tr>
<td>Net loss</td>
<td>(4,318,690)</td>
<td>(22,539,159)</td>
</tr>
</tbody>
</table>

Source: Poseidon Resources (Channelside) LP.

* Derived from unaudited Company-prepared financial statements.

HISTORICAL DEBT SERVICE COVERAGE RATIO

The following Historical Debt Service Coverage Ratio table has been provided by the Company. The information included in the calculation of the Historical Debt Service Coverage Ratio table set forth below is not prepared in accordance with GAAP, but is calculated in accordance with the terms of the Collateral Trust Agreement. In particular, the calculation of Net Cash Flow under the Collateral Trust Agreement is presented on a cash basis rather than an accrual basis. This means that such information does not include certain non-cash revenues and non-cash expenses normally reflected in financial statements prepared in accordance with GAAP and cannot be reconciled to the Company’s audited and
unaudited financial information included elsewhere in this Limited Offering Memorandum. Nonetheless, while such information may not be, and should not be relied upon as, a useful indicator of the general financial performance of the Company, the Company believes that this information is useful to investors in evaluating the operating performance of the Plant and the Company’s compliance with the terms of the Collateral Trust Agreement as described herein.

<table>
<thead>
<tr>
<th></th>
<th>As of December 31, 2016</th>
<th>As of December 31, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Cash Flow, plus</td>
<td>$46,332,885</td>
<td>$48,589,775</td>
</tr>
<tr>
<td>Pipeline Installment Payments</td>
<td>10,160,750</td>
<td>7,237,998</td>
</tr>
<tr>
<td>(a) Total</td>
<td>56,493,635</td>
<td>55,827,773</td>
</tr>
<tr>
<td>Pipeline Bonds Debt Service</td>
<td>10,160,750</td>
<td>10,160,750</td>
</tr>
<tr>
<td>Plant Bonds Debt Service</td>
<td>26,517,250</td>
<td>26,517,250</td>
</tr>
<tr>
<td>(b) Total Debt Service</td>
<td>$36,678,000</td>
<td>$36,678,000</td>
</tr>
<tr>
<td>Debt Service Coverage Ratio (a)/(b)</td>
<td>1.54</td>
<td>1.52</td>
</tr>
</tbody>
</table>

Source: Poseidon Resources (Channelside) LP.

Funds Available for Distribution have been paid to the Company in the aggregate amount set forth in the following table, as of [November 30, 2018].

**DISTRIBUTIONS TO THE COMPANY**

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 2017</td>
<td>$12,872,327</td>
</tr>
<tr>
<td>January 2018</td>
<td>$17,337,806</td>
</tr>
<tr>
<td>July 2018</td>
<td>$8,540,148</td>
</tr>
<tr>
<td>Aggregate Amount:</td>
<td>$38,750,281</td>
</tr>
</tbody>
</table>

**Company Projected Current Case Cash Flow Coverage**

The Company’s projected revenues, operating and maintenance expenses and debt service, Actual and Scheduled Projected Pipeline Purchase Payments from the Water Authority Financing Agency, and projected debt service coverage under the Collateral Trust Agreement, based on the Commercial Operation Date and assuming annual Product Water demand and production of the minimum 48,000 AFY, are summarized below. The Revenues are derived from the Company’s Current Case Financial Model (“**Current Case**”), and are based on projected Water Purchase Payments and Annual Management Fee Payments and projected SDG&E refund payments under the Special Conditions Contract. Such information has not been prepared in accordance with GAAP. Actual future cash flow coverage will vary and the variances may be material.
The operating and maintenance expenses are based on the operating expenses assumed to be required to produce the minimum 48,000 AFY. Projected Actual Pipeline Installment Payments from the Water Authority Financing Agency are expected to equal the projected Scheduled Pipeline Installment Payments. Also see “PROJECT PARTICIPANTS – Poseidon Resources (Channelside) LP” and Appendix B – Company Audited Financial Statements for Year Ended December 31, 2017.

Cash flow coverage in the Current Case projections set forth below demonstrates debt service coverage consistently in excess of 1.25x in 2019 and in excess of 1.35x in every year thereafter. The assumptions for the Current Case projections vary from the comparable projections set forth in the Limited Offering Memorandum for the Series 2012 Plant Bonds and the Series 2012 Pipeline Bonds dated December 21, 2012 as a result of several subsequent developments, including: (1) the impact of increased electricity prices in 2018 and projected on a long-term basis (In 2018, for example, San Diego Gas and Electric Company’s tariffs are 23% higher than Base Case projections. Since the cost of electricity is passed through to the Water Authority, the negative impact on operating expenses is offset entirely by an increase in operating revenues); (2) the updated expected receipt schedule for the SDG&E Special Conditions Contract has included more deferred payments than initially projected; (3) reduced interest income on funds held in reserve accounts as a result of a lower interest rate environment than was projected at the time of issuance of the Series 2012 Pipeline Bonds; (4) higher than originally forecasted administrative and trustee/rating agency amounts based on current fees and experience to date; and (5) real estate and business personal property taxes related to construction that were not included in the original projections and which have not been passed through to the Water Authority under the Water Purchase Agreement. Remaining unpaid taxes are assumed to be paid in the Current Case using the rates set by the San Diego Board of Equalization. The Company is actively appealing these taxes by challenging property tax valuations and expects this to be a multi-year effort. In addition, the Base Case did not contemplate the impact to operations for (i) an algae bloom in the spring of 2017 (resulting in certain disputed amounts with IDE Americas), and (ii) a coupling failure in August 2017 on a train resulting in a temporary plant shutdown and further single train isolation (both subject to reimbursement from business interruption insurance). These two unrelated events triggered Contracted Shortfall Payment obligations and Annual True Up Payments which were not assumed in the Base Case Model.

POSEidon TO UPDATE: The Current Case projections set forth below, as of June 2018, estimate issuing $35 million of debt in 2019 and an additional $44 million in 2021, to finance the Intake System Modifications described under “THE PROJECT – Intake System Modifications” following closure of the Power Station. The 2012 projections assumed $33 million of debt largely due to [POSEIDON: the Ocean Plan Amendment? the Permanent Pump Shutdown?]. Also see “PROJECT PARTICIPANTS – Poseidon Resources (Channelside) LP” and Appendix B – Company Audited Financial Statements for Year Ended December 31, 2017. This is the Company’s current reasonable estimate used to generate the projections, however the final financing of the Intake System Modifications may require a materially higher amount of debt [POSEIDON: and operating costs?]. The Company believes that its assumptions upon which such projections are based are reasonable.
### June 2018 Projected Cash Flow Coverage Company Current Case*

Company Base Case - 48,000 Acre Feet per contracted Year demanded / 48,000 Acre Feet per contracted Year produced

(dollars in thousands)

<table>
<thead>
<tr>
<th>Year (June 30)</th>
<th>Actual Water Produced (Acre Feet)</th>
<th>Revenues (A)</th>
<th>Project O&amp;M (B)</th>
<th>Net Cash Flow (A-B=C)</th>
<th>Pipeline Installation Payments (D)</th>
<th>Sum of C &amp; D (C+D=E)</th>
<th>Plant Bonds Projected Debt Service (F)</th>
<th>Expected Intake System Debt Service (G)</th>
<th>Scheduled Pipeline Installment Payments for Debt Service (H)</th>
<th>Sum of F, G and H (F+G+H=I)</th>
<th>Debt Service Coverage Ratio (E / I)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>48,000</td>
<td>113,693</td>
<td>77,218</td>
<td>36,475</td>
<td>9,802</td>
<td>46,276</td>
<td>26,517</td>
<td>-</td>
<td>10,030</td>
<td>36,548</td>
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<td>2020</td>
<td>48,000</td>
<td>133,027</td>
<td>71,224</td>
<td>61,803</td>
<td>10,475</td>
<td>72,278</td>
<td>28,172</td>
<td>1,745</td>
<td>10,475</td>
<td>40,393</td>
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<td>72,127</td>
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<td>63,939</td>
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<td>3,491</td>
<td>10,943</td>
<td>43,308</td>
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<td>66,398</td>
<td>29,598</td>
<td>3,491</td>
<td>11,221</td>
<td>44,310</td>
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<td>11,793</td>
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<td>12,094</td>
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<td>48,000</td>
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<td>79,343</td>
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<td>81,555</td>
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<td>2031</td>
<td>48,000</td>
<td>157,038</td>
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<td>86,153</td>
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<td>14,802</td>
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</tr>
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<td>77,865</td>
<td>15,555</td>
<td>93,420</td>
<td>40,797</td>
<td>3,491</td>
<td>15,555</td>
<td>59,843</td>
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<td>80,033</td>
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<td>95,976</td>
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<td>3,491</td>
<td>15,944</td>
<td>61,251</td>
<td>1.57</td>
</tr>
<tr>
<td>2037</td>
<td>48,000</td>
<td>181,502</td>
<td>99,269</td>
<td>82,233</td>
<td>16,348</td>
<td>98,580</td>
<td>42,863</td>
<td>3,491</td>
<td>16,348</td>
<td>62,701</td>
<td>1.57</td>
</tr>
<tr>
<td>2038</td>
<td>48,000</td>
<td>185,943</td>
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<td>84,467</td>
<td>15,169</td>
<td>99,636</td>
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<td>3,491</td>
<td>15,169</td>
<td>62,598</td>
<td>1.59</td>
</tr>
<tr>
<td>2039</td>
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Source: Poseidon Resources (Channelside) LP.
INVESTMENT RISKS

An investment in the Series 2019 Pipeline Bonds involves risks, and prospective purchasers of the Series 2019 Pipeline Bonds should read this Limited Offering Memorandum, including the Appendices, carefully. Before purchasing the Series 2019 Pipeline Bonds, a prospective investor should consider, among other things, the following factors, which factors are not a complete enumeration of all risks associated with an investment in the Series 2019 Pipeline Bonds.

Inaccuracy of Financial Forecasts; Forward-Looking Statements

The Company expects that Plant Revenues will continue to be sufficient to support its obligations to make Contracted Shortfall Payments when due and to pay the other amounts to be paid or distributed under the Collateral Trust Agreement or otherwise necessary to operate the Plant until the final maturity of the Series 2019 Pipeline Bonds. This expectation is based upon financial forecasts and projections that are based on many factors, including estimates of the cost of the Intake System Modifications; operating expenses, including electricity costs; state and federal laws, any or all of which may change from time to time; assumptions regarding the rate of return on moneys to be invested in various accounts under the Collateral Trust Agreement; the occurrence of future events, conditions and Plant production performance. Furthermore, future events, over many of which the Company has no control, may adversely affect Plant Revenues. Actual results will differ from such forecasts and projections because circumstances and events will not occur as projected and some of those differences may be material. If Plant Revenues or O&M Costs (including without limitation disputed costs with IDE Americas) vary substantially from those projected, the Company may be unable to make Contracted Shortfall Payments when due.

The financial forecasts and projections included in Appendix B or elsewhere in this Limited Offering Memorandum contain statements relating to future results that are “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995. When used in this Limited Offering Memorandum, the words “anticipate,” “estimate,” “intend,” “expect,” “assume” and similar expressions identify forward-looking statements. Any forward-looking statement is subject to uncertainty and risks that could cause actual results to differ, possibly materially, from those contemplated in such forward-looking statements. Inevitably, some assumptions used to develop forward-looking statements will not be realized or unanticipated events and circumstances may occur. Therefore, investors should be aware that there are likely to be differences between forward-looking statements and actual results and those differences could be material.

Limited Obligations of the Issuer

The Series 2019 Pipeline Bonds are limited obligations of the Issuer, payable solely from the Pipeline Trust Estate, including the Pipeline Loan Repayments, Contracted Shortfall Payments and, in certain circumstances, the Collateral. The Series 2019 Pipeline Bonds do not constitute general obligation indebtedness of the Issuer, the Water Authority Financing Agency, the Water Authority or any other entity. Neither the general credit nor the taxing power of the State of California or any political subdivision thereof or any local agency or other entity is pledged to the payment of the Series 2019 Pipeline Bonds, redemption premium, if any, and the interest thereon. The obligation to pay the principal, redemption premium, if any, and interest on the Series 2019 Pipeline Bonds does not constitute a pledge, charge, lien or encumbrance upon any of the Issuer’s, Water Authority Financing Agency’s or Water Authority’s property or the income, receipts or revenues on such property, except for amounts constituting the Pipeline Trust Estate. The Issuer has no taxing power.
Payments may not be received by the Issuer in amounts sufficient to pay principal of, redemption premium, if any, and interest on the Series 2019 Pipeline Bonds. Among other matters, water supply and demand, general and Southern California economic conditions and changes in law and government regulations could adversely affect the payments that the Issuer receives. Further, the amount of future payments that the Issuer receives is subject to, among other things, the ability of the Water Authority to provide water to its member agencies and to establish, maintain and collect rates and charges to pay for operation and maintenance of the Project and debt service, and the ability of the Company to make Contracted Shortfall Payments.

**Ability of the Company to Deliver Product Water and Make Contracted Shortfall Payments**

The obligation of the Water Authority Financing Agency to make Pipeline Loan Repayments and the obligation of the Water Authority to make Installment Sale Payments will be reduced by the amount of Contracted Shortfall Payments payable by the Company, in each case, whether or not paid. The Company is a single-purpose entity with no significant assets other than its interest in the Plant and the Water Purchase Agreement. Accordingly, the Company’s ability to make Contracted Shortfall Payments will depend solely on its ability to produce and sell a sufficient quantity and quality of Product Water to meet its obligations under the Water Purchase Agreement and to control O&M Costs. No present or future members of the Company, or the officers or directors of such members, has any personal liability for the operation of the Plant, the construction of the Intake System Modifications or the payment of the Contracted Shortfall Payments, and the Bondholders must look solely to the property of the Company, including the property subject to the Collateral Documents, in satisfaction of the Company’s obligation to make Contracted Shortfall Payments, and may not seek or obtain any deficiency or personal judgment against the present or future members of the Company, or the officers and directors of such members, except such judgment or decree as may be necessary to foreclose or bar their interests in the property of Company available to satisfy the obligation of the Company to pay Contracted Shortfall Payments.

The Company believes that it has adequately estimated and budgeted for necessary reserves, including the costs of compliance with the requirements of the GHG Plan and the MLMP and to undertake and complete the Intake System Modifications. The Company is required to set aside funds in various reserve accounts for the estimated costs to comply with certain of these requirements. However, there can be no assurance that the Company’s activities to comply with such requirements or the costs of such compliance will not exceed the Company’s expectations or the amounts budgeted for such activities, or that any such increased efforts or costs will not affect the operations of the Plant or otherwise materially and adversely affect the Company and its ability to deliver Product Water in accordance with the Water Purchase Agreement and/or to pay Contracted Shortfall Payments.

**Obligation of the Water Authority to Make Installment Sale Payments is Unsecured and Subordinated**

The Water Authority’s obligation to make Installment Sale Payments is unsecured and subordinated to payment of its other obligations under the General Resolution; however, in the Installment Sale and Assignment Agreement, the Water Authority agrees to comply with the covenants made by the Water Authority in the General Resolution for the benefit of the holders of the Authority Senior Lien Obligations and the Authority Subordinate Lien Obligations, including its rate covenant. The Installment Sale Payments are payable after payments in respect of the Water Authority’s secured debt obligations and its other payment obligations.
Inadequate Funds for Payment of Debt Service

Debt service on the Series 2019 Pipeline Bonds will be paid from Pipeline Loan Repayments made by the Water Authority Financing Agency under the Pipeline Loan Agreement and Contracted Shortfall Payments made by the Company, when required, received by the Pipeline Trustee and deposited into the Pipeline Revenue Fund. The obligations of the Water Authority Financing Agency to make payments under the Pipeline Loan Agreement are limited obligations payable solely from payments made by the Water Authority under the Installment Sale and Assignment Agreement. If the Water Authority does not make the required payments under the Installment Sale and Assignment Agreement, the Water Authority Financing Agency would not have the funds sufficient to make the required payments under the Pipeline Loan Agreement. There is no guarantee that sufficient amounts will be available to pay debt service on the Series 2019 Pipeline Bonds. However, the Water Authority has covenanted in the Installment Sale and Assignment Agreement to comply with the covenants it has made in its General Resolution for the benefit of the holders of the Water Authority’s secured debt, including its rate covenant.

Third-Party Contract Risk Generally

The viability of the Plant, the Water Authority’s ability to make payments in respect of the Series 2019 Pipeline Bonds and the Company’s ability to make Contracted Shortfall Payments depend highly on the performance by third parties (principally, IDE Americas under the O&M Agreement and Cabrillo with respect to its obligations under the Ground Lease) of their obligations under the Project Contracts. If the parties to the Project Contracts do not perform their obligations or are excused from performing their obligations because of nonperformance by the Company or due to force majeure events, it may not be possible to acquire alternate goods or services to cover such nonperformance on substantially equivalent terms and conditions (if at all) and the Company’s ability to make Contracted Shortfall Payments may be adversely affected.

This Limited Offering Memorandum includes limited or no financial or operational information about the counterparties to the Project Contracts, other than the information included herein with respect to the Water Authority. See Appendix C and “PROJECT PARTICIPANTS—San Diego County Water Authority”. As a result, in making an investment decision with respect to the Series 2019 Pipeline Bonds, a purchaser can have no assurance, based on the information contained herein, that any third party or its guarantor, if any, will have the capability to meet its financial obligations (including the payment of any liquidated or other damages) under the Project Contracts to which it is a party. Moreover, there can be no assurance that any such damages will be sufficient to compensate the Company for any shortfall in Plant Revenues or increase in costs attributable to the default in respect to which such damages or other payments are being paid.

Adequacy of Insurance

There can be no assurance that the amounts for which the Project is insured or which the Company or the Water Authority receive under their respective insurance coverage or the timeliness of receipt of such proceeds, will cover all unanticipated losses and, in particular, Contracted Shortfall Payments and/or debt service on the Series 2019 Pipeline Bonds, or repairs to the Plant or the Pipeline in the event of a casualty loss or discovery of a latent defect that is not under warranty. In addition, there can be no assurance that all required or desirable insurance will continue to be available on commercially reasonable terms.
Remedies on Default

The Plant is not practically suited to alternative uses. As a result, the remedies available to the Collateral Agent upon the occurrence of a Plant Financing Event of Default may be limited and the realization of proceeds from the sale or leasing of the Plant may be adversely affected by limitations on its use. The value of the proceeds upon a foreclosure of the Plant cannot be predicted but can be assumed to be limited. To the extent that the proceeds of such foreclosure were insufficient to make all payments in respect of the Plant Senior Debt, the Bondholders would be unsecured creditors of the Company, which will have no business other than the operation of the Plant.

The Collateral Agent is a party to, or has received an assignment of, the Project Contracts. In the event of a default by the Company, the Collateral Agent may attempt to enforce the contractual obligations of third parties under the Project Contracts to the Company. If the Company were to declare bankruptcy, such third parties might attempt to cancel their agreements with the Company; in that event, the Collateral Agent may attempt to cause such third parties to enter into similar contracts directly with the Collateral Agent. There can be no assurance that the Collateral Agent would be successful or that such proceedings would not result in substantial additional costs related to the continued operation of the Plant and/or delays to the completion of the Intake System Modifications. The various legal opinions to be delivered concurrently with the delivery of the Series 2019 Pipeline Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally, and by general principles of equity.

Dependence on Water Authority

The Water Authority is the Company’s only customer and payments under the Water Purchase Agreement will constitute all of the Company’s operating Plant Revenues. If the Water Purchase Agreement is terminated as a result of a Company default or for any other reason, and the Company is unable to sell Product Water to another water purchaser, it would be unlikely that the Plant would be able to generate Plant Revenues sufficient to make Contracted Shortfall Payments. See the summary of the Water Purchase Agreement in Appendix G.

Limitation on Increases in Water Purchase Price

The Company is entitled to increases in the Purchase Price as compensation for increased costs due to Uninsurable Force Majeure Events, Change in Law Events and Other Uncontrollable Circumstances as those terms are defined in the Water Purchase Agreement. The amount of such increases is limited to 30% of the Purchase Price over the term of the Water Purchase Agreement, and 10% of the Purchase Price in any Contract Year. See “PROJECT OPERATION — Water Purchase Agreement — Limitations on Increases in the Purchase Price Due to Uncontrollable Circumstances”. If the Company is not fully compensated for such increased costs due to such limits, this could negatively impact the Company’s cash flow and adversely affect the Company’s ability to perform its obligations under the Water Purchase Agreement.

Termination of the Water Purchase Agreement

The Water Authority may terminate the Water Purchase Agreement prior to the end of its term under certain circumstances, including (a) the occurrence of an event of default of the Company, (b) in the event the Company is unable to finance the costs resulting from Uncontrollable Circumstances and (c) if the Ground Lease is terminated on the account of a taking of the Plant Site by condemnation or eminent domain. Upon a termination for Company default or as a result of an inability to finance the
costs described above, the Water Authority has the right to purchase the Plant for a price that includes the outstanding principal of and accrued interest on the 2012 Plant Bonds. See “PROJECT OPERATION — Water Purchase Agreement — Purchase of the Plant”. In addition, upon a default by the Water Authority under the Water Purchase Agreement, the Company may terminate the Water Purchase Agreement. The Water Authority has no obligation to purchase the Plant or make any payment in respect of the Plant Senior Debt on the occurrence of any of these termination events.

Upon a termination of the Water Purchase Agreement, a new owner, or a new operator appointed by the Collateral Agent could seek to sell Product Water to parties other than the Water Authority. In addition to the issues related to continued operation discussed above under “-- Remedies on Default,” sale of Product Water to third parties could not be accomplished without the use of the Pipeline and, in most cases, the use of the Water Authority distribution system.

Sections 1810-1814 of the California Water Code preclude public agency owners of water conveyance facilities, such as the Water Authority, from denying use of unused capacity in such facilities for transfer of water upon terms and conditions specified by those sections and payment of fair compensation for such use. The statute establishes priority for any person or public agency with a long-term water service contract the right to receive water from the water conveyance facility owner in the use of available capacity. Unused capacity means space that is available within the operational limits of the conveyance system that the system owner is not using during the period of the proposed transfer and that is sufficient to convey the quantity of transfer water, up to 70% of the unused capacity. The Water Authority is obliged by its governing statute to provide adequate supplies of water to meet the increasing and expanding needs of its member public agencies, and uses its supply arrangements, including the Water Purchase Agreement and its conveyance facilities, to meet those needs.

As a result, the ability of a successor owner or operator to operate the Plant at a profit requires either an agreement with the Water Authority for purchase of the water or for the use of the Water Authority’s conveyance system. There can be no assurances that the Company after a Water Authority default, or a subsequent owner or operator after an Authority termination, will be able to profitably operate the Plant and gain access to sufficient capacity within the Water Authority’s conveyance system.

**Force Majeure; Change in Law**

Under the O&M Agreement, IDE Americas will receive any additional costs of producing Product Water during a force majeure event or, if unable to produce Product Water, will continue to receive its fixed fee during the pendency of the event.

The Company will be entitled to an increase in price under the Water Purchase Agreement to reflect the costs incurred by the Company to comply with a Change in Law Event, an Uninsurable Force Majeure Event occurring within the United States, delay by a contractor or subcontractor to furnish services (if the delay would be deemed an Uncontrollable Circumstance entitling the Company to compensation relief if it affected the Company directly); an extraordinary Flow Rate change or curtailment demanded by the Water Authority, or a raw seawater contamination event described in the Water Purchase Agreement.

In addition, the Water Authority will not be obligated to pay for Product Water that it was unable to accept as a result of an emergency condition within the Water Authority Distribution System Force Majeure consisting of a planned or unplanned shutdown of the pipelines designated as “Pipeline 3” and “Pipeline 4” of the Water Authority’s Second Aqueduct. The occurrence of such emergency conditions has been rare with only a few occurrences within the past ten years.
Permanent Pump Shutdown

As described in “THE PROJECT – Intake System Modifications,” the Power Station uses a cooling system which pumps seawater from the Lagoon and the Company is engaged in the process of planning for the Permanent Pump Shutdown and stand-alone operation of the Plant’s intake system. Additional intake and discharge system improvements will be required. These improvements are required in order to comply with the Ocean Plan Amendment, to address effects associated with the construction and operation of seawater desalination facilities. There can be no assurance that any permits and permit amendments that are necessary in order to complete the Intake System Modifications will be granted or, if granted, will not contain conditions materially more burdensome than the conditions of the existing permits. Further, there can be no assurance that the contemplated bond and equity financing arrangements therefor will be effectuated, or that the Intake System Modifications will be undertaken or completed, or that even if undertaken and completed, will comply with the requirements set forth in the Ocean Plan Amendment. Accordingly, it is possible that the Plant will not be able to operate on a stand-alone basis and, accordingly, that it will not be able to generate the Product Water required to be delivered pursuant to the Water Purchase Agreement.

A reserve fund for the costs of relocating the Plant’s connections has been established under the Collateral Trust Agreement and funded with a Reserve Surety in the amount of $35.6 million as required pursuant to the Collateral Trust Agreement upon receipt of a Shutdown Notice of Permanent Pump Shutdown from Cabrillo. [POSEIDON, PLEASE CONFIRM/UPDATE AND CONFIRM WHAT IS THE CREDIT SUPPORT FOR THE RESERVE SURETY – LETTER OF CREDIT, YES?:] The amount of the Reserve Surety reflects the Company’s current estimate of the costs for the improvements required as a result of the Permanent Pump Shutdown. While drawing down the Reserve Surety would permit construction of the Interim Intake Modifications, the Company intends to finance these costs separately as discussed above. The Company also expects to incur additional costs for compliance with the Ocean Plan Amendment. See “THE PROJECT – Intake System Modifications” for additional information regarding the Company’s financing plans for the costs of the Interim Intake Improvements and Ocean Plan Amendment compliance. There can be no assurances that such financing will be obtained, or that the amounts obtained will be sufficient to pay such costs in excess of the Reserve Surety. There also can be no assurance that the capital and operating costs related to the Permanent Pump Shutdown will be less than the caps on such costs that are allowable under the Water Purchase Agreement as increases to the price of Product Water.

Climate Change Issues

General Concerns. Many of the potential risks to the operation of the Plant that are described herein are exacerbated by global warming. The Intergovernmental Panel on Climate Change currently estimates that worldwide surface temperatures have increased by one degree Celsius since the preindustrial period and is highly confident that the current levels of emissions of carbon dioxide and other greenhouse gasses, if they remain unchecked, will result in warming in excess of two degrees Celsius. The effects of continued warming are expected with scientific confidence to include (i) continued ocean warming at a higher rate than general surface warming, (ii) increasing intensity and frequency of drought such that dry land regions are at high risk, (iii) increase in intense storms and heavy rains and (iv) rising sea levels.

The U.S. Global Change Research Act of 1990 mandates that the U.S. Global Change Research Program (“USGCRP”) submit a National Climate Assessment to Congress and the President every four years on the effects of global change on the environment, water resources, human health and welfare and numerous interrelated topics. USGCRP consists of twelve federal agencies, the Smithsonian Institution and others and is administered by the Department of Commerce/National Oceanic and Atmospheric
Administration. The most recent such report, the Fourth National Climate Assessment\(^2\), states that widespread U.S. wildfires in 2018 are driving up costs associated with worsening air quality, loss of homes and infrastructure, impairing outdoor quality of life and tourist economies, and so on, with overlapping and complex consequences. Its key messages pertaining to water describe risks associated with water quality and quantity, deteriorating water infrastructure and gaps between research and implementation in water management strategies. It is not possible to predict the timing, scope and/or impact on the ability of the Plant to continue operating throughout the term of the Water Purchase Agreement, the ability of the parties thereto to perform their obligations thereunder or the demand for and availability of water, due to the impacts of climate change and/or compound extreme factors.

The social and economic changes required to avoid these effects are substantially greater than are currently being undertaken worldwide. The current expectation is that conditions with the potential to impair the operation of the Plant, including warmer intake temperatures, algal blooms, periodic flooding and regional wildfires, will continue to increase.

**Risks of Sea Level Rise and Potential Flooding.** Climate change may pose a risk to the operations of the Plant. Numerous scientific studies conclude that sea levels have risen, and will continue to rise, due to the increasing temperature of the oceans causing thermal expansion and growing ocean volume due to the melting of glaciers and ice caps into the ocean. If sea levels rise, the Plant may face the risk of flooding as a result of its close proximity to the Pacific Ocean. The extent of such risk, however, is difficult to quantify. The scientific studies that forecast the amount and timing of sea level rise and its adverse impacts, including the increased risk of flooding in coastal regions such as the location of the Plant, are based upon assumptions made in such studies (as to which the Water Authority can make no representation), and actual impacts may vary materially. Accordingly, the Water Authority is unable to predict whether sea level rise, or other potential adverse consequences of climate change (e.g., the occurrence of extreme weather events, such as coastal storm surges, drought, wildfires, floods and heatwaves; and the reduction in the Sierra Nevada snowmelt, a major source of water in California), will occur while the Series 2019 Pipeline Bonds are outstanding. In particular, the Water Authority cannot predict the timing or precise magnitude of adverse effects, including, without limitation, material adverse impacts on the operation of the Plant, or the business operations or financial condition of the Water Authority. The effects, however, could be material.

**Regulatory Risks.** Beyond the direct adverse material impacts of global climate change, existing, proposed, and possible laws and regulations aimed at addressing the effects of climate change could have a material adverse effect on the Plant and the Water Authority. A number of such laws and regulations have been adopted by states, including California, and have been proposed on the federal level. The USEPA has taken steps toward the regulation of GHG emissions under existing federal law. On December 14, 2009, the USEPA made an “endangerment and cause or contribute finding” under the Clean Air Act, and determined that six identified GHGs – carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride – are pollutants that cause global warming, and that global warming endangers public health and welfare. On a state level, California passed Assembly Bill 32, the “California Global Warming Solutions Act of 2006” which requires the statewide level of GHG to be reduced to 1990 levels by 2020. In 2015, the Governor issued Executive Order B-30-15, which calls for a statewide reduction of GHGs to 40 percent below 1990 levels by 2030. The Water Authority is unable to predict what additional laws and regulations with respect to GHG emissions or

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other environmental issues (including, without limitation, air, water, hazardous substances and waste regulations) will be adopted on the state or federal level, or what effects such laws and regulations may have on the Plant or the Water Authority, however such effects could be material.

See “– Prolonged Drought Conditions”, “– Water Supply Shortages”, “– Water Quality Issues”, and “– Factors Affecting Demand for Water” and Appendix C – “Water Authority Information”.

**Prolonged Drought Conditions**

The State in recent years has been facing water shortfalls and reduced snowpack. In light of increased precipitation levels during the 2016-17 winter season, on April 7, 2017 the Governor issued an executive order which rescinded several prior executive orders pertaining to water use in California and terminated the drought state of emergency in all California counties except Fresno, Kings, Tulare and Tuolumne. The order directed the SWRCB to continue development of permanent prohibitions on wasteful water use and requirements for reporting water use by urban water agencies. The order further directed SWRCB to rescind those portions of its existing emergency regulations that require a water supply stress test or mandatory conservation standard for urban water agencies, however numerous components of the Governor’s May 2016 executive order were retained. That executive order established a new water use efficiency framework for California and remains in effect except as specified in the April 7, 2017 executive order. The May 2016 order relating to then existing drought conditions bolstered the State’s drought resilience and preparedness by establishing longer-term water conservation measures that include permanent monthly water use reporting, new urban water use targets, reduction of system leaks and elimination of clearly wasteful practices, strengthening urban drought contingency plans and improving agricultural water management and drought plans.

The Water Authority cannot predict when or how long drought conditions will recur and persist, what effect drought conditions may have on property values, to what extent water reduction requirements may affect property owners or to what extent a drought could cause disruptions to economic activity within the Water Authority’s service area. See Appendix C – Water Authority Information.

**Water Supply Shortages**

The Water Authority’s principal sources of supply are purchased. While the Water Authority has taken steps to diversify its portfolio of supplies so that it is not dependent on any single source for the majority of its water, and plans and manages its supplies to account for normal occurrences of drought conditions, recent drought conditions have placed additional limitations on the Water Authority’s ability to obtain and deliver water supplies to its member agencies. The Water Authority may obtain supplies to meet demands during water supply shortages by, among other things, drawing on its stored water supplies and pursuing additional water transfers. No assurances can be given that water supply or demand will continue at historic levels.

**Water Quality Issues**

The Plant is designed for the raw seawater conditions typically experienced in Southern California’s recent history. However, algal blooms, among other things, can materially adversely impact the operations of desalination facilities such as the Plant, depending on the intensity, frequency and duration of such blooms. During the peak periods of severe algal blooms, algae and certain related by-products can reduce the efficiency of the Plant’s pre-treatment filters and adversely affect the production capacity of the Plant’s backwash water treatment and solids handling systems, which will in turn reduce the Plant’s production capacity. Under such circumstances, the Plant may experience periods in which it will not be able to produce an average of 52 MGD of potable water or where it will be required to shut
down for some period of time. The Water Purchase Agreement provides that, during extremely severe algal bloom conditions in which the raw seawater intake quality exceeds certain parameters, the Company is excused from its obligation to deliver water to the Water Authority. While the Company will not be entitled to compensation for any such excused deliveries, the Company may make up any such excused volumes of product water over the remaining term of the Water Purchase Agreement and for an up to three-year extended term. An algal bloom occurred at the Plant in the second quarter of 2017, which impacted Plant operations [POSEIDON TO COMPLETE:] for a period of ____ [days] [weeks]. There can be no assurances that such severe algal conditions will not recur in the future, or that any such occurrences would not result in material reductions in the Plant’s production capacity.

Factors Affecting Demand for Water

The Water Authority’s primary purpose is to provide a safe and reliable supply of water to its member agencies serving the San Diego region. The demand for such water is dependent on water use at the retail consumer level, the amount of locally supplied water, and the amount of rainfall. High rainfall during late 2016 and early 2017 reduced the level of water sales. Consumer demand and locally supplied water vary from year to year, resulting in variability in water sales. See also “–Climate Change Issues”.

Retail level water use is affected by economic conditions. Economic recession and its associated impacts such as job losses, income losses, and housing foreclosures or vacancies affect aggregate levels of water use and the Water Authority’s water sales.

The Water Authority provides a supplemental supply of water to its member agencies, some of which have access to alternative sources of water, including potable reuse. For example, the City of San Diego has announced its “Pure Water San Diego” multi-year phased program that is intended to provide one-third of the City of San Diego’s water supply locally by 2035, using water purification technology to clean recycled water to produce drinking water. Climatic conditions in the Water Authority’s service area and availability of local supplies affect demands for water purchased from the Water Authority. The Water Authority uses its financial reserves and budgetary tools to manage reductions in revenues due to reduced sales. No assurances can be given that water supply or demand will continue at historic levels.

Environmental Considerations

Current and proposed environmental laws, regulations and judicial decisions, including court-ordered restrictions and Federal and State administrative determinations relating to species on the “endangered” or “threatened” lists under the Federal or California Endangered Species Acts, have materially affected the operations of the State Water Project and the water deliveries therefrom. The Water Authority cannot predict when and how additional laws, regulations, judicial decisions and other determinations (including listings of additional species under the Federal or California Endangered Species Acts) may affect water deliveries and the Authority’s operations in the future by requiring, among other things, additional export reductions, releases of additional water from storage or other operational changes impacting water supply operations. Any of these laws, regulations and judicial decisions and other official determinations relating to the Water Authority’s water supply could have a materially adverse impact on the operation of the Project and the Water Authority’s available water supplies.

Earthquakes, Wildfires and Other Disasters

Southern California is subject to geotechnical and extreme weather conditions which represent potential safety hazards, including expansive soils, wildfires and areas of potential liquefaction and landslide. Some of these conditions may be worsened by the impacts of climate change. Earthquakes, wildfires or other natural disasters could interrupt Water Authority operations and thereby interrupt the
ability of the Water Authority to generate funds sufficient to make payments under the Installment Sale and Assignment Agreement. The Water Authority serves a seismically active region of the State. Earthquake loads have been taken into consideration in the design of Water Authority structures such as pumping plants and hydroelectric plants. All known faults are crossed by pipelines at very shallow depths to facilitate repair in case of damage from movement along a fault. Although most Water Authority infrastructure is below ground and thus not at risk from wildfires, wildfires and other natural disasters can adversely impact delivery of electricity. To date, no Water Authority facilities have suffered any material earthquake damage. Although the Water Authority has undertaken many emergency preparedness and security improvements, a terrorist attack, cyber breach or significant natural disaster could materially impair system operations, water deliveries and revenues.

**Actions to Manage Risks Relating to Water Sales**

Drought, weather conditions, regional economy and environmental considerations referred to above in recent years have contributed to lower water deliveries at a higher cost to the Water Authority. A reduction in water deliveries to the Water Authority’s member agencies might adversely affect its ability to make payments under the Installment Sale and Assignment Agreement and the Water Authority may be required to further increase its rates and charges. To address supply shortages due to prolonged drought conditions and environmental restrictions, the Water Authority may pursue additional water transfers and investments in capital projects. However, these actions and expenditures may not result in reliable alternate supplies of water at costs that, together with other available supplies and storage, will generate amounts sufficient to make the payments under the Installment Sale Agreement and may require the Water Authority to increase its rates and charges.

**Constitutional Limitations**

**Article XIII-A**

The taxing powers of California public agencies are limited by Article XIII-A of the California Constitution, added by an initiative amendment approved by the voters on June 6, 1978, and commonly known as Proposition 13.

Article XIII-A limits the maximum ad valorem tax on real property to one percent of “full cash value,” which is defined as “the County Assessor’s valuation of real property as shown on the fiscal year 1975-76 tax bill under ‘full cash value’ or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment”. The full cash value may be adjusted annually to reflect inflation at a rate not to exceed 2 percent per year, or reduction in the consumer price index or comparable local data, or declining property value caused by damage, destruction, or other factors.

The tax rate limitation referred to above does not apply to ad valorem taxes to pay the debt service on any indebtedness approved by the voters before July 1, 1978, or on any bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of the votes cast by the voters voting on the proposition.

Under the terms of Article XIII-A and pursuant to an allocation system created by implementing legislation, each county is required to levy the maximum ad valorem tax permitted by Article XIII-A and to distribute the proceeds to local agencies, including special districts such as the Water Authority. The allocation of property tax revenues among special districts, while subject to certain statutory procedures and criteria, is largely discretionary with each county.
Assessed valuation growth allowed under Article XIII A (new construction, change of ownership and 2 percent annual value growth) is allocated on the basis of sites among the jurisdictions that serve the tax rate area within which the growth occurs. Local agencies and schools share the growth of base revenues from the tax rate area. Each year’s growth allocation becomes part of each agency’s allocation in the following year. The availability of revenues from tax bases to such entities were affected by the establishment of redevelopment agencies that, under certain circumstances, may be entitled to such revenues resulting from the upgrading of certain property values.

Under California law, any fee that exceeds the reasonable cost of providing the service for which the fee is charged may be considered a “special tax,” which under Article XIII A must be authorized by a two-thirds vote of the electorate. Accordingly, if a portion of the Water Authority’s water user rates or capacity charges were determined by a court to exceed the reasonable cost of providing service, the Water Authority would not be permitted to continue to collect that portion unless it were authorized to do so by a two-thirds majority of the votes cast in an election to authorize the collection of that portion of the rates or fees. If the Water Authority were unable to obtain such a two-thirds majority vote, such failure could adversely affect the Water Authority’s ability to make Installment Sale Payments. However, the reasonable cost of providing water services has been determined by the State Controller to include depreciation and allowance for the cost of capital improvements. In addition, the California courts have determined that fees such as capacity charges will not be special taxes if they approximate the reasonable cost of constructing the water system improvements contemplated by the local agency imposing the fee.

The United States Supreme Court has upheld Article XIII A against a challenge alleging violation of equal protection under the Fourteenth Amendment to the United States Constitution.

**Articles XIIIC and XIIID**

Proposition 218, a State ballot initiative known as the “Right to Vote on Taxes Act,” was approved by the voters on November 5, 1996. The initiative added Articles XIIIC and XIIID to the California Constitution, creating additional requirements for the imposition by most local governments of “general taxes,” “special taxes,” “assessments,” “fees,” and “charges.” The Water Authority and its members are local governments within the meaning of Articles XIIIC and XIIID. Articles XIIIC and XIIID became effective, pursuant to their terms, as of November 6, 1996, although compliance with some of the provisions was deferred until July 1, 1997.

Article XIIID imposes substantive and procedural requirements on the imposition, extension or increase of any “fee” or “charge” subject to its provisions. A “fee” or “charge” subject to Article XIIID includes any levy, other than an ad valorem tax, special tax or assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership. Article XIIID prohibits, among other things, the imposition of any proposed fee or charge, and, possibly, the increase of any existing fee or charge, in the event written protests against the proposed fee or charge are presented at a required public hearing on the fee or charge by a majority of owners of the parcels upon which the fee or charge is to be imposed. Except for fees and charges for water, sewer and refuse collection services, the approval of a majority of the property owners subject to the fee or charge, or at the option of the agency, by a two-thirds vote of the electorate residing in the affected area, is required within 45 days following the public hearing on any such proposed new or increased fee or charge. In the view of the Water Authority, rates for water usage charged by the Water Authority to its member agencies are not fees or charges under Article XIIID, although no assurance may be given by the Water Authority that a court would not determine otherwise.

The California Supreme Court decisions in Richmond v. Shasta Community Services District, 32 Cal. 4th 409 (2004) (“Richmond”), and Bighorn-Desert View Water Authority vs. Verijl, 39 Cal. 4th 2005 (2006) (“Bighorn”) have clarified some of the uncertainty surrounding the applicability of Section 6 of
Article XIIID to service fees and charges. In Richmond, the Shasta Community Services District charged a water connection fee, which included a capacity charge for capital improvements to the water system and a fire suppression charge. The Court held that both the capacity charge and the fire suppression charge were not subject to Article XIIID because a water connection fee is not a property-related fee or charge because it results from the property owner’s voluntary decision to apply for the connection. Under this reasoning the Water Authority’s capacity charge may not be subject to Article XIIID. In both Richmond and Bighorn, however, the Court stated that a fee for ongoing water service through an existing connection is imposed “as an incident of property ownership” within the meaning of Article XIIID, rejecting, in Bighorn, the argument that consumption-based water charges are not imposed “as an incident of property ownership” but as a result of the voluntary decisions of customers as to how much water to use.

Article XIIID also provides that “standby charges” are considered “assessments” and must follow the procedures required for “assessments” under Article XIIID and imposes several procedural requirements for the imposition of any assessment, which may include (1) various notice requirements, including the requirement to mail a ballot to owners of the affected property; (2) the substitution of a property owner ballot procedure for the traditional written protest procedure, and providing that “majority protest” exists when ballots (weighted according to proportional financial obligation) submitted in opposition exceed ballots in favor of the assessments; and (3) the requirement that the levying entity “separate the general benefits from the special benefits conferred on a parcel” of land. The Water Authority has not increased its Water Standby Availability Charge since the enactment of Article XIIID. Any increase to the Water Authority’s current standby charge could require notice to property owners and approval by a majority of such owners returning mail-in ballots approving or rejecting any imposition or increase of such standby charge. Article XIIID also precludes standby charges for services that are not immediately available to the parcel being charged. This could adversely impact the ability of the Water Authority and its member agencies to collect standby charges on undeveloped land.

Article XIIID provides that all existing, new or increased assessments are to comply with its provisions beginning July 1, 1997. Existing assessments imposed on or before November 5, 1996, and “imposed exclusively to finance the capital costs or maintenance and operations expenses for water” are exempted from some of the provisions of Article XIIID applicable to assessments. The Water Authority has authorized and imposed water standby charges since 1989.

Article XIIIC extends the people’s initiative power to reduce or repeal previously authorized local taxes, assessments, fees and charges. This extension of the initiative power is not limited by the terms of Article XIIIC to fees, taxes, assessment fees and charges imposed after November 6, 1996 and absent other authority could result in retroactive reduction in any existing taxes, assessments, fees or charges. In Bighorn, the Court concluded that under Article XIIIC local voters by initiative may reduce a public agency water rates and delivery charges. The Court noted, however, that it was not holding that the authorized initiative power is free of all limitations, stating that it was not determining whether the electorate’s initiative power is subject to the public agency statutory obligation to set water service charges at a level that will “pay the operating expenses of the agency, ... provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of such debt as it may become due”.

No assurance can be given that Articles XIIIC and XIIID will not have a material adverse impact on the Water Authority’s revenues.

Proposition 26
On November 2, 2010, the California voters approved Proposition 26, an initiative measure amending Article XIIIC of the California Constitution. Proposition 26 adds a new definition of “tax” applicable to local government agencies to include any levy, charge, or exaction imposed by a local government, but which expressly excepts from that definition charges imposed for benefits or privileges or for services or products granted or provided to the payor (and not to those not charged) that do not exceed their reasonable cost; regulatory fees that do not exceed the cost of regulation; fees for the use of local governmental property; fines and penalties imposed for violations of law; fees imposed as a condition of property development; and assessments and property-related fees imposed under Article XIID of the California Constitution. California local taxes are subject to voter approval.

No assurance can be given that Proposition 26 will not have a material adverse impact on the Water Authority’s revenues.

Other Initiative Measures

Article XIIIA, Articles XIIIC and XIIID and Proposition 26 were adopted pursuant to California’s constitutional initiative process. From time to time other initiative measures could be adopted by California voters, placing additional limitations on the ability of the Water Authority to increase revenues.

Enforcement of Judgments Against the Water Authority. While the Water Authority believes that its water rates and capacity charges comply with the standards described above, there can be no assurance that voters, property owners, taxpayers or payers of assessments, fees and charges will not, in the future, (a) file litigation to challenge the Water Authority’s assessments, fees or charges or (b) approve initiatives that repeal, reduce or prohibit the future imposition or increase of assessments, fees or charges, including the Water Authority’s water service fees and charges, which will be the sole sources of Plant Revenues.

In the event the Water Authority fails to comply with its covenants or make required payments under the Water Purchase Agreement, the Company may seek a judgment against the Water Authority. Under the California Government Code (the “Government Code”), local public entities, such as the Water Authority, may sue and be sued and are required to pay any judgment against them in the manner set forth in the Government Code. A local public entity may pay a judgment by using funds that are (a) unappropriated and may be used for any purpose, unless the use of such funds is restricted, or (b) appropriated for the payment of judgments for the current fiscal year. However, a local public entity is always entitled to defer payments of judgments until funds become available in the next fiscal year.

The ability of the Water Authority and the Company to comply with their respective covenants and agreements may be adversely affected by actions and events outside of the control of the Water Authority and the Company. Furthermore, any remedies available to the owners of the Series 2019 Pipeline Bonds are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

Limited Nature of Ratings

The ratings to be assigned by each Rating Agency to the Series 2019 Pipeline Bonds will be based on that Rating Agency’s analyses and will reflect only the views of that Rating Agency. Future events could have an adverse impact on the ratings of the Series 2019 Pipeline Bonds, and there is no assurance that any such rating will continue for any period of time or that it will not be qualified, downgraded or withdrawn entirely by the assigning Rating Agency if, in its judgment, circumstances so warrant. There is no obligation of the Water Authority to maintain any particular rating, and a
qualification, downgrade or withdrawal of a rating on the Series 2019 Pipeline Bonds may have an adverse effect on the liquidity and market price thereof. A rating is not a recommendation to buy, sell or hold securities.

LITIGATION

The Issuer

There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body known to the Issuer to be pending (as to which the Issuer has received service of process) against the Issuer or, without any investigation having been undertaken, known to the Issuer to be threatened against the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (a) the existence or organization of the Issuer or the title to office of any member or officer of the Issuer or any power of the Issuer material to the transaction described herein or (b) the validity of the proceedings taken by the Issuer for the adoption, authorization, execution, delivery and performance by the Issuer of, or the validity or enforceability of, the Bond Purchase Agreement relating to the Series 2019 Pipeline Bonds, the Series 2019 Pipeline Bonds, the Pipeline Indenture or the Installment Sale and Assignment Agreement.

The Water Authority Financing Agency

There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body known to the Water Authority Financing Agency to be pending (as to which the Water Authority Financing Agency has received service of process) against the Water Authority Financing Agency or, without any investigation having been undertaken, known to the Water Authority Financing Agency to be threatened against the Water Authority Financing Agency wherein an unfavorable decision, ruling or finding would adversely affect (a) the existence or organization of the Water Authority Financing Agency or the title to office of any member or officer of the Water Authority Financing Agency or any power of the Water Authority Financing Agency material to the transaction described herein or (b) the validity of the proceedings taken by the Issuer for the adoption, authorization, execution, delivery and performance by the Issuer of, or the validity or enforceability of, the Pipeline Loan Agreement or the Installment Sale and Assignment Agreement.

The Company

There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body known to the Company to be pending or threatened against the Company, as to which there is a reasonable likelihood of an adverse determination and which, if adversely determined, individually or in the aggregate, with all such other actions, suits, proceedings, claims, arbitrations or investigations, would have a material adverse effect on the Company, the issuance of the Series 2019 Pipeline Bonds, the Project or the Plant. Nevertheless, there can be no assurance that future litigation will not materially interfere with the Intake System Modifications or Project operations.

The Water Authority

There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body known to the Water Authority to be pending (as to which the Water Authority has received service of process) against the Water Authority or, without any investigation having been undertaken, known to the Water Authority to be threatened against the Water Authority wherein an unfavorable decision, ruling or finding would adversely affect (a) the existence or organization of the Water Authority or the title to office of any member or officer of the Water Authority
or any power of the Water Authority material to the transactions described herein or (b) the validity of the
proceedings taken by the Water Authority for the authorization, execution, delivery and performance by
the Issuer of, or the validity or enforceability of, the Bond Purchase Agreement relating to the Series 2019
Pipeline Bonds, the Installment Sale Payment Agreement or the Water Purchase Agreement. Nevertheless, there can be no assurance that future litigation will not materially interfere with the Intake System Modifications or Project operations. See Appendix C – Water Authority Information.

**TAX MATTERS**

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Issuer (“Bond Counsel”), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series 2019 Pipeline Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”) and is exempt from State of California personal income taxes. Bond Counsel is of the further opinion that interest on the Series 2019 Pipeline Bonds is not a specific preference item for purposes of the federal alternative minimum tax. A complete copy of the proposed form of opinion of Bond Counsel is set forth in Appendix J hereto.

To the extent the issue price of any maturity of the Series 2019 Pipeline Bonds is less than the amount to be paid at maturity of such Series 2019 Pipeline Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Series 2019 Pipeline Bonds), the difference constitutes “original issue discount,” the accrual of which, to the extent properly allocable to each Beneficial Owner thereof, is treated as interest on the Series 2019 Pipeline Bonds which is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes. For this purpose, the issue price of a particular maturity of the Series 2019 Pipeline Bonds is the first price at which a substantial amount of such maturity of the Series 2019 Pipeline Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity of the Series 2019 Pipeline Bonds accrues daily over the term to maturity of such Series 2019 Pipeline Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such Series 2019 Pipeline Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Series 2019 Pipeline Bonds. Beneficial Owners of the Series 2019 Pipeline Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Series 2019 Pipeline Bonds with original issue discount, including the treatment of Beneficial Owners who do not purchase such Series 2019 Pipeline Bonds in the original offering to the public at the first price at which a substantial amount of such Series 2019 Pipeline Bonds is sold to the public.

Series 2019 Pipeline Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) (“Premium Series 2019 Pipeline Bonds”) will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of bonds, like the Premium Series 2019 Pipeline Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a Beneficial Owner’s basis in a Premium Series 2019 Pipeline Bond, will be reduced by the amount of amortizable bond premium properly allocable to such Beneficial Owner. Beneficial Owners of Premium Series 2019 Pipeline Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.
The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Series 2019 Pipeline Bonds. The Issuer, the Water Authority Financing Agency and the Water Authority have made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the Series 2019 Pipeline Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Series 2019 Pipeline Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the Series 2019 Pipeline Bonds. The opinion of Bond Counsel assumes the accuracy of these representations and compliance with these covenants. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Bond Counsel’s attention after the date of issuance of the Series 2019 Pipeline Bonds may adversely affect the value of, or the tax status of interest on, the Series 2019 Pipeline Bonds. Accordingly, the opinion of Bond Counsel is not intended to, and may not, be relied upon in connection with any such actions, events or matters.

Although Bond Counsel is of the opinion that interest on the Series 2019 Pipeline Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of amounts treated as interest on, the Series 2019 Pipeline Bonds may otherwise affect a Beneficial Owner’s federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the Beneficial Owner or the Beneficial Owner’s other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Series 2019 Pipeline Bonds to be subject, directly or indirectly, in whole or in part, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent Beneficial Owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals or clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the Series 2019 Pipeline Bonds. Prospective purchasers of the Series 2019 Pipeline Bonds should consult their own tax advisors regarding the potential impact of any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel is expected to express no opinion.

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel’s judgment as to the proper treatment of the Series 2019 Pipeline Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service (“IRS”) or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of the Issuer, the Water Authority Financing Agency or the Water Authority, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. The Issuer, the Water Authority Financing Agency and the Water Authority have covenanted, however, to comply with the requirements of the Code.

Bond Counsel’s engagement with respect to the Series 2019 Pipeline Bonds ends with the issuance of the Series 2019 Pipeline Bonds and, unless separately engaged, Bond Counsel is not obligated to defend the Issuer, the Water Authority Financing Agency, the Water Authority or the Beneficial Owners regarding the tax-exempt status of the Series 2019 Pipeline Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than the Issuer, the Water Authority Financing Agency, the Water Authority and their appointed counsel, including the Beneficial Owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is
difficult, obtaining an independent review of IRS positions with which the Issuer, the Water Authority Financing Agency and the Water Authority legitimately disagrees, may not be practicable. Any action of the IRS, including but not limited to selection of the Series 2019 Pipeline Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues may affect the market price for, or the marketability of, the Series 2019 Pipeline Bonds, and may cause the Issuer, the Water Authority Financing Agency, the Water Authority or the Beneficial Owners to incur significant expense.

**RATINGS**

Moody’s and Fitch Ratings have given the Series 2019 Pipeline Bonds ratings of [_____]” and [“____.”] respectively. These ratings reflect only the views of such organizations, and an explanation of the significance of such ratings may be obtained only from the rating agencies furnishing the ratings. Explanations of the ratings may be obtained from Moody’s at www.moodys.com and from Fitch Ratings at www.fitchratings.com. There is no assurance that such ratings will be continued for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agencies if, in the judgment of such rating agencies, circumstances so warrant. Any such downward revision or withdrawal may have an adverse effect on the market price of the Series 2019 Pipeline Bonds. The Issuer has no responsibility either to bring to the attention of the Registered Holders or the Beneficial Owners of the Series 2019 Pipeline Bonds any proposed change in or withdrawal of such ratings or to oppose any such revision or withdrawal.

**UNDERWRITING**

The Series 2019 Pipeline Bonds are being sold at an aggregate purchase price of $[_____________] (which amount represents the $[___________] aggregate principal amount of the Series 2019 Pipeline Bonds [plus a net original issue premium of $[___________], less an underwriting discount of $[___________]], pursuant to a Bond Purchase Agreement, dated [January __, 2019], entered into among the Issuer, the Water Authority Financing Agency, the Water Authority, the Company and J.P. Morgan Securities LLC, as representative of itself, RBC Capital Markets, LLC, Goldman Sachs & Co. LLC and Loop Capital Markets LLC (collectively, the “Underwriters”). The expenses associated with the issuance of the Series 2019 Pipeline Bonds are being paid by the Water Authority from proceeds of the Series 2019 Pipeline Bonds. The right of the Underwriters to receive compensation in connection with the Series 2019 Pipeline Bonds is contingent upon the issuance and delivery by the Issuer, and the purchase by the Underwriters, of the Series 2019 Pipeline Bonds. The Underwriters are obligated to purchase all of the Series 2019 Pipeline Bonds if any are purchased.

The Underwriters initially will offer the Series 2019 Pipeline Bonds for sale at the prices or yields set forth on the inside cover page of this Limited Offering Memorandum. The Series 2019 Pipeline Bonds may be offered and sold to certain dealers at prices lower than such public offering prices, and such public offering prices may be changed, from time to time, by the Underwriters. The Underwriters reserve the right to join with dealers and other investment banking firms in offering the Series 2019 Pipeline Bonds for sale.

The Underwriters and their respective affiliates are full-service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, investment management, principal investment, hedging, financing and brokerage activities. Certain of the Underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various investment banking services for the Company and its affiliates and the Water Authority, for which they received or will receive customary fees and expenses. Each of the Underwriters also serves as a dealer of commercial paper notes for the Water Authority.
In the ordinary course of their various business activities, the Underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and security activities may involve securities and instruments of the Company and its affiliates.

TRANSFER RESTRICTIONS

Each purchaser, by purchasing the Series 2019 Pipeline Bonds (or beneficial interests therein), agrees that the Series 2019 Pipeline Bonds (or beneficial interests therein) may be reoffered, resold, pledged or otherwise transferred only as described below. Each purchaser also will be deemed to have made certain representations and agreements as described hereunder. The Series 2019 Pipeline Bonds will be offered and sold to “Qualified Institutional Buyers,” as such term is defined in Rule 144A under the Securities Act of 1933.

Each prospective purchaser (and if such prospective purchaser is an insurance company general account, insurance company separate account, bank collective investment fund or investment fund managed by a qualified professional asset manager or an “in-house asset manager,” each fiduciary with respect to the assets used to acquire the Series 2019 Pipeline Bonds (or beneficial interests therein)) and each subsequent transferee of Project Bonds will be deemed to have acknowledged, represented and agreed as follows:

1. The Series 2019 Pipeline Bonds are being offered for resale to “Qualified Institutional Buyers” as defined in Rule 144A under the Securities Act of 1933. Any offer, sale, pledge, transfer or exchange made of the Series 2019 Pipeline Bonds to a person other than a Qualified Institutional Buyer will be void and the purported transferor of the Series 2019 Pipeline Bonds will remain the owner of record for such Project Bonds.

2. The Series 2019 Pipeline Bonds will bear a legend to the following effect:

THIS SERIES 2019 PIPELINE BOND IS SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO A QUALIFIED INSTITUTIONAL BUYER AS DEFINED UNDER RULE 144A UNDER THE SECURITIES ACT OF 1933. THE PURCHASER HEREOF AGREES TO PROVIDE NOTICE TO ANY PROPOSED TRANSFEREE OF A BENEFICIAL OWNERSHIP INTEREST IN THE PURCHASED SERIES 2019 PIPELINE BOND OF THE RESTRICTION ON TRANSFERS.

EACH TRANSFEREE OF THIS SERIES 2019 PIPELINE BOND, BY ITS PURCHASE HEREOF, IS DEEMED TO HAVE REPRESENTED THAT SUCH TRANSFEREE IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT AND WILL ONLY TRANSFER, RESELL, REOFFER, PLEDGE OR OTHERWISE TRANSFER THIS BOND TO A SUBSEQUENT TRANSFEREE WHO IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT OF 1933.

A TRANSFER OF THIS SERIES 2019 PIPELINE BOND TO ANY PERSON OTHER THAN A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT OF 1933 WILL BE VOID AND THE PURPORTED TRANSFEROR WILL REMAIN THE OWNER OF RECORD.
CONTINUING DISCLOSURE

The Series 2019 Pipeline Bonds are subject to the continuing disclosure requirements imposed on the Underwriters pursuant to Section (b)(5) of Rule 15c2-12 (the “Rule”) adopted by the SEC under the Securities Exchange Act of 1934.

The Company

The Company has entered into a Continuing Disclosure Agreement with respect to the Series 2019 Pipeline Bonds (the “Company Undertaking”) for the benefit of the Beneficial Owners of the Series 2019 Pipeline Bonds to send certain information annually and to provide notice of certain events to the Municipal Securities Rulemaking Board pursuant to the requirements of Section (b)(5) of the Rule. The information to be provided on an annual basis, the events that will be noticed on an occurrence basis and the other terms of the Company Undertaking, including termination, amendment and remedies, are set forth in the form of Company Undertaking attached as Appendix K.

A failure by the Company to comply with the Company Undertaking will not constitute an event of default with respect to the Series 2019 Pipeline Bonds and Beneficial Owners of the Series 2019 Pipeline Bonds are limited to the remedies described in the Company Undertaking. A failure by the Company to comply with the Company Undertaking must be reported in accordance with the Rule and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Series 2019 Pipeline Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Series 2019 Pipeline Bonds and their market price.

Except as set forth in this paragraph, during the five years preceding the date of this Limited Offering Memorandum, the Company has not failed to comply in all material respects with its prior continuing disclosure obligations entered into in connection with the Rule. On June 7, 2017 the Company filed an event notice more than ten business days following the occurrence of a reportable event under its Continuing Disclosure Agreement entered into in connection with the Series 2012 Plant Bonds. On June 5, 2016, to partially fund its next interest payment of $13,258,625 on the Series 2012 Plant Bonds, Poseidon made a draw on the Debt Service Reserve Fund for the Series 2012 Plant Bonds in the amount of $1,715,947. The Debt Service Reserve Fund for the Series 2012 Plant Bonds was replenished to the amount of the Debt Service Reserve Requirement for the Series 2012 Plant Bonds by November 7, 2016. The Company has engaged municipal disclosure counsel and has adopted updated continuing disclosure policies and procedures that are designed to enhance timely compliance with the Company’s continuing disclosure reporting requirements.

The Water Authority

The Water Authority has entered into a Continuing Disclosure Agreement with respect to the Series 2019 Pipeline Bonds (the “Water Authority Undertaking”) for the benefit of the Beneficial Owners of the Series 2019 Pipeline Bonds to send certain information annually and to provide notice of certain events to certain information repositories pursuant to the requirements of Section (b)(5) of the Rule. The information to be provided on an annual basis, the events that will be noticed on an occurrence basis and the other terms of the Water Authority Undertaking, including termination, amendment and remedies, are set forth in the form of Water Authority Undertaking attached as Appendix L.

A failure by the Water Authority to comply with the Water Authority Undertaking will not constitute an event of default with respect to the Series 2019 Pipeline Bonds and Beneficial Owners of the Series 2019 Pipeline Bonds are limited to the remedies described in the Water Authority Undertaking.
failure by the Water Authority to comply with the Water Authority Undertaking must be reported in accordance with the Rule and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Series 2019 Pipeline Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Series 2019 Pipeline Bonds and their market price.

Except as set forth in this paragraph, during the five years preceding the date of this Limited Offering Memorandum, the Water Authority has not failed to comply in all material respects with its prior continuing disclosure obligations entered into in connection with the Rule. On June 5, 2017 the Water Authority became aware of a reportable event under its Continuing Disclosure Agreement entered into in connection with the Series 2012 Pipeline Bonds. On June 7, 2017 the Water Authority filed an event notices more than ten business days following the occurrence of the event which is described in “—The Company” above. The Water Authority has adopted updated continuing disclosure policies and procedures that are designed to enhance timely compliance with continuing disclosure reporting requirements.

LEGAL MATTERS

The validity of the Series 2019 Pipeline Bonds and certain other legal matters are subject to the approving opinions of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Issuer. A complete copy of the proposed form of Bond Counsel opinion with respect to the Series 2019 Pipeline Bonds is contained in Appendix J. Bond Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Limited Offering Memorandum. Certain legal matters will be passed upon for the Water Authority and the Water Authority Financing Agency by Mark J. Hattam, General Counsel to the Water Authority and the Water Authority Financing Agency; for the Issuer by the Honorable Xavier Becerra, Attorney General of the State of California; for the Company by Blank Rome LLP, counsel to the Company and Latham & Watkins LLP, local counsel to the Company; and for the Underwriters by Drinker Biddle & Reath LLP and eco(n)law LLC. Polsinelli LLP serves as Disclosure Counsel and Special Counsel to the Water Authority. Members of Blank Rome LLP indirectly own equity interests in Poseidon Water. In addition, a member of Blank Rome LLP is an alternate member of the Board of Directors of Poseidon Water.

The various legal opinions to be delivered concurrently with the delivery of the Series 2019 Pipeline Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to the transaction. The rendering of an opinion does not guarantee the outcome of any legal dispute that may arise out of the transaction.

MUNICIPAL ADVISORS

The Water Authority has retained Montague DeRose and Associates, LLC, and Acacia Financial Group, Inc. (the “Municipal Advisors”), as municipal advisors with respect to the issuance and delivery of the Series 2019 Pipeline Bonds. The Municipal Advisors are not obligated to undertake, and have not undertaken to make, an independent verification or to assume responsibility for the accuracy, completeness or fairness of the information contained in this Limited Offering Memorandum.

MISCELLANEOUS

The execution and delivery of this Limited Offering Memorandum have been approved by the Issuer. The Issuer has not provided any of the information in this Limited Offering Memorandum except
for the information under the caption “THE ISSUER” and the information under the Caption “LITIGATION—The Issuer” solely as it pertains to the Issuer, and the Issuer makes no representation or warranty, express or implied, as to the accuracy or completeness of any other information in this Limited Offering Memorandum. This Limited Offering Memorandum is not to be construed as a contract or agreement between the Issuer, the Water Authority Financing Agency, the Water Authority or the Company and the Registered or Beneficial Owners of any Series 2019 Pipeline Bonds.

CALIFORNIA POLLUTION CONTROL
FINANCING AUTHORITY

By: ____________________________
[Renée Webster-Hawkins
Executive Director]

APPROVED:

SAN DIEGO COUNTY WATER AUTHORITY

By: Maureen A. Stapleton, General Manager

By: ____________________________
Dan Denham
Assistant General Manager

SAN DIEGO COUNTY WATER AUTHORITY
FINANCING AGENCY

By: ____________________________
Lisa Marie Harris
Treasurer

POSEIDON RESOURCES (CHANNELSIDE) LP

By: Poseidon Resources Channelside GP, Inc.,
its general partner

By: ____________________________
Barbara G. Littlefield
Treasurer
APPENDIX A

I. Certain Definitions
CERTAIN DEFINITIONS
[TO BE UPDATED PRIOR TO PRINTING]

Acceptable Credit Provider means a bank or trust company authorized to engage in the banking business having a combined capital and surplus of at least $500,000,000 or the equivalent thereof whose long-term unsecured debt is rated “A” or higher by S&P and Fitch Ratings and “A2” or higher by Moody’s or a surety provider or other financial institution whose long-term unsecured debt is rated “A-” or higher by S&P and Fitch Ratings and “A3” or higher by Moody’s; provided if any of such rating agencies are no longer in business or are no longer rating unsecured debt of banks, trust companies, surety providers or similar financial institutions, such bank or trust company, surety provider, or similar financial institution must have a comparable rating of another nationally recognized rating service.

Account Collateral means, collectively, (a) each Account, except the Contractor Security Account and the Rebate Fund, and (b) all cash, instruments, investment property, securities, “security entitlements” (as defined in Section 8-102(a)(17) of the UCC) and other Financial Assets at any time on deposit in any such Account, including all income, earnings and distributions thereon and all proceeds, products and accessions of and to any and all of the foregoing, including whatever is received or receivable upon any collection, exchange, sale or other disposition of any of the foregoing and any property into which any of the foregoing is converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in connection with any of the foregoing; provided that (i) any amounts disbursed from the Distribution and Stabilization Fund in accordance with the Collateral Trust Agreement do not constitute Account Collateral, and (ii) the Lien on all of the Company’s right, title and interest in, to and under an Additional Debt Service Reserve Fund established for Additional Plant Senior Debt issued by an Additional Plant Lender is solely for the benefit of such Additional Plant Lender.

Account Letter of Credit means an irrevocable, unconditional, direct pay letter of credit (a) in a form reasonably acceptable to the Collateral Agent; (b) issued by an Acceptable Credit Provider and in respect of which the Company is not the account party; (c) the Collateral Agent is the beneficiary and holder thereof; (d) which clearly identifies which Account such letter of credit is to be credited to; and (e) which has been issued for the sole purposes of satisfying the Company’s obligations under the Collateral Trust Agreement to fund a Debt Service Reserve Fund, the Working Capital Reserve Fund or any other Account established under the Collateral Trust Agreement which is designated as a reserve fund or account.

Act means the California Pollution Control Financing Authority Act (Chapter 1 (commencing with Section 44500 of Division 27 of the Health and Safety Code), as now in effect and as it may from time to time hereafter be amended.

Actual Monthly Pipeline Purchase Payment means for any calendar month (a) the Scheduled Monthly Pipeline Purchase Payments for such month, minus, for any completed calendar month, (b)(i) the Contracted Shortfall Payments payable by the Company with respect to its failure to deliver Product Water during such month times (ii) the sum of the Pipeline Interest Payment Factor and the Pipeline Principal Payment Factor for such month.

Actual Pipeline Purchase Payment means (a) for any calendar month, the Actual Monthly Purchase Pipeline Payment for such month; (b) for any Fiscal Year or Budget Year, the sum of the Actual Monthly Pipeline Purchase Payments for the months included in such year; and (c) for any period less than a calendar year but greater than a month, the sum of the Actual Monthly Pipeline Purchase Payments for each full calendar month included in such period.
Additional Pipeline Bonds means any bonds issued under the Pipeline Indenture other than the Series 2019 Pipeline Bonds.

Additional Plant Debt Service Reserve Fund means any Account that may be established in the Debt Service Reserve Fund for Additional Plant Senior Debt.

Additional Plant Bonds means any bonds issued under the Plant Indenture other than the Series 2012 Plant Bonds.

Additional Plant Financing Agreement means any agreement entered into in connection with the issuance of Plant Senior Debt.

Additional Plant Lender means a holder of Additional Plant Senior Debt (other than Additional Plant Bonds) or any trustee or similar agent thereof.

Additional Plant Senior Debt means Additional Plant Bonds and any Additional Non-Bond Plant Senior Debt issued after the Series 2012 Closing Date.

Additional Non-Bond Plant Senior Debt means Senior Debt other than the Plant Bonds and the Contracted Shortfall Payments.

Additional Payments means the amounts payable to the Issuer, the Plant Trustee or other Persons pursuant to Section 4.2 of the Loan Agreement.

Additional Project Contract means any material contract or agreement related to the construction of the Pipeline or the construction, operation or use of the Plant entered into by the Company and any other Person, or assigned to the Company, subsequent to the Series 2012 Closing Date, excluding any such contract or agreement (i) providing for the payment by the Company of less than $1,000,000 (Escalated) per annum individually, (ii) providing for the delivery by the Company of less than $1,000,000 (Escalated) per annum individually in value of goods or services, (iii) having a term no greater than one year, (iv) having a term of greater than one year, if the Company has the right to terminate such contract or agreement upon no more than 90 days’ notice, or (v) entered into in respect of Eligible Investments or Additional Plant Senior Debt.

Affiliate of any Person means any other Person who, directly or indirectly, Controls or is Controlled by or is under common Control with such other Person.

Applicable Law means any law, regulation, requirement or order of any federal, state or local government agency, court or other governmental body, including any building code or the terms and conditions of any Permit, license or governmental approval, applicable from time to time to the Project or, with respect to any Person, the performance by such Person of any obligation under a Plant Financing Document or a Project Contract.

Authority Net Revenues means, for any fiscal year of the Water Authority or other period, the Water Revenues during such fiscal year or period less the Maintenance and Operation Costs during such fiscal year or period, pursuant to the General Resolution.

Authority Senior Lien Obligations means revenue bonds of the Water Authority, installment sale agreements and other contracts of indebtedness under which payments are payable from Net Revenues on a parity with all other Authority Senior Lien Obligations.
**Authority Subordinated Lien Obligations** means obligations of the Water Authority payable from Authority Net Water Revenues subject and subordinate to Authority Senior Lien Obligations.

**Authority Water Revenues** means (a) all gross income and revenue received or receivable by the Water Authority from the ownership or operation of the Water System determined in accordance with GAAP plus (b) deposits to the Water Revenue Fund from the Rate Stabilization Fund, each maintained pursuant to the General Resolution minus (c) amounts transferred to the Rate Stabilization Fund.

**Authorized Denominations** means $250,000 and any integral multiple of $5,000 in excess of $250,000.

**Authorized Representative** means, with respect to any party to any Plant Financing Document, any Person or Persons at the time designated to act on behalf of such party by a written certificate, containing a specimen signature of such person or persons, which is duly executed on behalf of such party; provided that, with respect to the Issuer, such term means Chair, Executive Director or any other person designated by the Chair as aforesaid.

**Available Construction Funds** means in summary, as of any Construction Disbursement Date, the [sum of] amount[s] on deposit (a) in the Poseidon Project Account and (b) in the Plant Contractor Security Account. Available Construction Funds also include, among other things, any Net Capital Proceeds and proceeds of Additional Plant Senior Debt, in each case deposited in or reasonably anticipated to be deposited in the Plant Project Fund. See Appendix A for a complete definition of Available Construction Funds.

**Bankruptcy Law** means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute, and any similar federal, state or foreign law for the relief of debtors.

**Base Case** – Used in “Material Decrease in Coverage” and “Financial Model”.

**Beneficial Owner** or **Beneficial Owners** means the owners of a beneficial interest in the Plant Bonds or the Series 2019 Pipeline Bonds, as applicable.

**Bond Counsel** means Orrick, Herrington & Sutcliffe LLP or such other firm of attorneys of nationally recognized standing in the field of law relating to municipal bond law and the excludability of interest on state or local bonds from gross income of the owners of the Plant Bonds for purposes of federal income taxation, selected by the Issuer and acceptable to the Plant Trustee and the Company.

**Bond Fund** means the fund of that name created under the Pipeline Indenture.

**Bond Insurance Policy** means, for any Additional Plant Bonds, a financial guarantee insurance policy guaranteeing the scheduled payment of all principal of and interest on such Additional Plant Bonds when due or an irrevocable letter of credit issued for the purpose of guaranteeing the Company’s obligation to pay scheduled principal, or sinking fund redemption price of and interest on such Additional Plant Bonds in each case.

**Bond Insurer** means any issuer of a Bond Insurance Policy.

**Bond Insurer Default** means any one of the following events has occurred and is continuing: (i) the Bond Insurer fails to make a payment required under the Bond Insurance Policy in accordance with its terms or (ii) the Bond Insurer (a) files any petition or commences any case or proceeding under any provision or chapter of the United States Bankruptcy Code or any other similar federal or state law relating to insolvency, bankruptcy, rehabilitation, liquidation or reorganization; (b) makes a general assignment for the benefit of its creditors; or (c) has an order for relief entered against it.
under the United States Bankruptcy Code or any other similar federal or state law relating to insolvency, bankruptcy, rehabilitation, liquidation or reorganization which is final and non-appealable; or (iii) a court of competent jurisdiction, the New York Department of Insurance or other competent regulatory authority enters a final and non-appealable order, judgment or decree (a) appointing a custodian, trustee, agent or receiver for the Bond Insurer or for all or any material portion of its property or (b) authorizing the taking of possession by a custodian, trustee, agent or receiver of the Bond Insurer (or the taking of possession of all or any material portion of the property of the Bond Insurer).

**Bond Insurer Payments** means payments required to be made to an insurer under a Bond Insurance Policy.

**Budget Year** means a 12-month period ending on June 30.

**Business Day** means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in Los Angeles, California or New York, New York close, or in the city where the Payment Office or Principal Office of the Plant Trustee or the Collateral Agent is located are authorized or obligated by law or executive order to close, or The New York Stock Exchange is authorized or obligated by law or executive order to close or is actually closed.

**Cabrillo** means Cabrillo Power I LLC, an indirect wholly owned subsidiary of NRG Energy Inc.

**Cabrillo Entity** means Cabrillo, its affiliates, any of their respective successors or assigns, and any subsequent owner of the Cabrillo generating facility or Cabrillo generating facility site, and their respective successors and assigns.

**Calculation Period** means as the context requires (a) a calendar month, (b) a twelve-month year, including a Fiscal Year or a Budget Year, or (c) for any period greater than a calendar month and less than a full twelve-month year, the aggregate of the full calendar months contained in such period; provided that for any calculation period beginning on the Commercial Operation Date, the first two full calendar months following the Commercial Operation Date shall be omitted.

**Capital Lease Obligations** of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

**Capital Modification**, as used in the Water Purchase Agreement, means a material change to the physical assets constituting the Plant (including the alteration, addition, demolition, removal, extension or expansion of the physical assets constituting the Plant, or the installation of new structures, equipment, systems or technology) made after the Commercial Operation Date for any reason that, individually or in the aggregate with any related changes, exceeds $10,000,000 (escalated in accordance with the Water Purchase Agreement) in capital cost or that materially impairs the quality, integrity, durability or reliability of the Plant or materially alters the original design of the Plant as set forth in the design requirements under the Water Purchase Agreement.

**Capital Proceeds** means (i) proceeds of property and casualty insurance or other insurance protecting against loss or damage to the Plant or any portion thereof (excluding the proceeds of delay in start-up insurance or business interruption insurance); (ii) proceeds of any title insurance respecting a defect of title or Lien on the Company’s interest in the Plant or the Company Real Property or portion thereof; (iii) any condemnation awards or proceeds of an eminent domain proceeding relating to a taking of any portion of the Plant or the Company Real Property; (iv) any Performance Guarantee Payments pursuant to the Plant EPC Contract; (v) any cash settlement of a warranty claim by the Company arising
under any construction contract, including the Plant EPC Contract (including warranties by any subcontractor or supplier) and the Pretreatment Warranty but excluding the Pipeline EPC Contract; (vi) any damage awards or indemnity payments received by the Company or the Collateral Agent on its behalf with respect to loss or damage to the Plant or the Company Real Property or any portion thereof; (vii) any contributions in aid of construction for any Capital Project received by the Company from the Water Authority or other third parties; (viii) any payments by the Plant EPC Contract Guarantor in respect of items (iv), (v) or (vi) above; (ix) any equity contribution received by or on behalf of the Company for any Capital Project; (x) the proceeds of Additional Plant Senior Debt issued to fund a Capital Project as permitted under the Collateral Trust Agreement (except capitalized interest, Costs of Issuance and Debt Service Reserve Fund deposits); and (xi) the net proceeds received by the Company or the Collateral Agent from any sale of assets constituting all or a portion of the Plant other than any sale of assets permitted under the Loan Agreement. “Capital Proceeds” do not include proceeds of insurance compensating third parties for injuries or personal property claims.

**Capital Project** means (i) replacement or renewal of all or a portion of the Plant following an Event of Loss or Event of Eminent Domain or (ii) a modification or expansion of the Plant after the Commercial Operation Date that is permitted under the Collateral Trust Agreement; for which, in either case, the costs of which are required in accordance with GAAP to be capitalized on the Company’s balance sheet.

**Capitalized Interest Account** means the account by that name established in the Collateral Trust Agreement in connection with the Series 2012 Plant Bonds.

**Carlsbad** means the City of Carlsbad, California.


**Certificate of the Issuer** means a certificate signed in the name of the Issuer by its Chairman, Executive Director or Deputy Executive Director or such other individual as may be designated and authorized to sign for the Issuer.

**Change Order Amendment** means any change order under the Plant EPC Contract, the Pipeline DBA or the Pipeline EPC Contract and any related amendments, modifications or supplements to such contracts, the Plant O&M Agreement or any other Project Contract necessary to implement such change order.

**Change in Project Scope** means:

(a) a Change Order Amendment; or

(b) any other change in the scope or cost of work required to achieve Completion, [including the incurrence of any Poseidon Pipeline Costs]3, as compared to the initial Project Construction Budget.

**Claims** means any and all actions, suits, penalties, claims and demands and reasonable out-of-pocket liabilities, losses, costs and expenses (including reasonable and documented attorney’s fees and expenses) of any nature whatsoever.

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Code means the Internal Revenue Code of 1986, as amended, from time to time. A reference to any specific section of the Code will be deemed also to be a reference to the comparable provisions of any enactment that supersedes or replaces the Code.

Collateral is defined under “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 PIPELINE BONDS – The Collateral Trust Agreement” in the body of this Limited Offering Memorandum.

Collateral Agent means MUFG Union Bank, N.A., as collateral agent under the Collateral Trust Agreement, and any successor collateral agent or co-agent thereunder.

Collateral Agent’s Remedies Agreement means the Collateral Agent’s Remedies Agreement between the Water Authority and the Collateral Agent.

Collateral Documents means the Deed of Trust, the Pledge Agreements, the Security Agreement, the Collateral Trust Agreement, the Control Agreement, each Consent, any fixture filings, financing statements, or other similar documents filed, recorded or delivered in connection with the foregoing, and any other agreement, document or instrument pursuant to which a Lien is granted securing any Secured Obligations or under which rights or remedies with respect to any such Lien are governed.

Collateral Trust Agreement means the Collateral Trust Agreement among the Collateral Agent, the Company, the Plant Trustee, the Pipeline Trustee and any Additional Plant Lender that becomes a party thereto.

Commercial Operation means that Provisional Acceptance is achieved under and as defined in the Plant EPC Contract.

Commercial Operation Date means December 23, 2015.

Commodity Hedging Arrangements means any interest rate, other financial or commodity swap, cap or collar agreement or similar arrangement between the Company (or its agent or nominee) and one or more banks or other financial institutions providing for the transfer or mitigation of commodity risks either generally or under specific contingencies (including confirmations thereunder) that (i) contain terms, and are otherwise in form and substance, customary for similar transactions; and (ii) cover Transactions (as defined therein) having a notional principal amount in the aggregate less than or equal to the aggregate principal amount of hedged loans or other obligations (if necessary, as the same may be reasonably estimated by the Company for such date).

Company means Poseidon Resources (Channelside) LP, a Delaware limited partnership.

Company Plant Bonds means any Plant Bonds held by the Plant Trustee for and on behalf of the Company or any nominee for (or any Person who owns Plant Bonds for the sole benefit of) the Company.

Company Funded Capital Project means a Capital Project whose costs to complete, including any interest costs occasioned by delay in the Commercial Operation Date, are funded entirely by Net Proceeds consisting of equity contributions by the Company.

Company Interest Hedging Payment means a regularly scheduled payment (after any payment netting against any Counterparty Interest Hedging Payment on a given payment date) under an Interest Hedging Arrangement (excluding (i) any termination payment (whether as a result of optional, elective, early or mandatory termination) relating to the Interest Hedging Arrangement and (ii) any payment in
respect of fees, costs, indemnities or expenses with respect to such Interest Hedging Arrangement) required to be made by or on behalf of the Company to an Interest Hedging Counterparty pursuant to an Interest Hedging Arrangement.

**Company Real Property** means (a) the Plant Site and the easements, rights and interests in real property granted to the Company pursuant to the Ground Lease and any other agreements granting the Company the right to use real property to construct the Plant and (b) rights to access the Pipeline route granted to the Company in the Pipeline DBA.

**Compliance Debt** means Additional Plant Senior Debt the proceeds of which are to be used to comply with Applicable Law or any Principal Project Contract, including the performance of any obligations of the Company under the Water Purchase Agreement.

**Completion** means Project Completion under the Plant EPC Agreement has occurred and the Company has delivered certain certifications required under the Plant Loan Agreement.

**Completion Date** means the date on which Completion has occurred.

**Consents** means the Collateral Agent’s Remedies Agreement and the individual agreements among the Collateral Agent, the Company and one of the following Persons in which such Person agrees, among other things, to the assignment to the Collateral Agent by the Company of the Principal Project Contract to which it is a party: the Ground Lessor, the EPC Contractor (with respect to both EPC Contracts), the EPC Guarantor, IDE Americas, Carlsbad, SDG&E, the California State Lands Commission, Poseidon Water LLC and each counterparty to an Additional Project Contract.

**Construction Contingency Amount** is defined under “SERIES 2012 PLANT BONDS – SECURITY AND SOURCES OF PAYMENT FOR the Series 2012 Plant Bonds – Collateral Trust Agreement – Poseidon Project Account; Contingency Amount” in the body of this Limited Offering Memorandum.

**Construction Disbursement Date** means the 20th Business Day of each month beginning in the month following the Series 2012 Closing Date and ending in the month in which Completion occurs.

**Construction Withdrawal Certificate** means a certificate in the form prescribed by the Collateral Trust Agreement or the Pipeline Indenture, as applicable.

**Contracted Shortfall Payment Default** means an event of default under the Pipeline Indenture resulting from a failure to pay from any source of available funds interest or principal on the Series 2019 Pipeline Bonds when due caused by the Company’s failure to make any Contracted Shortfall Payment when due.

**Contracted Shortfall Payment Notice** means the notice that Contracted Shortfall Payments are due, delivered to the Collateral Agent pursuant to the Collateral Trust Agreement.

**Contracted Shortfall Payments** means Operating Period Shortfall Payments and Termination Operating Period Shortfall Payments.

**Contractor Security Account** means the account designated as the Contractor Security Account within the Project Fund under the Collateral Trust Agreement.

**Contract Year** means each of the period from the Contract Date to the next June 30th; each subsequent period of twelve months commencing on July 1st; and the period from July 1st in the year in
which the Water Purchase Agreement expires or is terminated (for whatever reason) to and including the Termination Date.

**Control** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “Controlling” and “Controlled” and “under common control with” have meanings correlative thereto.

**Control Agreement** means the Collateral Account Control Agreement, dated as of December 24, 2012 among the Company, the Collateral Agent and MUFG Union Bank, N.A., in its capacity as securities intermediary.

**Cost of Issuance** means all items of expense directly or indirectly payable by or reimbursable to the Issuer or the Water Authority and related to the authorization, issuance, sale and delivery of the Series 2019 Pipeline Bonds, including costs of preparation and reproduction of documents, printing expenses, filing and recording fees, initial fees and charges of the Pipeline Trustee, legal fees and charges, fees and disbursements of consultants and professionals, rating agency fees, fees and charges for preparation, execution and safekeeping of the Series 2019 Pipeline Bonds and any other cost, charge or fee in connection with the original issuance of the Series 2019 Pipeline Bonds which constitutes a “cost of issuance” within the meaning of Section 147(g) of the Code.

**Counsel** means an attorney at law or a firm of attorneys (who may be an employee of or counsel to the Issuer, the Plant Trustee, the Collateral Agent, the Bond Insurer, the Liquidity Facility Provider or the Company) duly admitted to the practice of law before the highest court of any state of the United States of America or of the District of Columbia knowledgeable about the relevant law and reasonably acceptable to the Plant Trustee, the Collateral Agent and the Company.

**Counterparty Interest Hedging Payment** means any payment (after giving effect to any netting on a given payment date) to be made to, or for the benefit of, the Company, under any Interest Hedging Arrangement.

**Current Case Financial Projections** means, at any time, the Financial Projections most recently updated pursuant to the Collateral Trust Agreement.

**Dated Date** means the date of any Series of Project Bonds.

**Debt** of any Person at any date means, without duplication:

(a) indebtedness created, issued or incurred by such Person for borrowed money (whether by loan or the issuance and sale of debt securities or the sale of Property of such Person to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property from such Person);

(b) notes payable and drafts accepted by such Person representing extensions of credit whether or not representing obligations for borrowed money;

(c) any obligation owed by such Person for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA), which purchase price is due more than six months from the date of incurrence of the obligation in respect thereof;

(d) the face amount of any letter of credit or similar instrument issued for the account of such Person or as to which such Person is otherwise liable for reimbursement of drawings;
(e) the direct or indirect Guarantee, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another (provided that such obligation of such Person will be “Debt” under the Collateral Trust Agreement only if and to the extent that the assurance such Person is providing to such obligee is in respect of an obligation that otherwise constitutes “Debt” under the Collateral Trust Agreement);

(f) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged or the holders thereof will be protected (in whole or in part) against loss in respect thereof (provided that such obligation of such Person will be “Debt” under the Collateral Trust Agreement only if and to the extent that the assurance such Person is providing to such obligee is in respect of an obligation that otherwise constitutes “Debt” under the Collateral Trust Agreement);

(g) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (i) or (ii) of this clause (g), the primary purpose or intent thereof is as described in clause (f) above (provided that such liability of such Person will be “Debt” only if and to the extent that the related obligation otherwise constitutes “Debt”);

(h) all ordinary course trade payables which are more than 90 days overdue;

(i) all obligations of such person in respect of any exchange traded or over the counter derivative transaction or any interest rate protection or commodity hedging transaction, including any transaction under any Interest Hedging Arrangement or Commodity Hedging Arrangement; and

(j) Capital Lease Obligations.

**Debt Service** means, for any period under review, (a) for any Plant Senior Debt, the sum of (i) interest payable on such Plant Senior Debt during such period (except interest to be paid from amounts on deposit in the related Capitalized Interest Account) and (ii) the total amount of principal of, on premium on, such Plant Senior Debt payable, or for which provision for payment must be made, during such period whether at stated maturity or upon sinking fund redemption thereof, and (b) Company Interest Hedging Payments required to be made during such period; provided that, with respect to any Company Interest Hedging Payments or Plant Senior Debt bearing interest at a variable rate, the determination of Debt Service will made as provided in the related Additional Plant Financing Documents.

**Debt Service Coverage Ratio** means, for any Calculation Period following the Commercial Operation Date:

(a) the total of (i) Net Cash Flow for such Calculation Period plus (ii) Actual Pipeline Purchase Payments for such Calculation Period; divided by

(b) the total of (i) Debt Service paid or payable for such Calculation Period, net of any Counterparty Interest Hedging Payments paid or payable for such period, plus (ii) the Scheduled Pipeline Purchase Payments for such Calculation Period.
**Debt Service Related Payments** means, for any period, with respect to either the Plant Senior Debt or the Series 2019 Pipeline Bonds, (a) the sum of principal and interest payments, (b) required deposits to the related debt service reserve fund resulting from an increase in the related debt service fund requirement and trustee and issuer fees and (c) with respect to the Plant Debt, the fees of the Collateral Agent, for such period.

**Debt Service Reserve Fund** means the fund designated as the Debt Service Reserve Fund under the Pipeline Indenture in connection with the issuance of the Series 2019 Pipeline Bonds.

**Debt Service Reserve Requirement** means, on any Monthly Disbursement Date, an amount equal to the principal, premium, if any, and interest due with respect to the Series 2019 Pipeline Bonds during the 12-month period succeeding such Monthly Disbursement Date.

**Deed of Trust** means that certain Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, executed by the Company, as trustor, in favor of the deed of trust trustee for the benefit of the Collateral Agent, as beneficiaries.

**Defeasance Obligations** means the obligations described in clauses (a) and (b) of the definition of “Eligible Investments” and any other direct obligations of, or obligations the timely payment of the principal of and interest on which are fully and unconditionally guaranteed by the United States of America, including the interest portion of obligations of the Resolution Funding Corporation to the extent so guaranteed.

**Deficiency** means the failure to achieve any of the Guaranteed Performance Levels during the relevant Performance Test under the Plant EPC Contract.

**Development Agreement** means the Amended and Restated Development Agreement between Carlsbad and the Company.

**Disbursement Request** means a request substantially in the form prescribed by the Collateral Trust Agreement.

**Discharge Date** means the date on which payment in full in cash of all Secured Obligations has been made or provision has been made for the payment and discharge in full of such other Secured Obligations in accordance with the terms and conditions of (a) the Plant Financing Documents (with respect to obligations of the Company thereunder), (b) the Pipeline DBA and the Water Purchase Agreement (with respect to the Contracted Shortfall Payments) and (c) the Plant EPC Contract (with respect to amounts owed to the Plant EPC Contractor).

**Distribution and Stabilization Fund** means the fund of such name established pursuant to the Collateral Trust Agreement.

**DTC** means The Depository Trust Company acting as the securities depository as set forth in Section 214 of the Plant Indenture or any successor securities depository under the Plant Indenture.

**Eligible Investments** means any investment set forth below that matures (or is redeemable at the option of the owner thereof or is marketable prior to maturity) at such time or times as to enable disbursements to be made from the Fund or Account in which such investment is held in accordance with the terms of the Collateral Trust Agreement or the Plant Indenture:

(i) Governmental Obligations;
(ii) bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies or such other like governmental or government-sponsored agencies which may be hereinafter created: Bank for Cooperatives; Federal Intermediate Credit Banks; Federal Financing Bank; Federal Home Loan Bank System; Export-Import Bank of the United States; Farmers Home Administration; Small Business Administration; Inter-American Development Bank; International Bank for Reconstruction and Development; Federal Land Banks; the Federal National Mortgage Association; the Government National Mortgage Association; or the Tennessee Valley Authority;

(iii) debt obligations of any state of the United States or any political subdivision of any state, or of any agency or instrumentality of any state or of any political subdivision thereof, if at the time of their purchase such obligations are rated at the time of investment in any of the three highest Rating Categories by any Rating Agency;

(iv) negotiable or non-negotiable certificates of deposit, time deposits, demand deposits, including interest bearing money market accounts, trust funds, trust accounts, bankers acceptances or other similar banking arrangements, issued by any bank or trust company (including the Collateral Agent, the Plant Trustee and their respective affiliates) the deposits of which to the extent uninsured, by the Federal Deposit Insurance Corporation, are to be secured as to principal by the securities listed in subsections (i), (ii), or (iii) above;

(v) repurchase agreements or similar arrangements: (x) with any banking institutions or other financial services company, including the Collateral Agent, the Plant Trustee and their respective Affiliates if applicable, having or the parent company of which must be rated at the time of investment in any of the three highest Rating Categories by any Rating Agency, pursuant to which has been delivered to the Collateral Agent, or its designee, investments of the types set forth in subsections (i) and/or (ii) above having at all times a fair market value of at least 100% of the value of such agreement; or (y) with any banking institutions or other financial services company, including the Collateral Agent, the Plant Trustee and their respective Affiliates if applicable, not meeting the rating requirements of (x) above pursuant to which there has been delivered to the Collateral Agent or its designee, investments of the types set forth in subsections (i) and/or (ii) above and at all times having a fair market value of at least 102% of the value of such agreement;

(vi) shares of an open-end, diversified investment company that is qualified under Rule 2a-7 promulgated under the Investment Company Act of 1940, the shares of which are registered under the Securities Act of 1933, and having aggregate net assets of not less than $50,000,000 on the date of purchase (including any such mutual fund for which the Collateral Agent, the Plant Trustee or an affiliate of either of them, serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian but excluding funds with a floating net asset value, notwithstanding that (A) the Collateral Agent, the Plant Trustee or an affiliate of either of them, receives fees from such funds for services rendered, (B) the Collateral Agent and the Plant Trustee charge and collect fees for services rendered pursuant to the Collateral Trust Agreement and the Plant Indenture, respectively, which fees are separate from the fees received from such funds, and (C) services performed for such funds and pursuant to the Collateral Trust Agreement or the Plant Indenture may at times duplicate those provided to such funds by the Collateral Agent, the Plant Trustee of an affiliate of either of them;

(vii) redeemable securities of a “unit investment trust” as defined in the Investment Company Act of 1940, each of which represents an undivided interest in a unit of specified Qualified Investments of the types set forth in subsections (i), (ii) or (iii) above;
(viii) commercial paper rated at the time of investment in the highest Rating Category by any Rating Agency, and having a maturity at the time of purchase not to exceed six months; and

(ix) guaranteed investment contracts with any bank or investment banking firm or other financial services company the long-term debt of which is rated at the time of investment in any of the three highest Rating Categories by any Rating Agency.

**Eminent Domain Proceeds** means all amounts and proceeds in respect of an Event of Eminent Domain received by the Company (or the Collateral Agent on its behalf).

**Environmental Claim** means any and all liabilities, losses, administrative, regulatory or judicial actions, suits, written demands, decrees, written claims, Liens, judgments, warning notices, notices of noncompliance or violation, governmental investigations, governmental proceedings, orders to conduct removal or remedial actions, or damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, fees, out-of-pocket costs, expenses, disbursements, attorneys’ or consultants’ fees, relating in any way to any (a) violation or alleged violation of any Environmental Law, (b) Release of Hazardous Substances or (c) any legal or administrative proceedings relating to any of the above.

**Environmental Laws** means all Applicable Laws relating to the environment or to any Hazardous Substance, including CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as now or hereafter amended, the Clean Water Act, 33 U.S.C. Section 1251 et seq., as now or hereafter amended, the Clean Air Act, 42 U.S.C. Section 7401 et seq., as now or hereafter amended, the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., as now or hereafter amended, the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq., as now or hereafter amended, the Hazardous Waste Control Law, Ca. Health & Safety Code Section 25100, et seq., as now or hereafter amended, the Porter-Cologne Water Quality, Ca. Water Code Section 13000 et seq., as now or hereafter amended, and the Safe Drinking Water and Toxic Enforcement Act of 1986, Ca. Health and Safety Code Section 24249.5 et seq., as now or hereafter amended.

**EPC Contractor** means Kiewit Shea Desalination, a joint venture between Kiewit Infrastructure West Co. and J.F. Shea Construction, Inc.

**EPC Contracts** means the Plant EPC Contract and the Pipeline EPC Subcontract, together.

**EPC Guarantee** means the Guarantees dated December 20, 2012 from the EPC Guarantor in favor of the Company with respect to the EPC Contractor’s obligations under the EPC Contracts.

**EPC Guarantor** means Kiewit Infrastructure Co.

**ERISA** means the Employee Retirement Income Security Act of 1974 from time to time.

**ERISA Affiliate** means any trade or business (whether or not incorporated) that together with the Company, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

**ERISA Event** means (a) a Reportable Event with respect to a Pension Plan of which the Company has notice; (b) a withdrawal by the Company or withdrawal by any ERISA Affiliate of which the Company has notice from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA of which the Company
has notice; (c) notification to the Company of a complete or partial withdrawal by the Company or any ERISA Affiliate from a Multiemployer Plan or notification to the Company that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate by the Company, notice to the Company of the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or notice to the Company of the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) notice to the Company from the PBGC of an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) notice to the Company of the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon either the Company or any ERISA Affiliate.

**Escalated** means, with respect to any amount, such amount escalated at the rate of 2.5% beginning on the first anniversary of the Commercial Operation Date and on each anniversary of the Commercial Operation Date thereafter.

**Event of Eminent Domain** means any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Collateral, by any Governmental Authority having jurisdiction.

**Event of Loss** means an event which causes any material part of the Collateral or a material part of the Plant to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, other than an Event of Eminent Domain.

**Favorable Opinion of Bond Counsel** means, with respect to any action relating to any Tax Exempt Series of Plant Bonds, the occurrence of which requires such an opinion, a written legal opinion of Bond Counsel to the effect that such action, in and of itself, is permitted under the Plant Indenture and will not have an adverse effect on the exclusion of interest on such Tax Exempt Series of Plant Bonds from gross income for purposes of federal income taxation.

**Fees and Expenses** means with respect to any Fiduciary, the Issuer or any Additional Plant Lender, the scheduled periodic fees and expenses of such Person as set forth in the Plant Indenture or any supplement thereto or any other Plant Financing Documents and all out-of-pocket expenses of such Person incurred under any Plant Financing Document.

**Fiduciary** means the Plant Trustee, the Collateral Agent, the Paying Agent or a Depository Bank or any or all of them, as may be appropriate, and any other fiduciary with respect to Additional Plant Senior Debt as specified in the related Plant Financing Documents, which may include a remarketing agent, tender agent auction agent or broker-dealer for Plant Bonds bearing interest at variable or auction rates.

**Financial Model** means the financial formulas that were audited by the Independent Engineer prior to the Series 2012 Closing Date, which financial formulas were used to prepare the Base Case, but which do not include the data and information used by or incorporated into the Base Case or any Current Case Financial Projections, as such financial formulas may be revised from time to time in accordance with the Collateral Trust Agreement.

**Financial Projections** means the projections for the financial performance of the Plant from the date as of which they were prepared to the latest maturity date of the then Outstanding Plant Senior Debt.
**Fiscal Year** means the period beginning on January 1 of each year and ending on the next succeeding December 31, or any other twelve-month period hereafter designated by the Company as the fiscal year of the Company.

**Fixed O&M Costs** for any period, fixed payments to IDE Americas pursuant to the O&M Agreement, administrative costs charged to the Company, property taxes; rent under the Ground Lease and insurance payments not included in the fixed payments to IDE Americas that, in each case, would be expected to be incurred for such period as reflected in the then-current Operating Budget.

**GAAP** means generally accepted accounting principles in the United States or, when used in the context of financial statements of a Person organized or operating under the laws of a foreign jurisdiction, in such jurisdiction.

**General Resolution** means the Water Authority’s resolution originally adopted on May 11, 1989, Resolution No. 89-21, entitled “A Resolution of the Board of Directors of the San Diego County Water Authority Providing for the Allocation of Water System Revenues and Establishing Covenants to Secure the Payment of Obligations Payable from Net Water Revenues,” which was supplemented by Resolution No. 97-52 adopted on December 11, 1997 and by Resolution No. 09-23 adopted on December 17, 2009.

**GHG Plan** means the Energy Minimization and Greenhouse Gas Reduction Plan adopted by the Company in connection with the land use and zoning permits obtained by the Company for the Plant.

**Governmental Authority** means the government of the United States of America or any other nation, any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

**Governmental Obligations** means a bond, note or other evidence of indebtedness issued by the State or any agency or political subdivision of the State or any local agency, which is described by Sections 103 and 141-150 of the Code.

**Ground Lease** means the Second Amended and Restated Ground Lease and Easement Agreement, dated as of April 7, 2011, between Cabrillo Power I LLC and the Company, as amended pursuant to the First Amendment, dated as of October 5, 2010; the Second Amendment, dated as of December 14, 2011; the Third Amendment, dated as of February 10, 2012; the Fourth Amendment, dated as of March 23, 2012; the Fifth Amendment, dated as of April 24, 2012; the Sixth Amendment, dated as of May 15, 2012; the Seventh Amendment, dated as of June 19, 2012; the Eighth Amendment, dated as of July 31, 2012; the Ninth Amendment, dated as of August 9, 2012; the Tenth Amendment, dated as of December 11, 2012 and the Eleventh Amendment dated as of February 16, 2018 [CONFIRM ANY OTHER AMENDMENTS?].

**Ground Lease Restoration Reserve Amount** means an amount to be agreed on by the Ground Lessor and the Company as the anticipated cost to be incurred by Poseidon in satisfying its obligation under the Ground Lease to restore the Plant Site at the end of the term thereof.

**Ground Lease Restoration Reserve Fund** means the fund of that name established pursuant to the Collateral Trust Agreement.

**Ground Lessor** means Cabrillo.
Guarantee of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of (a) the guarantor or (b) another Person (including any bank under a letter of credit) to induce the creation of which the guarantor has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or having the economic effect of guaranteeing any Debt or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation, contingent or otherwise, of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Debt or other obligation of the payment of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, (iv) as an account party in respect of any letter of credit or letter of guaranty issued to support such Debt or obligation or (v) to otherwise assure or hold harmless the owner of such Debt or other obligation against loss in respect thereof; provided, however, that the term “Guarantee” will not include endorsements for collection or deposit in the ordinary course of business.

Guaranteed Completion Date means the date that is 1,065 days after the date specified by the Company for the commencement of construction, as it may be extended in accordance with the terms of the Plant EPC Contract. [POSEIDON: WHERE DOES THIS STAND?]

Hazardous Substances means (a) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Pipeline or to persons on or about facilities relating to the Pipeline or (ii) cause the Pipeline to be in violation of any Environmental Regulation; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) any chemical, material or substance defined as or included in the definition of “waste,” “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any Environmental Regulation including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 USC §§ 9601 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 USC §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 USC §§ 1801 et seq.; the Federal Water Pollution Control Act, 33 USC §§ 1251 et seq.; the California Hazardous Waste Control Law ("HWCL"), Cal. Health & Safety Code §§ 25100 et seq.; the Hazardous Substance Account Act ("HSAA"), Cal. Health & Safety Code §§ 25300 et seq.; the Underground Storage of Hazardous Substances Act, Cal. Health & Safety Code §§ 25280 et seq.; the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), Cal. Water Code §§ 13000 et seq., the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); and Title 22 of the California Code of Regulations, Division 4, Chapter 30; (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or agency or may or could pose a hazard to the health and safety of users and consumers of water delivered by the Pipeline or the owners and/or occupants of property adjacent to or surrounding the Pipeline, or any other person coming into contact with the Pipeline or adjacent property; or (e) any other chemical, materials or substance which may or could pose a hazard to the environment.

IDE means IDE Technologies, Ltd.

IDE Americas means IDE Americas, Inc.
IDE Guarantee means the Guarantee by IDE in favor of the Company of IDE Americas’ obligations to the Company under the O&M Agreement.

IDE Subcontract means the Process Services Agreement, dated December 20, 2012 between the EPC Contractor and IDE Americas.

Independent Accountant means Friedberg Smith P.C. and any successor independent firm of certified public accountants engaged by the Company.

Independent Engineer means Black & Veatch and any successor consulting engineering firm engaged by the Company, and reasonably acceptable to a Senior Debt Majority, to perform the duties of the Independent Engineer under the Plant Financing Documents; provided that any successor Independent Engineer must be a nationally recognized consulting engineering firm in the field of reverse osmosis and independent of and not under the direct or indirect control of the Company or any Secured Party.

Independent Insurance Consultant means Willis of New York, Inc. and any successor firm engaged by the Company, and reasonably acceptable to a Senior Debt Majority, provided that any successor firm must be independent of and not under the direct or indirect control of the Company or any Secured Party.

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

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

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

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

Insolvency or Liquidation Proceeding means:

(a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to the Company;

(b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to the Company or with respect to a material portion of its assets;

(c) any liquidation, dissolution, reorganization or winding up of the Company, whether voluntary or involuntary, and whether or not involving insolvency or bankruptcy; or
(d) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of the Company.

**Installment Sale and Assignment Agreement** means Pipeline Installment Sale and Assignment Agreement dated as of December 24, 2012, as amended, between the Water Authority Financing Agency and the Water Authority.

**Insured Plant Bonds** means any Plant Bonds that are insured by a Bond Insurance Policy.

**Interest Hedging Arrangement** means any interest rate swap similar arrangement between the Company (or its agent or nominee) and one or more banks or other financial institutions providing for the transfer or mitigation of interest risks either generally or under specific contingencies (including confirmations thereunder) that (i) require Counterparty Interest Hedging Payments to be made directly to the Collateral Agent, (ii) contain terms, and are otherwise in form and substance, customary for similar transactions; and (iii) cover transactions (as identified therein) having a notional principal amount in the aggregate less than or equal to the aggregate principal amount of hedged Plant Senior Debt (if necessary, as the same may be reasonably estimated by the Company and confirmed by a Senior Debt Majority).

**Interest Hedging Counterparty** means a Person that is a counterparty to any Interest Hedging Arrangement.

**Interest Payment Date** means each January 1 and July 1 beginning on July 1, 2013.

**IP Sublicense** means the Patent License Agreement, dated as of January 30, 2006, among Poseidon Resources IP LLC, as licensor, and Poseidon Resources, LLC, Poseidon Resources (Channelside) LP and Poseidon Resources (Surfside) LLC, as licensees.

**Issuer** means California Pollution Control Financing Authority created pursuant to, and as defined in, the Act.

**Lien** means, with respect to any Property, (a) any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, encumbrance, collateral assignment, charge or security interest in, on or of such Property, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such Property and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

**Limited Partner** means Poseidon Resources Channelside Holding LLC, a Delaware limited liability company and any subsequent or additional limited partners of the Company.

**Loan Agreement** means the Loan Agreement between the Issuer and the Company, as from time to time amended and supplemented including for the purpose of evidencing a loan of the proceeds of Additional Plant Bonds.

**Loan Default Event** is defined in the summary of the Loan Agreement in Appendix F to this Limited Offering Memorandum under the heading “Loan Default Event”.

**Loan Repayments** means the payments so designated and required to be made by the Company pursuant to the Loan Agreement.
**Major Project Participant** means a party to a Principal Project Contract other than the Company.

**Maintenance and Operation Costs** means all costs paid or incurred by the Water Authority for maintaining and operating the Water System, determined in accordance with Generally Accepted Accounting Principles, including all costs of water purchased by the Water Authority for resale and including all expenses of management and repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and including all administrative costs of the Water Authority, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, and including all other costs of the Water Authority or charges required to be paid by it to comply with the terms of the General Resolution or of any resolution authorizing the execution of any Contract or of such Contract or of any resolution authorizing the issuance of any Bonds or of such Bonds, such as compensation, reimbursement and indemnification of the trustee, seller, lender or lessor for any such Contracts or Bonds and fees and expenses of independent certified public accountants, but excluding in all cases (1) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, premiums and discounts, (2) interest expense and (3) amounts paid from other than Water Revenues (including, but not limited to, amounts paid from the proceeds of ad valorem property taxes).

**Management Services Agreement** means the Management Services Agreement, dated as of December 24, 2012, among the Company, the Poseidon GP and Poseidon Water LLC.

**Material Adverse Effect** means any event or occurrence of whatever nature which has resulted or would reasonably be expected to result in a material adverse change in (a) the business, operations or financial condition of the Company, (b) the ownership, use or operation of the Plant (c) the ability of the Company to perform its obligations under the Plant Financing Documents or the Principal Project Contracts or (d) the validity or enforceability of the Plant Financing Documents, Principal Project Contracts or the IP Sublicense or the remedies of the holders of Plant Senior Debt or the Collateral Agent under the Plant Financing Documents. For purposes of this definition, an act, event or condition is deemed to have a material adverse effect if it delays the Commercial Operation Date by delaying critical tasks on the critical path schedule. For purposes of giving notice to the Collateral Agent pursuant to the Loan Agreement, “Material Adverse Effect” will not include any adverse change, event, development, or effect arising from or relating to (i) general business or economic conditions, (ii) national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States, (iii) financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index), or (iv) changes in GAAP, except, in each case, to the extent that any such event or occurrence has had or would reasonably be expected to have a materially disproportionate impact on the business, financial condition or results of operations of the Company relative to other industry participants.

**Material Decrease in Coverage** means with respect to the taking of any action:

(a) if the action is a Change Order Amendment, then:

   (i) such action will not decrease the projected average annual Debt Service Coverage Ratio for the remaining term of the Outstanding Senior Debt from that set forth in the Base Case; or

   (ii) if such action is required to respond to the effects of one or more Uncontrollable Circumstances:
(A) such action will not decrease the projected average annual Debt Service Coverage Ratio for the remaining term of the Outstanding Senior Debt from the projected average annual Debt Service Coverage Ratio if no such action were taken; and

(B) the projected Debt Service Coverage Ratio following the taking of such action is not less than 1.00 in any succeeding Fiscal Year.

(b) if the action occurs after the Commercial Operation Date, and is not a Change Order Amendment, then, either:

(i)

(A) if the Debt Service Coverage Ratio for the most recently completed Fiscal Year was 1.20 or greater, (1) the projected average annual Debt Service Coverage Ratio for the remaining term of the then Outstanding Senior Debt is not reduced by more than 10% and (2) the projected Debt Service Coverage Ratio is not reduced below 1.20 for any succeeding Fiscal Year; or

(B) if the Debt Service Coverage Ratio for the most recently completed Fiscal Year was less than 1.20, the projected Debt Service Coverage Ratio is not less than the level achieved in such prior Fiscal Year for any succeeding Fiscal Year;

or:

(ii) if the proposed action or event is required to respond to the effects of one or more Uncontrollable Circumstances,

(A) such action will not decrease the projected average annual Debt Service Coverage Ratio for the remaining term of the Outstanding Senior Debt from the projected average annual Debt Service Coverage Ratio if no such action were taken; and

(B) the projected Debt Service Coverage Ratio following the taking of such action is not less than 1.00 in any succeeding Fiscal Year.

Maximum Lawful Rate means the maximum rate of interest on the relevant obligation permitted by applicable law.

Maximum Rate means the lesser of (a) the rate of 12% per annum calculated in the same manner as interest is calculated for the particular interest rate on the Plant Bonds and (b) the Maximum Lawful Rate.

MLMP means the Marine Life Mitigation Plan that was established by the Company in connection with obtaining permits for the construction of the Plant.

Monthly Disbursement Date means the fifth Business Date of any month commencing after the Commercial Operation Date or, if not a Business Day, the next Business Day thereafter.

Monthly Ground Lease Restoration Amount means one-thirty-sixth (1/36th) of the Ground Lease Restoration Reserve Amount.

Monthly Permanent Pump Shutdown Amount means one-thirty-sixth (1/36th) of the Permanent Pump Shutdown Reserve Amount. [Delete if term not used.]
Moody's means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, Moody’s will be deemed to refer to any other nationally recognized securities rating agency designated by the Company, with notice to the Collateral Agent and the Secured Parties.

Multiemployer Plan means a “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA to which the Company or one of its ERISA Affiliates has an obligation to contribute.

Net Capital Proceeds means, with respect to any item of Capital Proceeds, such Capital Proceeds (a) net of any Collection Expenses related to such Capital Proceeds, or (b) if such Capital Proceeds are proceeds of Additional Plant Senior Debt issued to fund a Capital Project, the proceeds of Additional Plant Senior Debt issued to fund a Capital Project, net of costs incurred by the Company in the issuance thereof. As used in this definition, “Collection Expenses” means all reasonable and documented out-of-pocket costs and expenses (if any) and, if applicable, reasonable transaction costs (including legal and accounting fees and expenses, and taxes paid or payable as a result thereof), incurred by the Company in connection with the collection, enforcement, negotiation, consummation, settlement, proceedings, administration or other activity related to the receipt or collection of any Capital Proceeds.

Net Cash Flow means for any Calculation Period, computed without duplication, (a) Plant Revenues received by the Company for Calculation Period, minus (b) O&M Costs payable for such Calculation Period (except to the extent paid from an account in the Working Capital Reserve Fund or the Special Maintenance Reserve Fund or the Distribution and Stabilization Fund) and the amount of Fiduciary Fees payable for such Calculation Period.

O&M Costs means, without duplication, all actual cash maintenance and operation costs for the Plant paid or reimbursed by the Company in any calendar or fiscal year or period to which said term is applicable, and all payments made by the Company:

(a) under any Permit or Project Contract, excluding Contracted Shortfall Payments and Annual Adjusted Supply Commitment True Up Payments;
(b) for energy, additives or chemicals and transportation costs related thereto;
(c) for the costs of obtaining any other materials, supplies, utilities, or services for the Plant;
(d) for employee salaries, wages, and other employee-related costs;
(e) for fees, expenses and other amounts paid by the Company for accounting, business, tax and financial management, and administrative services;
(f) for capital maintenance expenditures (other than in connection with Capital Projects to the extent funded from the Plant Restoration Fund);
(g) for Taxes (other than those based upon the Company’s income), and any payments in lieu of taxes;
(h) for insurance, consumables, spare parts, equipment, material, repair and maintenance services;
(i) in the form of lease, easement, license and similar payments;
(j) for fees, expenses, indemnity payments and other amounts (including reimbursement amounts) payable to the provider of any surety bond, letter of credit (except a Plant Letter of Credit) or similar instrument provided to a counterparty to a Project Contract or issuer of a Permit as security for the performance of the Company’s obligations thereunder, and any cash collateral required to be provided in connection therewith and security deposits made to applicable counterparties to the Project Contracts (to the extent not paid out of any Account designated as a reserve for such payments under the Collateral Trust Agreement);

(k) under any parts or services agreement;

(l) for legal fees and consulting fees and expenses paid by the Company in connection with the financing, management, maintenance or operation of the Plant;

(m) for fees and other costs paid in connection with obtaining, transferring, maintaining or amending any Permits (including the costs of any required wetlands mitigation or acquisition of RECs and VERs, unless paid out of the REC/VER Reserve Fund) but excluding any Permits required to be obtained in connection with a Permanent Pump Shutdown;

(n) for amounts paid to the IDE Americans;

(o) for reasonable general and administrative expenses, including all expenses incurred to prevent the occurrence of any default under any Plant Financing Document or Project Contract and/or to keep the Collateral free and clear of all Liens (other than Permitted Encumbrances) and for all other fees and expenses necessary for the continued operation and maintenance of the Plant and the conduct of business of the Plant;

(p) for fees and expenses of the Issuer; and

(q) for other amounts to the extent specified in the then effective Operating Budget for the Plant.

O&M Costs do not include (i) Restricted Payments, (ii) non-cash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, (iii) Project Costs, (iv) payments for Capital Projects from the Plant Restoration Fund, (v) payments in respect of Debt of the Company (other than Debt of the type referred to in clause (j) above, clause (h) of the definition of Debt or clauses (iii), (iv) and (vi) of the definition of Permitted Plant Debt, or (vi) any income taxes of the Company.

Operating Budget means an operating budget for the Plant prepared in accordance with the requirements of the Loan Agreement.

Operating Fund means the fund of such name established pursuant to the Collateral Trust Agreement.

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

Operating Period Shortfall Payment is defined in the body of this Limited Offering Memorandum under “SUMMARY STATEMENT” and “INTRODUCTION”.
Operating Work means everything required to be furnished and done relating to the operation, maintenance and management of the Project by the Company pursuant to the Water Purchase Agreement during the Operating Period.

Outstanding in connection with the Plant Bonds means, as of the time in question, all Plant Bonds authenticated and delivered under the Plant Indenture, except:

(a) Plant Bonds theretofore canceled or required to be canceled pursuant to the Plant Indenture following payment of the principal thereof, or not presented for payment when the principal thereof became due and for which funds sufficient to pay such Plant Bonds have been segregated and are being held in trust by the Plant Trustee;

(b) Plant Bonds which are deemed to have been paid in accordance with the defeasance provisions of the Plant Indenture;

(c) Plant Bonds (including Plant Bonds which are deemed to have been purchased pursuant to the Plant Indenture) in substitution for which other Plant Bonds have been authenticated and delivered pursuant to the Plant Indenture; and

(d) Mutilated, destroyed, lost or stolen Plant Bonds that have matured prior to the issuance of a replacement bond and paid by the Plant Trustee.

In determining whether the Owners of a requisite aggregate principal amount of Outstanding Plant Bonds have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions of the Plant Indenture, Plant Bonds that are owned of record by the Company or any Affiliate thereof or held by the Plant Trustee for the account of the Company will be disregarded and deemed not to be Outstanding under the Plant Indenture for the purpose of any such determination (except that, in determining whether the Plant Trustee will be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Plant Bonds which the Plant Trustee knows to be so owned or held will be disregarded) unless all Plant Bonds are owned by the Company or any Affiliate thereof and/or held by the Plant Trustee for the account of the Company, in which case such Plant Bonds will be considered Outstanding for the purpose of such determination.

Outstanding in connection with the Series 2019 Pipeline Bonds and Additional Bonds issued under the Pipeline Indenture means, as of the time in question, all Pipeline Bonds authenticated and delivered under the Pipeline Indenture, except:

(a) Pipeline Bonds theretofore canceled or required to be canceled pursuant to the Pipeline Indenture following payment of the principal thereof, or not presented for payment when the principal thereof became due and for which funds sufficient to pay such Pipeline Bonds have been segregated and are being held in trust by the Pipeline Trustee;

(b) Pipeline Bonds which are deemed to have been paid in accordance with the defeasance provisions of the Pipeline Indenture;

(c) Pipeline Bonds in substitution for which other Pipeline Bonds have been authenticated and delivered pursuant to the Pipeline Indenture; and

(d) Mutilated, destroyed, lost or stolen Pipeline Bonds that have matured prior to the issuance of a replacement bond and paid by the Pipeline Trustee.

In determining whether the Registered Owners of a requisite aggregate principal amount of Outstanding Pipeline Bonds have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions of the Pipeline Indenture, Pipeline Bonds that are owned of record by the Water Authority or any Affiliate thereof or held by the Pipeline Trustee for the account of the Water Authority will be disregarded and deemed not to be Outstanding under the Pipeline Indenture for
the purpose of any such determination (except that, in determining whether the Pipeline Trustee will be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Pipeline Bonds which the Pipeline Trustee knows to be so owned or held will be disregarded) unless all Pipeline Bonds are owned by the Water Authority or any Affiliate thereof and/or held by the Pipeline Trustee for the account of the Water Authority, in which case such Pipeline Bonds will be considered Outstanding for the purpose of such determination.

**Outstanding** in connection with Additional Plant Senior Debt other than Additional Plant Bonds means, as of the time in question, any such Additional Plant Senior Debt that has not been paid in full.

**Outstanding Plant Debt** means the aggregate principal amount of the Outstanding Plant Bonds and Outstanding Additional Plant Senior Debt that is not Plant Bonds.

**Outstanding Senior Debt** means the total of the Outstanding Plant Debt plus the Outstanding Pipeline Bonds.

**Owner** means a Registered Owner.

**Participant** means a member of, or a participant in, the Securities Depository.

**Partners** means the Poseidon GP and the Limited Partner.

**Paying Agent** means the Plant Trustee.

**Payment Office** means the corporate trust office of the Plant Trustee where payment of principal, premium, if any, and interest on the Plant Bonds is made, as designated by the Plant Trustee from time to time. The initial Payment Office will be the office of the Plant Trustee in Los Angeles, California.

**PBGC** means the Pension Benefit Guaranty Corporation.

**Pension Plan** means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by Company, or any ERISA Affiliate or to which Company or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

**Performance Guarantee Payments** means the payments, if any, payable by the Plant EPC Contractor for the failure to achieve the performance levels during performance testing as described under “Plant EPC Contract” in Appendix H. [CONFIRM TERM STILL NEEDED AND RELEVANT.]

**Permanent Pump Shutdown** means a permanent shutdown of the once-through-cooling system pumps at the Power Station.

**Permanent Pump Shutdown Account** means the Account of that name established pursuant to the Collateral Trust Agreement.

**Permanent Pump Shutdown Reserve Amount** means the aggregate costs reasonably expected to be incurred by the Company in connection with the design, acquisition, construction, permitting and startup of replacement water circulating pumps and supporting infrastructure and any Permit requirements for the Plant after a Permanent Pump Shutdown, as set forth in a certificate signed by an Authorized
Representative of the Company, and confirmed by the Independent Engineer, delivered to the Collateral Agent on or before the first Monthly Disbursement Date on which the Collateral Agent is required to transfer funds from the Revenue Account to the Permanent Pump Shutdown Reserve Account in accordance with the Collateral Trust Agreement; provided that the Permanent Pump Shutdown Reserve Amount will be adjusted to reflect (i) any Net Capital Proceeds of the type described in clauses (ix) and (x) of the definition of “Capital Proceeds” that are received by the Company in respect of the Capital Project for replacement water circulating pumps; and (ii) any revised estimates of such aggregate costs as may be certified by the Company and confirmed by the Independent Engineer in a certificate delivered to the Collateral Agent after such first Monthly Distribution Date.

Permits means any and all franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required to be granted or entered into by, or filed or made with, any Governmental Authority under Applicable Law.

Permitted Plant Debt means (i) Debt under the Plant Financing Documents, the Project Contracts and the Permits, (ii) Additional Plant Senior Debt, (iii) trade payables, (iv) purchase money indebtedness or Capital Lease Obligations incurred to finance discrete items of equipment with a principal amount or capitalized portion not exceeding $5,000,000 (Escalated) in the aggregate (in each case not exceeding the purchase price plus reasonable expenses), (v) Debt subordinate to the Senior Debt on terms set forth in the Plant Financing Documents and payable solely out of funds disbursed to the Company from the Distribution and Stabilization Account in accordance with the Collateral Trust Agreement, and (vi) obligations in respect of surety bonds, letters of credit, cash security deposits or similar instruments which the Company is required to deliver to other Persons under any Project Contract or Permit.

Permitted Encumbrances means

(1) undetermined Liens and charges incident to construction or maintenance, and Liens and charges incident to construction or maintenance now or hereafter filed of record that are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired), provided that the Company has delivered a surety bond therefor to the Collateral Agent in form and substance acceptable to a Senior Debt Majority;

(2) notices of lis pendens or other notices of or Liens with respect to pending actions which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired), provided that the Company has set aside reserves with respect thereto in accordance with GAAP;

(3) the Lien of taxes, assessments, or other governmental charges which are not delinquent, or if delinquent are payable without penalty or are being contested in good faith; provided that the Company has set aside reserves with respect to any taxes, assessments or other governmental charges which are being contested which, in the opinion of its governing board, are adequate;

(4) minor defects and irregularities in the title to the Plant which in the aggregate do not materially adversely affect the value or operation of the Plant for the purposes for which it is or may reasonably be expected to be used;

(5) easements, exceptions or reservations for the purpose of ingress and egress, parking, pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets,
alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which in the aggregate do not materially interfere with or impair the operation of the Plant;

(6) rights reserved to or vested in any municipality or governmental or other public authority to control or regulate or use in any manner any portion of the Plant which do not materially impair the operation of the Plant for the purposes for which they are or may reasonably be expected to be used;

(7) present or future valid zoning laws and ordinances;

(8) the rights of the Issuer, the Company, the Collateral Agent and the Secured Parties under the Plant Financing Documents and the Lien and charge of the Plant Indenture and the Collateral Documents;

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

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

(11) statutory Liens (including mechanics Liens) arising in the ordinary course of business, or during the construction of the Plant or any Capital Project that are (i) not delinquent, (ii) being contested in good faith by the Company or (iii) subject in full to surety bonds, performance bonds or similar arrangements with third party sureties or indemnitors or similar Persons or are fully insured by the Title Insurance Policy issued by Fidelity National Title Company on the Series 2012 Closing Date;

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

(13) Liens of the Plant EPC Contractor in respect of the Contractor Security Account and the rights of the counterparties to the Project Contracts under the terms thereof;

(14) any exceptions to title existing as of the date of issuance of the Series 2012 Plant Bonds listed in in the Title Insurance Policy issued by issued by Fidelity National Title Company on the Series 2012 Closing Date;

(15) ordinary course Liens, or those arising during the construction of the Plant or any Capital Project, in connection with worker’s compensation and unemployment insurance or other social security or pension obligations;

(16) Liens associated with trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business, or during the
construction of the Plant or any Capital Project, so long as such trade accounts are payable within 90 days of the date the related goods are delivered or the related services are rendered;

(17) Liens on accounts or deposits containing cash or other Property dedicated to providing security for surety bonds, letters of credit or similar instruments which the Company is required to deliver to other Persons under any Project Contract or Permit; other deposits or pledges to secure statutory obligations or appeals; releases of attachments, stays of execution or injunctions; performance bids, tenders, contracts (other than for the repayment of borrowed money) or leases; or for purposes of like general nature in the ordinary course of business, or during the construction of the Plant or any Capital Project;

(18) judgment Liens if an appeal thereof is being prosecuted and for which reserves required in accordance with GAAP have been provided;

(19) Liens granted (i) under the Subordinated Deed of Trust and Subordinated Security Agreement made by the Company in favor of the City of Carlsbad pursuant to the Development Agreement and any other rights granted to the City of Carlsbad under the Development Agreement which constitute Liens and (ii) in favor of the Plant EPC Contractor in the Contractor Security Account and any funds therein and proceeds thereof;

(20) rights granted to the Ground Lessor under the Ground Lease that constitute Liens;

(21) any Liens granted to the Ground Lessor’s lenders to the extent such lenders provide the Company with non-disturbance rights in accordance with Section 15.6 of the Ground Lease and any Liens granted by the Ground Lessor that are subordinate to the Ground Lease;

(22) any involuntary Liens not described in clauses (1) through (21) above of less than $100,000 (Escalated) in the aggregate; and

(23) any other Liens not described in clauses (1) through (22) above on assets which have a fair market value of less than $500,000 (Escalated) in the aggregate.

**Person** means any natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity.

**Pipeline** means, collectively, the pipelines, pumps, connectors and related equipment and structures required to deliver product water from the outlet flange of the product water pump station at the Plant Site to Water Authority’s aqueduct.

**Pipeline Bond Factor** means, for any month, a fraction (a) the numerator of which is the Pipeline Bond Related Payments and (b) the denominator of which is the Project Debt Related Payments, each for such month.

**Pipeline Bond Related Payments** means, for any month, one-twelfth of the applicable “Annual Pipeline Bond Costs” set forth in a table in the Water Purchase Agreement for the applicable Budget Year.

**Pipeline Bonds** means the Series 2019 Pipeline Bonds and any Additional Pipeline Bonds.
**Pipeline Construction Account** means the account designated as the Construction Account in the Pipeline Indenture.

**Pipeline DBA** means Design-Build Agreement for Product Water Pipeline Improvements Relating to the Carlsbad Seawater Desalination Project, dated as of December 24, 2012, between the Company and the Water Authority.

**Pipeline Debt Service Requirement** means an amount equal to the principal, premium, if any, and interest due with respect to the Series 2019 Pipeline Bonds during any 12 month period.

**Pipeline EPC Contract** means the Product Water Delivery System Engineering, Procurement and Construction Services Agreement between the Company and the Pipeline EPC Contractor.

**Pipeline EPC Contractor** means Kiewit Shea Desalination, a joint venture of Infrastructure West Co. and J.F. Shea Construction, Inc.

**Pipeline Indenture** means the Trust Indenture between the Issuer and the Pipeline Trustee, pursuant to which the Series 2019 Pipeline Bonds will be issued.

**Pipeline Interest Payment Factor** means, for any Budget Year or any month in a Budget Year, a fraction the numerator of which is the aggregate of the applicable amount of “Pipeline Bond Net Interest” set forth in a table in the Water Purchase Agreement for such Budget Year and the denominator of which is the Pipeline Bond Related Payments for such Budget Year.

**Pipeline Principal Payment Factor** means, for any Budget Year or any month in a Budget Year, a fraction the numerator of which is the applicable amount of “Pipeline Bond Principal” set forth in a table in the Water Purchase Agreement for such Budget Year and the denominator of which is the Pipeline Bond Related Payments for such Budget Year.

**Pipeline Reserve Increase Factor** means, for any Budget Year or any month in a Budget Year, a fraction the numerator of which is the applicable amount of “Net Deposits to DSRF” set forth in a table in the Water Purchase Agreement for the applicable Budget Year and the denominator of which is the Pipeline Bond Related Payments for such Budget Year.

**Pipeline Revenue Fund** means the fund designated as the Revenue Fund under the Pipeline Indenture.

**Pipeline Trustee** means MUFG Union Bank, N.A.

**Plant** means the reverse osmosis seawater desalination facility together with related pumps, pipelines, connectors and other equipment and structures constructed, operated and maintained on the Company Real Property in Carlsbad, California, and all ancillary facilities, equipment and infrastructure in connection therewith.

**Plant Account** means a fund or account established under the Collateral Trust Agreement or the Plant Indenture.

**Plant Bond Fund** means the fund of that name created under the Plant Indenture.

**Plant Bonds** means the Series 2012 Plant Bonds and any Additional Plant Bonds.
**Plant Construction Account** means the account designated as the Construction Account in the Collateral Trust Agreement in connection with the issuance of the Series 2012 Plant Bonds. [CAN PROBABLY REMOVE]

**Plant Contractor Security Account** means the account designated as the Contractor Security Account under the Collateral Trust Agreement.

**Plant Debt Service Reserve Fund** means the fund designated as the Debt Service Reserve Fund under the Collateral Trust Agreement in connection with the issuance of the Series 2012 Plant Bonds.

**Plant Debt Service Reserve Requirement** means, with respect to any 12-month period (a) for the Series 2012 Plant Bonds, (i) prior to the Commercial Operation Date, $26,517,250, and (ii) thereafter, an amount equal to the Plant Revenues to be transferred by the Collateral Agent to the Plant Trustee during such 12-month period with respect to principal, premium, if any, and interest due on the Plant Bonds during such period and (b) for any Additional Plant Senior Debt, the amount set forth in the related Plant financing agreements.

**Plant EPC Contract** means the Desalination Facility Engineering, Procurement and Construction Services Agreement between the Company and the Plant EPC Contractor.

**Plant Financing Default** means any event which with the giving of notice, the passage of time, or both, would become a Plant Financing Event of Default.

**Plant Financing Documents** means (a) the Plant Bonds, the Loan Agreement, the Plant Indenture, the Tax Agreement, (b) any purchase agreement or remarketing agreement entered into in connection with the Plant Senior Debt, (c) any agreement, document, indenture or instrument providing for or evidencing Secured Obligations owing to any Additional Plant Senior Debt.

**Plant Financing Event of Default** means an Event of Default under the Plant Indenture as described in the summary of the Plant Indenture in Appendix I, a Plant Loan Default as described in the summary of the Plant Loan Agreement in Appendix I or an event of default identified in any other Plant Financing Document entered into in respect of Additional Plant Senior Debt that permits the exercise of remedies under such document.

**Plant Indenture** means the Trust Indenture between the Issuer and the Plant Trustee pursuant to which the Series 2012 Plant Bonds were issued, including any indentures supplemental to the Plant Indenture or amendatory of the Plant Indenture.

**Plant Indenture Funds** means any of the funds established under the Plant Indenture.

**Plant Letter of Credit** means any letter of credit to secure the Company’s obligations under Project Contracts pursuant to any bank or other letter of credit and reimbursement facility that the Company is permitted under the Collateral Trust Agreement to issue, including the WPA Letter of Credit if issued under such facility.

**Plant Letter of Credit Issuer** means a bank or other financial institution that issues a Plant Letter of Credit.

**Plant O&M Agreement** means the Plant Operation, Maintenance, Repair and Replacement Agreement between the Company and IDE Americas.
**Plant Project Fund** means the fund designated as the Project Fund under the Collateral Trust Agreement.

**Plant Restoration Fund** means the fund of that name established pursuant to the Collateral Trust Agreement.

**Plant Revenue Fund** means the Revenue Fund established pursuant to the Collateral Trust Agreement.

**Plant Revenues** means, for any period, the sum of the following amounts attributable to that period (without duplication) and received by (or credited to the account of) the Company on a cash basis during such period:

(a) all revenues under the Water Purchase Agreement (including refunded Contracted Shortfall Payments) and all other revenues from the operation of the Plant;

(b) all performance damages payable by the Operator;

(c) investment income on amounts on deposit in the Accounts held by the Plant Trustee or the Collateral Agent;

(d) proceeds of any insurance policy maintained by the Company pursuant to the Plant Financing Documents, except Net Capital Proceeds;

(e) any cash security delivered by the Company under a Project Contract and returned to the Company;

(f) receipts derived from the sale of any property pertaining to the Plant or incidental to the operation of the Plant, except Net Capital Proceeds;

(g) Counterparty Interest Hedging Payments (but only to the extent that such payments are (i) not taken into account when calculating Debt Service, whether through netting them against Company Interest Hedging Payments or otherwise or (ii) are not termination payments used by the Company to replace any Interest Hedging Arrangement with a new Interest Hedging Arrangement);

(h) any completion bonus or other payment to the Company under the Pipeline DBA that is not payable to the EPC Contractor pursuant to the Pipeline EPC Contract;

(i) all performance damage payments made by IDE Americas under the O&M Agreement; and

(j) refunds received from SDG&E pursuant to the SDG&E Contract.

Revenues do not include (i) the proceeds of any drawings made under any Reserve Surety, (ii) proceeds from any Additional Plant Senior Debt, (iii) payments to the Company from the Operating Fund or the Working Capital Reserve Fund, (iv) amounts disbursed to the Company from the Distribution and Stabilization Fund, (v) Net Capital Proceeds, (vi) moneys received from the Company representing equity contributions or loans from its Partners, and (vii) Retained Rights.
Plant Senior Debt means the Company’s obligations under the Plant Loan Agreement, its obligation to make Contracted Shortfall Payments and its obligations with respect to any Additional Plant Senior Debt.

Plant Site means the real property subject to the Ground Lease and all easements and rights or interests in real property granted to the Company pursuant to the Ground Lease.

Plant Trust Estate means the property interests conveyed to the Plant Trustee pursuant to the granting clauses of the Plant Indenture, excluding Retained Rights.

Plant Trustee means MUFG Union Bank, N.A., in its capacity as trustee under the Plant Indenture.

Pledge Agreements means (a) the Pledge and Security Agreement between the Poseidon GP, the Company and the Collateral Agent and (b) the Pledge and Security Agreement between the Limited Partner, the Company and the Collateral Agent.

Poseidon means the Company.

Poseidon GP means Poseidon Resources Channelside GP, Inc.

Poseidon Project Account means the account of that name established pursuant to the Collateral Trust Agreement.

Power Station means the Encina Power Station.

Prepayment Fund means the fund of that name established pursuant to the Collateral Trust Agreement.

Principal Office means, with respect to the Plant Trustee or the Pipeline Trustee, the corporate trust office of Union Bank located in Los Angeles, California, which office at the time of the issuance of the Series 2012 Plant Bonds and the Series 2019 Pipeline Bonds was located at the address specified in the Plant Indenture and the Pipeline Indenture, or any other corporate trust office of the Plant Trustee or the Pipeline Trustee identified in a notice sent in accordance with the Plant Indenture or the Pipeline Indenture, as applicable.

Principal Project Contracts means the O&M Agreement, the Water Purchase Agreement, the EPC Contracts, the IDE Subcontract, the IDE Guarantees, the EPC Guarantee, the Ground Lease, the Management Services Agreement, the State Lands Commission Lease, the SDG&E Contracts, the Development Agreement and any Additional Project Contracts.

Product Water means potable water produced by the Plant.

Project means (a) as used in the Water Purchase Agreement, the Plant and the Plant Site and (b) as used in the Plant Financing Documents, the Plant and the Pipeline.


Project Construction Budget means a budget prepared by the Company and delivered to the Independent Engineer on the Series 2012 Closing Date identifying all (a) Plant Costs anticipated to be incurred through the Completion Date, including all construction and non-construction costs, working capital costs, interest, taxes and other carrying costs, and such other information as the Independent
Engineer may require, together with a statement of then-anticipated uses of proceeds of the Project Fund and any other moneys necessary to complete the Plant and (b) all anticipated Poseidon Pipeline Costs.

**Project Contracts** means the Principal Project Contracts and any other contracts or agreements relating to the development or construction of the Pipeline or the development, construction, operation or use of the Plant to which the Company is a party, excluding the Plant.

**Project Costs** means, without duplication, costs and expenses incurred by the Company on or prior to the Completion Date in connection with the development, design, engineering, permitting, construction, financing, management, installation, equipping, assembly, inspection, start-up, testing and initial operations of the Plant and leasing and preparation of the Plant Site and the other Company Real Property, together with an adequate contingency, which costs and expenses include: (a) all amounts payable under the Plant EPC Contract and the other Project Contracts (other than the Pipeline EPC Subcontract) relating to any of the foregoing activities, any state sales taxes on equipment or other goods or services, amounts payable for chemicals, supplies, power and other utilities and services relating to construction, start-up and testing, and all project development expenses and fees incurred by the Company or any of its Affiliates constituting Closing Date Project Payments; (b) interest incurred on or in respect of the loan made to the Company pursuant to the Loan Agreement and any other amounts required to be paid by the Company under the Plant Financing Documents, including Fiduciary Fees and Issuer’s fees and expenses; (c) Bond Insurer Payments and payments contemplated by any Bond Insurance Policy, and the fees and expenses and other reimbursement of the Issuer, the Plant Trustee, the Collateral Agent and any other agent or trustee party to the Plant Financing Documents; (d) legal, accounting, consulting, financial advisory and other transaction fees and expenses incurred by the Company and its Affiliates prior to the Commercial Operation Date; (e) O&M Costs due and payable on or prior to the Commercial Operation Date; (f) the costs of obtaining surety bonds, letters of credit or other security required to be delivered under a Project Contract or Permit on or prior to the Commercial Operation Date (including any cash collateral required to be provided in connection therewith and security deposits made to applicable counterparties to the Project Contracts) and (g) all amounts payable to SDG&E under the SDG&E Contract. Plant Costs do not include (i) Restricted Payments, (ii) non-cash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, (iii) payments for restoration or repair of the Plant or for any Capital Project from the Plant Restoration Fund in accordance with the terms of the Collateral Trust Agreement, (iv) any income taxes of the Company and (v) other amounts that are not provided for in the Project Construction Budget, including in the contingency line-item therein, as amended from time to time in accordance with the Plant Financing Documents.

**Project Reserve Fund** means the fund of that name established pursuant to the Collateral Trust Agreement.

**Property** means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible. For the avoidance of doubt, for purposes of the Plant Financing Documents, Property includes all Renewable Energy Certificates and Verified Emissions Reductions notwithstanding any provision of Applicable Law.

**Provisional Acceptance** means that the conditions described in “THE PROJECT – Construction of the Project” have been satisfied.

**Qualified Institutional Buyer** has the meaning ascribed to that term in Securities and Exchange Commission Rule 144A adopted under the Securities Act.
**Rating Agency** means each of the following: (a) Moody’s; (b) S&P; (c) Fitch Ratings; and (d) if any of the foregoing are not providing rating services, any nationally recognized rating agency designated in writing by the Company and acceptable to a Senior Debt Majority.

**Rating Category** means any of the principal rating categories assigned to investment securities or credit facilities by any Rating Agency, without regard to any gradation or distinction within any Rating Category (such as may be identified by numerical symbols or the symbols “+” or “−”).

**Record Date** means with respect to any Interest Payment Date in respect of the Plant Bonds, the fifteenth day of the calendar month next preceding such Interest Payment Date.

**REC/VER Reserve Fund** means the fund of that name established pursuant to the Collateral Trust Agreement.

**REC/VER Reserve Requirement** means, as to any year in which the Company has elected to defer the acquisition of carbon offsets and renewable energy certificates as permitted under the Energy Minimization and Greenhouse Gas Reduction Plan for the Plant, as approved by the staff of the California Coastal Commission on October 1, 2009 and the State Lands Commission Lease, the amount of expenditures to acquire carbon offsets and renewable energy certificates which the Company would otherwise have been required by such Permits to incur with respect to such year, absent such election.

**Registered Owner** means the Person or Persons in whose name or names a Plant Bond or a Pipeline Bond is registered on the bond register for the Plant Bonds or the Series 2019 Pipeline Bonds, as applicable.

**Registrar** means the Plant Trustee or the Pipeline Trustee, as applicable.

**Release** means any release, spill, seepage, emission, leaking, pumping, injection, pouring, emptying, deposit, disposal, discharge, dispersal, dumping, escaping, leaching, or migration into the environment.

**Reportable Event** means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

**Reserve Surety** means an Account Letter of Credit or other similar instrument issued by an Acceptable Credit Provider to the Collateral Agent for the purpose of satisfying the Company’s obligations to fund a reserve account under the Collateral Trust Agreement and, with respect to which, the Company is not the account party. For the avoidance of doubt, any Account Letter of Credit held in the Poseidon Project Account is not a Reserve Surety.

**Restricted Payment** means all distributions of the Company (in cash, Property of the Company or obligations) on, or other payments or distributions on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by the Company of, any portion of any Equity Interest in the Company. Payments to the Partners or their Affiliates permitted under the Loan Agreement and the payment to such Persons of Closing Date Project Payments do not constitute Restricted Payments.

**Retained Rights** means (i) the Issuer’s right to obtain notices, reports and opinions and Additional Payments and indemnification; (ii) the Issuer’s right to provide approvals and consents; and (iii) in the case of the Plant Bonds, the Issuer’s nonexclusive right to enforce the provisions of the Tax Agreement, provided that the Issuer will retain the exclusive right, as the taxpayer pursuant to the Internal
Revenue Service Form 8038, which will be completed by or on behalf of the Issuer in connection with the issuance of the Plant Bonds, to communicate with the Internal Revenue Service in any investigation of the Plant Bonds by the Internal Revenue Service.

S&P means Standard & Poor’s Ratings Group, a division of McGraw-Hill, Inc., its successors and their assigns, and, if Standard & Poor’s Ratings Group is dissolved or liquidated or no longer performs the functions of a securities rating agency, S&P will be deemed to refer to any other nationally recognized securities rating agency designated by the Company, with notice to the Collateral Agent and a Senior Debt Majority.

Scheduled Monthly Pipeline Purchase Payments means for any calendar month one twelfth of the aggregate amounts of “Pipeline Bond Interest” and “Pipeline Bond Principal” set forth in a table in the Water Purchase Agreement for the Budget Year that includes such month.

Scheduled Pipeline Purchase Payments means (a) for any month, the Scheduled Monthly Pipeline Purchase Payment; (b) for any 12-month year, including any Fiscal Year or Budget Year, the sum of the Scheduled Monthly Pipeline Purchase Payments for the months included in such year; and (c) for any period less than a calendar year but greater than a month, the sum of the Scheduled Monthly Pipeline Purchase Payments for each full calendar month included in such period.

SDG&E means San Diego Gas and Electric Company.

SDG&E Contract mean the Special Conditions Contract dated October 21, 2009 between the Company and SDG&E.

Secured Obligations means, collectively, without duplication: (i) with respect to the holders of Plant Senior Debt, (a) all of the Company’s financial liabilities and obligations, of whatsoever nature and however evidenced (including, but not limited to, principal, interest, premium, Contracted Shortfall Payments, fees, reimbursement obligations, penalties, termination payments, settlement amounts, amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Law, indemnities and legal and other expenses, whether due after acceleration, termination or otherwise) to the Secured Parties in their capacity as such under the Plant Financing Documents or any other agreement, document or instrument evidencing, securing or relating to such financial liabilities or obligations, in each case, direct or indirect, primary or secondary, fixed or contingent, now or hereafter arising out of or relating to any such agreements; (b) any and all sums advanced by any of the Secured Parties in order to preserve the Collateral or preserve its security interest in the Collateral; and (c) in the event of any proceeding for the collection or enforcement of the obligations described in clauses (a) and (b) above, after a Plant Financing Event of Default has occurred and is continuing and unaived, the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral, or of any exercise by any of the Secured Parties of its rights under the Collateral Documents, together with reasonable attorneys’ fees and court costs, (ii) with respect to Union Bank, the Company’s obligations to pay any amounts due to the Collateral Agent or the Plant Trustee under the Collateral Trust Agreement or the Plant Indenture, (iii) with respect to the Issuer, the Company’s obligation with respect to the Retained Rights, and (iv) with respect to the Plant EPC Contractor, the Company’s obligation to make payments to the Plant EPC Contractor from the Plant Contractor Security Account in accordance with the Collateral Trust Agreement.

Secured Parties means the Issuer, the Plant Trustee (for the benefit of the Registered Owners of the Plant Bonds), the Pipeline Trustee (for the benefit of the Registered Owners of the Series 2019 Pipeline Bonds and any Additional Pipeline Bonds), the Bond Insurer in respect of Insured Plant Bonds, the Plant EPC Contractor in respect of the Plant Contractor Security Account and the Additional Plant
Lenders; provided that, notwithstanding anything to the contrary in the Collateral Trust Agreement or any other Plant Financing Document, MUFG Union Bank, N.A., in its individual capacity, is a Secured Party solely for purpose of having a security interest in the Collateral with respect to amounts payable by the Company to the Collateral Agent or the Plant Trustee under the Collateral Trust Agreement or the Plant Indenture, the Issuer is a Secured Party solely for the purpose of having a security interest in the Retained Rights and the Plant EPC Contractor is a Secured Party solely for the purpose of having a security interest in the Plant Contractor Security Account, and none of MUFG Union Bank, N.A., in its individual capacity, the Issuer or the Plant EPC Contractor will have any rights of a Secured Party with respect to giving approvals and consents, receiving notices or anything else except to the extent that any such rights relate to the payments due to the Collateral Agent or the Plant Trustee, Retained Rights or the disposition of amounts held in the Plant Contractor Security Account.

**Securities Act** means the Securities Act of 1933, as amended.

**Securities Depository** means initially The Depository Trust Company, New York, New York, and its successors and assigns, or a successor clearing agency designated pursuant to the Plant Indenture or the Pipeline Indenture, as the case may be.

**Security Agreement** means the Security Agreement between the Company and the Collateral Agent.

**Senior Debt Majority** means a majority in interest of the Outstanding Senior Debt based on the outstanding principal amount of such Senior Debt, including for these purposes the outstanding principal amount of the Series 2019 Pipeline Bonds, acting by written notice to the Collateral Agent.

**Separate Desalination Project** means the development, acquisition, financing, construction, installation, start-up and operation by a Person other than the Company of a reverse osmosis desalination plant and related facilities to be located adjacent to the Plant Site, which project may be under common Control with the Plant and may share with the Company (through joint or common ownership, leasehold estate, easements, licenses or other rights to use) common facilities and equipment at the Plant Site, or portions thereof.

**Separate Project Modification** means a Capital Project for the construction, installation and operation or one or more modifications or enhancements to any part of the Plant undertaken in connection with a Separate Desalination Project.

**Series** means all Plant Bonds of a designated series.

**Series 2012 Closing Date** means December 24, 2012.

**Series 2012 Plant Bonds** means the Issuer’s Water Furnishing Revenue Bonds, Series 2012 (Poseidon Resources (Channelside) LP Desalination Project).

**Series 2019 Pipeline Bonds** means the Issuer’s Water Furnishing Revenue Refunding Bonds, Series 2019 (San Diego County Water Authority/Carlsbad Desalination Pipeline Project).

**Special Maintenance Reserve Fund** means the fund of that name that may be established under the Collateral Trust Agreement if a 10-Year Coverage Shortfall occurs.

**State** means the State of California.
**Stated Maturity** means as to any Project Bond the date specified in such Project Bond as the fixed date on which the principal is due and payable.

**State Lands Commissions Lease** means the Lease PRC 8727.1, executed by Cabrillo and the State of California State Lands Commission on May 31, 2007 and August 14, 2007, respectively, together with the State Lands Commission Lease Amendment.

**State Lands Commission Lease Amendment** means the Amendment of Lease PRC 8727.1, effective as of August 22, 2008, among the Commission, Cabrillo and the Company.

**Tax Agreement** means the Tax Agreement dated as of December 24, 2012 between the Company and the Issuer.

**Tax Exempt** means, with respect to interest on any obligations of a state or local government, including any Tax Exempt Series, that such interest is excluded from gross income of the Owners or Beneficial Owners thereof for federal income tax purposes (other than in the case of an Owner or Beneficial Owner of any Plant Bonds who is a substantial user of the Project or a related person within the meaning of Section 147(a) of the Code) whether or not such interest is includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating tax liabilities, including any alternative minimum tax or environmental tax, under the Code.

**Taxes** means any and all present or future taxes, levies, imposts, duties, deductions, charges, liabilities or withholdings imposed by any Governmental Authority (including any ad valorem, sales, use or property taxes) and any and all interest and penalties related thereto.

**10-Year Coverage Shortfall** is defined in the body of this Limited Offering Memorandum under “THE SERIES 2012 PLANT BONDS — SECURITY AND SOURCES OF PAYMENT FOR the Series 2012 Plant Bonds — Collateral Trust Agreement — Plant Reserve Funds — Special Maintenance Reserve Fund”[[ADD DEFINITION FROM 2012 LOM]].

**Termination Operating Period Shortfall Payment** is defined in the body of this Limited Offering Memorandum under “INTRODUCTION”.

**UCC** means the Uniform Commercial Code as the same may, from time to time, be in effect in the State; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral (including the Account Collateral) is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State, the term “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions of the Collateral Trust Agreement relating to such perfection or priority and for purposes of definitions related to such provisions.

**Uncontrollable Circumstances:**

(a) as the term relates to the Plant EPC Contract and the Pipeline EPC Contract, is defined in the summaries of those documents in Appendix H to this Limited Offering Memorandum.

(b) as such term relates to the Water Purchase Agreement and the Pipeline DBA, is defined in the summaries of those documents in Appendix G to this Limited Offering Memorandum; and
(b) as used in the Plant Financing Documents, means any act, event or condition that has had, or may reasonably be expected to have, a Material Adverse Effect if such act, event or condition is beyond the reasonable control of the Company, including the following:

(i) an Event of Loss or any other act of God, landslide, lightning, earthquake, fire or explosion, flood, sabotage or similar occurrence; acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;

(ii) the order and/or judgment of any federal, State or local court, administrative agency or governmental body, except decisions of federal and state courts interpreting income tax laws, if such order or judgment is not also the result of the willful or negligent action or inaction of the party relying thereon; provided that neither the contesting in good faith of any such order or judgment nor the failure to so contest will constitute or be construed as a willful or negligent action or inaction of the Company;

(iii) a Change in Law;

(iv) the failure of any federal, State, county or local public agency or private utility or public utility having operational jurisdiction in the area in which the Project is located to provide and maintain utilities, services, water and sewer lines or any other governmentally provided services and power transmission lines to the Company Real Property or the Pipeline Site that are required to complete the Project;

(v) an Event of Eminent Domain or any other condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Plant, the Company Real Property, or any material portion or part thereof by the action of any federal, State or local government or governmental agency or authority;

(vi) any site condition for which the EPC Contractor is entitled to an equitable adjustment to the terms of the Plant EPC Contract or the Pipeline EPC Contract, as applicable; and

(v) Fault or breach of any unaffiliated third party to a project contract.

“Uncontrollable Circumstances” do not include:

(A) any site condition accepted by the Plant EPC Contractor or the Pipeline EPC Contractor; or

(B) any strike, walkout, job action or other labor difficulty for which the Plant EPC Contractor, Pipeline EPC Contractor or IDE Americans is responsible.

As used in this definition, “Change in Law” means (i) the adoption, promulgation or modification or reinterpretation (including any change in enforcement policy) after the Series 2012 Closing Date of any Applicable Law not adopted, and/or officially published in The Congressional Record, The Federal Register, California Code of Regulations or the California Regulatory Notice Register on or before the Series 2012 Closing Date, or (ii) the imposition after the Series 2012 Closing Date of any material conditions in connection with the issuance, renewal or modification of any official permit, license or approval, of which the Company has received a copy or been advised in writing if no written permit, license or approval is available, that, in the case of either (i) or (ii), establishes requirements affecting any portion of the Project that are more burdensome than the applicable
requirements (A) in effect as of the Series 2012 Closing Date, (B) agreed to in any applications of the
Company for official permits, licenses or approvals pending as of the Series 2012 Closing Date or
(C) contained in any official permits, licenses, or approvals for the Plant obtained as of the Series 2012
Closing Date, or (iii) the failure of any applicable federal, State or local government agency or unit
having jurisdiction over the Project to issue any permit, license or approval necessary for any portion of
the Project after the Series 2012 Closing Date, which permit, license or approval was not issuable on or
before the Series 2012 Closing Date. A change in federal, State, local or any other income tax law, will
not be a Change in Law.

Underwriters and J.P. Morgan Securities LLC; RBC Capital Markets, LLC; Goldman Sachs &
Co. LLC and Loop Capital Markets.

Union Bank means (a) MUFG Union Bank, N.A., in its individual capacity and not as the
Collateral Agent, the Plant Trustee or the Pipeline Trustee or (b) any institution acting as a successor
Collateral Agent or a successor trustee, in such institution’s individual capacity.

Water Authority means the San Diego County Water Authority.

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

Water Authority Financing Agency means the San Diego County Water Authority Financing
Agency.

Water Authority Improvements is defined in the body of this Limited Offering Memorandum
under “THE PROJECT— Water Authority Improvements”.

Water Purchase Agreement means the Water Purchase Agreement, dated as of December 20,
2012, between the Company and the Water Authority, as amended.

Wetlands Mitigation Reserve Requirement means the aggregate costs reasonably expected to
be incurred by the Company after the Commercial Operation Date in completing the wetlands restoration
work which the Company is required to complete in accordance with the terms of the State Lands
Commission Lease (taking into account funds available to pay such costs upon the partial release of
security the Company is required to provide to the State Lands Commission in respect of such wetlands
mitigation obligations), as set forth in a certificate signed by an Authorized Officer of the Company, and
concurred in by the Independent Engineer, delivered to the Collateral Agent on or before the Commercial
Operation Date.

Working Capital Reserve Fund means the fund of that name established pursuant to the
Collateral Trust Agreement.

Working Capital Reserve Requirement means, an amount equal to one-twelfth of the
Company’s projected O&M Costs to be incurred during (a) as such term is used in respect of the
Commercial Operation Date, the first twelve months of operations following the Commercial Operation
Date, as set forth in the Operating Budget for such period; and (b) as such term is used in respect of any
Budget Year commencing on the first July 1 after the Commercial Operation Date, such Budget Year, as set forth in the Operating Budget for such Budget Year.

**WPA Letter of Credit** means the letter of credit which the Company is required to deliver to the Water Authority under the Water Purchase Agreement.
APPENDIX B

[Audited Financial Statements of the Company]
APPENDIX C
San Diego County Water Authority
[TO BE UPDATED PRIOR TO PRINTING]

I. INFORMATION REGARDING THE SAN DIEGO COUNTY WATER AUTHORITY

Introduction; The Water Authority

The San Diego County Water Authority (the “Water Authority”) was organized on June 9, 1944 under the California County Water Authority Act for the primary purpose of providing a safe and reliable supply of imported water to its member agencies for domestic, municipal, and agricultural uses. The Water Authority’s service area encompasses roughly the western one-third of San Diego County or approximately 1,479 square miles. The Water Authority’s service area is a semi-arid region where historically the natural occurrence of water from rainfall and groundwater provides a firm water supply for only a small portion of the water needs of the current population.

The Water Authority serves its 24 member agencies which in turn deliver water to end users. These member agencies include six cities, five water districts, three irrigation districts, eight municipal water districts, one public utility district, and one federal agency.

The following are the member agencies of the Water Authority:

<table>
<thead>
<tr>
<th>Cities</th>
<th>Special Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Del Mar</td>
<td>Rincon del Diablo Municipal Water District</td>
</tr>
<tr>
<td>Escondido</td>
<td>San Dieguito Water District</td>
</tr>
<tr>
<td>National City</td>
<td>Santa Fe Irrigation District</td>
</tr>
<tr>
<td></td>
<td>South Bay Irrigation District</td>
</tr>
<tr>
<td></td>
<td>Olivenhain Municipal Water District</td>
</tr>
<tr>
<td></td>
<td>Vallecitos Water District</td>
</tr>
<tr>
<td></td>
<td>Otay Water District</td>
</tr>
<tr>
<td></td>
<td>South Bay Irrigation District</td>
</tr>
<tr>
<td></td>
<td>Vista Center Municipal Water District</td>
</tr>
<tr>
<td></td>
<td>Vista Irrigation District</td>
</tr>
<tr>
<td></td>
<td>Yuima Municipal Water District</td>
</tr>
<tr>
<td></td>
<td>Pendleton Military Reservation</td>
</tr>
</tbody>
</table>

Board of Directors; Management

A 36-member Board of Directors governs the Water Authority with each of the member agencies having at least one voting representative on the Board. Any member agency may appoint one additional representative for each full five percent of total assessed value of property taxable for Water Authority purposes that is within the public agency service area. As a result, the City of San Diego is currently entitled to representation by ten directors and the Helix Water District, the Otay Water District and Carlsbad Municipal Water District are each currently entitled to representation by two directors. Directors are appointed to six-year terms by the chief executive officers of the respective member agencies, subject to approval by the agencies’ governing bodies.

Jim Madaffer, representing the City of San Diego, serves as Chair of the Board; and Gary Croucher, representing the Otay Water District, serves as Vice-Chair of the Board. Christy Guerin, representing the Olivenhain Municipal Water District, is the current Secretary of the Board.
The Water Authority’s service area lies within the foothill and coastal areas of the westerly third of San Diego County, encompassing approximately 946,300 acres (or approximately 1,479 square miles). When the Water Authority was established in 1944, its service area consisted of approximately 94,707 acres. Growth has primarily resulted from the addition of and annexation of additional service areas by member agencies. The City of San Diego, with approximately 213,121 acres, is the largest member agency within the Water Authority’s service area. In its 2016 county population estimate, the United States Census Bureau ranked San Diego County the second largest county by population in California. Of the total population of San Diego County, approximately 97 percent live within the Water Authority’s service area. It is estimated that the population of the Water Authority’s service area as of July 1, 2017 was approximately 3.3 million. The population of the City of San Diego, estimated at approximately 1.4 million as of July 1, 2017, represented approximately 43% of the total population of the Water Authority’s service area.

Water Use by Member Agencies

The term “water use” describes the quantity of water a member agency obtains from all sources to meet its consumers’ needs. These sources presently include impounding surface water reservoirs, groundwater, desalinated groundwater and seawater, recycled water and supplies imported to the Water Authority’s service area through the transportation system of The Metropolitan Water District of Southern California (“MWD”). Quantities of water are often expressed in terms of acre-feet. An acre-foot is the amount of water that will cover one acre to a depth of one foot and is equivalent to approximately 326,000 gallons, which is approximately the average annual water use of two households of four persons each.

It is the policy and responsibility of the Water Authority to provide all supplemental water required by its member agencies to meet their consumers’ needs. The level of dependence varies widely across the Water Authority’s member agencies. Some member agencies are completely dependent on the Water Authority for water supplies. Other member agencies’ dependence on Water Authority water supplies varies from approximately 90 percent to no utilization of Water Authority supplies during above normal rainfall cycles. The Water Authority’s member agencies are required to pay certain charges irrespective of whether they order water from the Water Authority in a given year. Except as set forth in the next sentence, the Water Authority’s member agencies are not contractually or otherwise required to order and pay for any set amounts of water from the Water Authority. Two of the Water Authority’s member agencies, the Carlsbad Municipal Water District and Vallecitos Water District, have entered into contracts with the Water Authority to purchase 2,500 and 3,500 AFY of treated water from the Plant, respectively, subject to adjustment generally in parallel to adjustments under the Water Purchase Agreement. Water subject to these agreements is treated as “local supply” for purposes of the Water Authority’s Water Shortage Contingency Plan (“WSCP”) approved by the Board in August 2017 and as such is eligible for the Local Projects Development Adjustment under the Water Authority’s Supply Allocation Methodology.
Due to the aggregated level of data provided by its member agencies, the Water Authority tracks water use under two class of service categories: the agricultural class and municipal and industrial ("M&I") class. Water tracked as agricultural is delivered pursuant to Water Authority’s Transitional Special Agricultural Water Rate ("TSAWR"). All remaining non-agricultural consumptive use reported by Water Authority member agencies is deemed M&I water use.

Water use in the San Diego region is closely linked to the local economy, population, and weather. Additionally, MWD supply allocations and implementation of state mandated water demand reductions can affect and have affected total water demand. In fiscal year 2007, annual water demands in the Water Authority’s service area reached an all-time high of 741,893 acre-feet, and has since dropped by almost 30 percent to 518,397 acre-feet by the end of fiscal year 2016.

Over the long-term 2040 planning horizon, regional water demand is anticipated to increase based on the San Diego Association of Governments ("SANDAG") Regional Growth Forecast. According to SANDAG demographic projections, between 2020 and 2040 the region will add roughly 484,000 people and add a combined total of roughly 182,000 new single-family and multi-family housing units in the region. Based on these growth estimates, the Water Authority’s 2015 Urban Water Management Plan ("UWMP"), a comprehensive document that includes long-term water demand projections for the San Diego region, was released. Since release of the 2015 UWMP, changed conditions (such as, a multi-year drought, The Governor’s state-wide drought emergency proclamation and the State Water Resources Control Board’s mandatory conservation standards) have impacted the region’s water use patterns. These events triggered a drop in total water demand. As a result, in February 2018 an Interim Demand Forecast Reset was developed, and presented to the Board, to address the discontinuity between 2015 UWMP demand projections and current demand levels. The net impact of the Interim Demand Forecast Reset is a downward shift in water demands of roughly 60,000 acre-feet across the entire 2020 through 2040 planning horizon. These projections are net of estimated conservation savings, resulting from member agency long-term water use efficiency efforts.

Other factors influence demand. For example, on November 4, 2009, the State Legislature passed a comprehensive package of water legislation (the “2009 State Water Legislation”) that included five bills addressing California’s statewide water situation, with particular emphasis on the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Bay-Delta") which, among other things, included a 20 percent water conservation mandate for most localities in the State by 2020, requirements that urban retail water suppliers develop urban water use targets to help meet the 20 percent goal, and an interim water reduction target by 2015. Although compliance with the legislative mandate rests with retail water agencies, the law requires that the Water Authority, as the wholesale supplier, support its retail member agencies’ efforts to comply with the 2009 State Water Legislation through a combination of regionally and locally administered active and passive water conservation measures, programs and policies, as well as the use of recycled water.

**Water Authority Storage Facilities**

Water storage facilities assist in managing consistent water availability to meet demand notwithstanding fluctuation in available supply. Ample storage allows the Water Authority to store water in wet years for use in dry years.

While the Water Authority does have some operational storage, the bulk of local storage was developed through the Emergency Storage Project ("ESP") and Carryover Storage Project ("CSP"). The ESP and CSP consist of a system of reservoirs, interconnected pipelines and pumping stations that allow the Water Authority to convey water throughout the County during an emergency or extreme drought condition. With the completion of the San Vicente Dam Raise Project in 2014, regional capacity for emergency and carryover storage increased by approximately 152,000 acre-feet and raised the total storage capacity in the region to approximately 743,690 acre-feet. As of September 2018, local storage owned by the Water Authority was approximately 153,600 acre-feet.
Agricultural Water Use

San Diego County has a well-established agricultural sector with approximately 251,147 acres in production and an annual value for all commodities of approximately $1.7 billion in 2015, according to the County of San Diego’s 2015 Crop Statistics and Annual Report. Nursery and cut flowers crops contributed approximately $1.15 billion of output during 2015; fruits and nuts and vegetable production contributed an additional approximately $467 million.

Since 2009, the Water Authority has made available to agricultural customers its TSAWR program. In exchange for receiving the TSAWR rate, composed of a supply rate differential and exemption from both the supply reliability charge and storage charge, agricultural customers forego the additional supply reliability benefit associated with the Water Authority’s supplies, and receive a higher cutback rate that matches the MWD reduction level. The supply rate differential represents the difference between MWD’s Tier 1 untreated rate and the Water Authority’s Melded Supply Rate. The TSAWR program is scheduled to terminate on December 31, 2020.

OVERVIEW OF WATER SUPPLY AND PLANNING

The Water Authority’s mission is to provide its service area a safe and reliable water supply. Historically, the principal source of supply for the Water Authority’s service area has been water purchased by the Water Authority from MWD for sale to the Water Authority’s member agencies. However, historic supply shortage events, regulatory uncertainties and continued population growth in the Water Authority’s service area have reinforced the need for diversification of the Water Authority’s water supply. Therefore, consistent with its mission statement, the Water Authority has actively pursued a strategy of supply diversification that includes the acquisition and importation of additional water supplies, the development of additional local water supply projects and enhancements to the reliability of its water supply via local and regional water storage capacity.

Water supplies utilized within the Water Authority service area originate from two sources: (1) imported water, and (2) local supplies (such as local runoff, groundwater, recycled water, and seawater desalination). The Water Authority has implemented programs and supported new technologies to increase local supply development. A significant milestone in local supply development was reached at the end of 2015, when the commercial operations commenced at the Claude “Bud” Lewis Carlsbad Desalination Plant (the “Plant”). Delivery of water from this drought proof local supply followed approval in 2012 by the Water Authority Board of a long-term Water Purchase Agreement with Poseidon Resources (Channelside) LP for the purchase of 48,000 to 56,000 acre-feet per year of desalinated seawater from the Plant.

Notwithstanding the Water Authority’s successful water supply diversification strategy, MWD remains a significant imported water supply source for the Water Authority. MWD obtains its water supply from two primary sources: the Colorado River, via MWD’s Colorado River Aqueduct, and the State of California Department of Water Resources’ State Water Project (“SWP”), via the Edmund G. Brown California Aqueduct.

As an alternative to purchasing all of its imported water from MWD, the Water Authority diversified its purchases through, among other things, acquiring imported supplies of water conserved as a result of the lining of the All-American Canal and the Coachella Canal, and water conserved from agricultural conservation measures in the Imperial Irrigation District service area. Since 2003, the Water Authority has been receiving a portion of its imported water pursuant to the terms of the Quantification Settlement Agreement (“QSA”) among the State, acting by and through the Department of Fish and Wildlife (“DFW”), the Coachella Valley Water District (“CVWD”), the Imperial Irrigation District (“IID”) and the Water Authority, executed on October 10, 2003, the Water Transfer Agreement (defined below) and other QSA related agreements. See “Quantification Settlement Agreement”. Water that the Water Authority receives from IID is conveyed through the Colorado River Aqueduct pursuant to an
exchange agreement with MWD. The Water Authority began receiving transferred water from IID in December 2003. Starting with the initial delivery of 10,000 acre-feet, the amount of water to be delivered is increasing according to an agreed-upon schedule until the maximum transfer yield of 200,000 acre-feet per year is achieved in 2021. The Water Authority received 115,000 acre-feet from IID transfers in 2018. In addition, the Water Authority’s portfolio includes imported supplies from water conserved as a result of the lining of the All-American Canal and the Coachella Canal. The Water Authority began receiving water from the Coachella Canal Lining Project in 2007 and from the All-American Canal Lining Project in 2009. In 2018, the Water Authority received approximately 79,000 acre-feet from the Coachella Canal Lining Project and All-American Canal Lining Project transfers. Dry year water transfers, which are short term transfers or leases that are typically agreed to and completed within one to three years, have been used occasionally in the past, most recently in 2011.

**Water Supply; Facilities**

The Water Authority is a member agency of and obtains a portion of its water supply from MWD. The Water Authority also obtains conserved water from the Colorado River under long-term agreements: from the IID and water conserved through the lining of the All-American Canal, an 80-mile long aqueduct which runs parallel to the Mexico California border in southeastern California and conveys water from the Colorado River to the Imperial Valley; and the Coachella Canal, a 122-mile aqueduct which also conveys Colorado River water from the All-American Canal to the Coachella Valley north of the Salton Sea.

The Water Authority’s water facilities include approximately 310 miles of water conveyance pipelines, storage capacity in several regional reservoirs and approximately 136 million gallons per day (MGD) of water treatment capacity through a Water Authority-owned water treatment plant and capacity in a plant owned by a member agency.

The Water Authority’s overall progress in supply diversification for the last five fiscal years is set forth in the following table:

### WATER AUTHORITY SERVICE AREA WATER SUPPLY

<table>
<thead>
<tr>
<th>Supply Source</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>MWD</td>
<td>325,729</td>
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<td>187,053</td>
<td>192,701</td>
<td>163,639</td>
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<tr>
<td>IID Transfer</td>
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<td>100,000</td>
<td>100,000</td>
<td>100,000</td>
<td>115,000</td>
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<td>Canal Lining</td>
<td>80,256</td>
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<td>79,347</td>
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<td>79,326</td>
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<tr>
<td>Dry Year Transfer</td>
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<td>0</td>
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<tr>
<td>Surface Water(^1)</td>
<td>40,396</td>
<td>4,071</td>
<td>18,021</td>
<td>25,747</td>
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</tr>
<tr>
<td>Groundwater(^2)</td>
<td>19,223</td>
<td>23,643</td>
<td>20,371</td>
<td>16,103</td>
<td>25,819</td>
</tr>
<tr>
<td>Recycled Water</td>
<td>28,932</td>
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<td>22,818</td>
<td>23,774</td>
<td>27,116</td>
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<tr>
<td>San Luis Rey Water Transfer(^3)</td>
<td>0</td>
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<td></td>
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<td>22,027</td>
</tr>
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<td>Seawater Desalination</td>
<td>0</td>
<td>0</td>
<td>27,353</td>
<td>40,421</td>
<td>40,907</td>
</tr>
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<td>Total</td>
<td>594,536</td>
<td>539,361</td>
<td>454,963</td>
<td>477,024</td>
<td>518,397</td>
</tr>
</tbody>
</table>

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1. Fluctuations in surface water use attributed to variation in local hydrology.
2. Includes Yuima Municipal Water District supplemental groundwater use.
3. San Luis Rey Water Transfers commenced in 2017

**Future Water Supply Planning**
Over the past several years, the Water Authority’s primary water supply sources were adversely impacted by a combination of multiple dry-year climatic events and regulatory constraints imposed on water deliveries. The Colorado River has experienced long term dry conditions since 2000 and regulatory issues related to the Bay-Delta continue to constrain supply availability and impact the cost of SWP water. As such, the Water Authority continues to pursue regional supply diversification efforts through the support of long-term planning efforts for local surface water, groundwater, recycled water, local seawater desalination and conservation efforts.

The Water Authority’s supply planning strategy was developed and continues to be implemented in cooperation with its member agencies. As part of its strategic supply planning process, the Water Authority produces several long-range planning documents, including the Water Authority’s 2015 UWMP. The preferred mix reflects the Water Authority Board policy to diversify supplies required to meet future water needs and increase supply reliability through local agency control. The 2015 UWMP was approved by the Water Authority Board in June 2016. The 2015 UWMP distinguishes “verifiable” new water supplies from “additional planned” or “conceptual” new water supplies. Verifiable projects are those with adequate documentation regarding implementation and supply utilization. “Additional planned” projects are those that either the Water Authority or member agencies are actively pursuing and currently funding, but do not currently rise to the level of verifiable for implementation. Conceptual projects are those considered to be in the pre-planning phase, where the projects have not progressed to a point where the project yield can be factored into reliability assessments conducted as part of the UWMP. Individual components of the projected water supply mix contained in the 2015 UWMP include: supplies from MWD, long-term water transfers from conserved IID agricultural water, water savings from the lining of the All-American Canal and Coachella Canal, seawater desalination supplies from the Carlsbad Desalination Plant, surface water, potable reuse and continued development of recycled water and groundwater. Additionally, through an agreement with local Native American bands, member agency supplies now include water transfers from the San Luis Rey Indian Water Authority. The Water Authority also supports water conservation as an important part of its supply diversification strategy. The Water Authority’s conservation efforts are intended to reduce demand for imported water, demonstrate a continued commitment to conservation best management practices, and assist member agencies in complying with the per-capita water use reduction required under the 2009 State Water Legislation.

Seawater desalination is a key component of the Water Authority’s supply diversification strategy. The Water Authority’s seawater desalination efforts include the Plant – See the forepart of this Limited Offering Memorandum.

The Water Authority member agencies are pursuing options to further diversify the region’s water resources through local supply development, which includes implementation of projects such as brackish groundwater recovery, potable reuse, seawater desalination and non-potable water recycling. With the goal of maximizing the use of recycled water, member agencies are pursuing the development of potable reuse projects.

The percent breakdown of Water Authority and its member agencies’ projected water supply mix for 2020 and 2035 based on the 2015 UWMP and total water demands based on the Interim Demand Forecast Reset are shown in the table below. To account for the long-term nature of the 2035 projections, production from member agencies’ additional planned local supply projects are included.
Climate Change. Evaluation of potential climate change impacts on water demand represents a prudent water resources planning exercise. However, definitive projections on the timing and magnitude of climate change-initiated variations to local temperature and precipitation patterns are still forthcoming. The body of work currently available from national and international research contains a full spectrum of possible outcomes based on numerous greenhouse gas emission scenarios run through an assortment of General Circulation Models (“GCM”). In the absence of research consensus, the Water Authority has adopted a qualitative evaluation approach that uses five climate change scenarios to develop a range of potential future water demand outcomes.

Findings from the evaluation of the climate change scenarios indicate no dramatic shifts in near-term precipitation patterns for the San Diego area. Additionally, for reference year 2040, the end of the 2015 UWMP planning horizon, mixed results were observed in the variation of precipitation projections among the climate models. Only two of the climate scenarios resulted in annual precipitation estimates for the region lower than the historic average. Results for temperature change revealed warming on average relative to historic conditions under all scenarios. Climate change impact on water demand ranged from negligible to under a 10 percent increase across the five scenarios.

The Water Authority Board approved a Climate Action Plan on March 27, 2014, updated December 2015, that contains a voluntary strategy for reducing the agency’s greenhouse gas emissions (carbon dioxide equivalent) linked to climate change. The plan demonstrates the Water Authority’s commitment to improving the energy efficiency of its operations and saving ratepayer money by limiting greenhouse gas emissions over which the Water Authority has direct control. The Climate Action Plan includes a 15 percent reduction in the baseline amount of carbon dioxide emissions. Water Authority projections show that the agency will achieve the targeted reductions. In addition, future facilities will incorporate energy-efficient designs, and the Water Authority continues to investigate additional ways to mitigate greenhouse gas emissions through expansion of renewable energy sources such as hydropower and solar.

On April 25, 2013, San Diego Coastkeeper filed a lawsuit in San Diego Superior Court challenging the 2013 Master Plan and Climate Action Plan on environmental grounds. The 2013 Master Plan update and Climate Action Plan, along with the related environmental review documents, were
approved in a process that involved approximately two dozen public workshops, meetings and hearings since September 2011. The San Diego Superior Court entered a judgment in the Water Authority’s favor denying the petition for writ of mandate. Notice of entry of judgment was given on August 27, 2015. Though Coastkeeper initially appealed, Coastkeeper’s appeal was later dismissed and the judgment for the Water Authority is final.

**PRIMARY SOURCES OF SUPPLY**

**Local Water Supplies**

In 1990, San Diego County area local supplies consisted almost exclusively of surface water and groundwater sources which represented only five percent of the region’s total water supply. These sources are heavily dependent upon precipitation and are cyclical in nature. Over the last several decades, total local supplies have ranged from a low of approximately 26,000 acre-feet in fiscal year ended June 30, 1991 to more than 151,000 acre-feet in fiscal year ended June 30, 1999. Total local water use came to approximately 47,000 acre-feet in the fiscal year ended June 30, 2016.

In the fiscal year ended June 30, 2018, local member agency supplies accounted for approximately 23 percent of the region’s water supply portfolio or roughly 119,000 acre-feet. The year-over-year increase in member agency local supplies was achieved through expanded brackish groundwater production, greater surface water use resulting from above average precipitation and runoff in the 2016-2017 winter and water transfers from the San Luis Rey Indian Water Authority.

**The Plant**

See the forepart of this Limited Offering Memorandum for a description of the Plant.

**Water Authority Water Transfers**

Core water transfers have emerged as one of the Water Authority’s primary alternatives to heavy reliance upon purchases from MWD, thus helping the Water Authority accomplish its supply diversification goal. In general, water transfers typically involve purchasing water for a specified period of time from an agency or district that then reduces its water use by the equivalent amount. The principle behind water transfers is that market forces will work to reallocate water supplies. The Water Authority/IID core water transfer, described below under “Quantification Settlement Agreement”, is an example of this principle, providing for gradual increases to a maximum of 205,000 acre-feet per year by 2021, then stabilizing at 200,000 acre-feet per year beginning in 2023. Also see “—All-American Canal and Coachella Canal Lining Projects” below.

**Quantification Settlement Agreement**

The QSA and its existing priorities and guidelines impact the Water Authority’s supply portfolio with respect to both water transfers as well as water purchased from MWD. The QSA establishes a plan for California to reduce its overuse of Colorado River water. The Water Authority’s Water Transfer Agreement with IID, described in detail below, is a cornerstone of the QSA. The Water Authority’s Colorado River Program manages the implementation of the Water Authority’s agreements under the QSA, including the Water Transfer Agreement and the agreements relating to lining of portions of the All-American and Coachella Canals. Taking into account the Interim Demand Forecast Reset, the Water Authority expects approximately 50 percent of the region’s water supply from the IID water transfer and canal lining projects by 2020.

The Water Authority/IID core water transfer provides for gradual increases to a maximum of 205,000 acre-feet per year by 2021, then stabilizing at 200,000 acre-feet per year beginning in 2023. Canal linings in Imperial and Coachella Valley have also allowed the Water Authority to reduce its reliance on purchases from MWD. The All-American and Coachella canal lining projects are critical components of the Quantification Settlement Agreement, and provide approximately 80,000 acre-feet per
year for 110 years. Through September 30, 2018, the Water Authority has received almost 1.9 million acre-feet of Colorado River supplies from its QSA transfer with IID and canal lining projects.

The following table details the existing priorities of the California users of Colorado River water under the 1931 Seven-Party Agreement. The Water Authority is entitled to Priority 3(a) under its Water Transfer Agreement with IID. The Colorado River supplies purchased from MWD fall under Priority 4 and, when available, 5(a) and 5(b).

**PRIORITIES UNDER THE 1931 CALIFORNIA SEVEN-PARTY AGREEMENT\(^1\)**

<table>
<thead>
<tr>
<th>Priority</th>
<th>Description</th>
<th>Acre-Feet Annually</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Palo Verde Irrigation District gross area of 104,500 acres of land in the Palo Verde Valley</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Yuma Project in California not exceeding a gross area of 25,000 acres in California</td>
<td></td>
</tr>
<tr>
<td>3(a)</td>
<td>Imperial Irrigation District and other lands in Imperial and Coachella Valleys(^2) to be served by All-American Canal</td>
<td>3,850,000</td>
</tr>
<tr>
<td>3(b)</td>
<td>Palo Verde Irrigation District - 16,000 acres of land on the Lower Palo Verde Mesa</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Metropolitan Water District of Southern California for use on the coastal plain</td>
<td>550,000</td>
</tr>
<tr>
<td></td>
<td><strong>SUBTOTAL</strong></td>
<td><strong>4,400,000</strong></td>
</tr>
<tr>
<td>5(a)</td>
<td>Metropolitan Water District of Southern California for use on the coastal plain</td>
<td>550,000</td>
</tr>
<tr>
<td>5(b)</td>
<td>Metropolitan Water District of Southern California for use on the coastal plain(^3)</td>
<td>112,000</td>
</tr>
<tr>
<td>6(a)</td>
<td>Imperial Irrigation District and other lands in Imperial and Coachella Valleys to be served by the All-American Canal</td>
<td>300,000</td>
</tr>
<tr>
<td>6(b)</td>
<td>Palo Verde Irrigation District - 16,000 acres of land on the Lower Palo Verde Mesa</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td><strong>5,362,000</strong></td>
</tr>
<tr>
<td>7</td>
<td>Agricultural use in the Colorado River Basin in California</td>
<td>Remaining surplus</td>
</tr>
</tbody>
</table>


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1 Agreement dated August 18, 1931, among Palo Verde Irrigation District, IID, CVWD, MWD, the City of Los Angeles, the City of San Diego and the County of San Diego. These priorities were memorialized in the agencies’ respective water delivery contracts with the Secretary of the Interior.

2 The CVWD serves Coachella Valley.

3 In 1946, the City of San Diego, the Water Authority, MWD and the Secretary of the Interior entered into a contract that merged and added the City of San Diego and the County of San Diego’s rights to storage and delivery of Colorado River water to the rights of MWD.
Water Authority/Imperial Irrigation District Water Transfer. In September 1995, the Water Authority approved a Memorandum of Understanding with IID to negotiate a long-term transfer of conserved agricultural water. In July 1996, the Water Authority and IID agreed to draft terms for a Cooperative Water Conservation and Transfer Program. On April 29, 1998, the Water Authority and IID approved an Agreement for the Transfer of Conserved Water (the “Water Transfer Agreement”). Concurrently with its approval of the QSA on October 10, 2003, the Water Authority executed a Revised Fourth Amendment to the Water Transfer Agreement and commenced implementation of the water transfer. The Water Transfer Agreement provides that reliable water saved through conservation measures in Imperial Valley will be transferred to the Water Authority through existing MWD facilities. This water supply is highly reliable because it is part of IID’s Colorado River Water, Priority 3(a). This water would be expected to remain available to the Water Authority even if Colorado River supplies to MWD were interrupted under its lower Priority 4. Implementation of the water transfer began in 2003 with a transfer of 10,000 acre-feet of water. IID has increased the volume of water conserved and transferred to the Water Authority according to the schedule described in the Water Transfer Agreement. Since deliveries began in 2003, IID Transfer deliveries through September 30, 2018 totaled 1,097,500 million acre-feet.

In calendar year 2018, the Water Authority received 130,000 acre-feet of conserved water from the Water Transfer Agreement, and 160,000 acre-feet of conserved water is scheduled for deliveries in calendar year 2019. An additional 10,000 acre-feet of water is scheduled for calendar years 2020-2022 consisting of 2,500 acre-feet in 2020 and 2022, and 5,000 acre-feet in 2021 through the Early Transfer Water provision in the Revised Fourth Amendment to the Water Transfer Agreement.

The Water Transfer Agreement provides for annual deliveries through 2047 as follows:

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Transfer Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>100,000</td>
</tr>
<tr>
<td>2017</td>
<td>100,000</td>
</tr>
<tr>
<td>2018</td>
<td>130,000</td>
</tr>
<tr>
<td>2019</td>
<td>160,000</td>
</tr>
<tr>
<td>2020</td>
<td>190,000</td>
</tr>
<tr>
<td>2021 – 2047</td>
<td>200,000</td>
</tr>
</tbody>
</table>

All-American Canal and Coachella Canal Lining Projects. As part of the QSA and related negotiations, MWD assigned to the Water Authority its rights to develop approximately 80,000 acre-feet per year of conserved Colorado River water from projects to line portions of the earthen All-American Canal (the “All-American Canal Lining Project” or “AACL”) and the Coachella Canal (the “Coachella Canal Lining Project” or “CCLP” and, collectively with the AACL, the “Canal Lining Projects”) pursuant to an Allocation Agreement among various parties to the QSA. Construction work on the CCLP was complete in April 2007 and it produces approximately 21,500 acre-feet of conserved water annually to the Water Authority, plus any unused environmental mitigation water. The Water Authority is entitled to receive up to an additional 4,850 acre-feet of water supply annually from the portion not used on environmental mitigation projects of the CCLP. Water began flowing in the AACL in 2009, and 56,200 acre-feet of water is conserved annually for the Water Authority. The AACL and CCLP also provide an additional 16,000 acre-feet of water supply annually for use by certain Indian tribes and local agencies located in northern San Diego County. The Water Authority has received approximately 832,000 acre-feet of water supply from Canal Lining Projects through September 30, 2018. Conserved water from
the Canal Lining Projects is expected to provide the Water Authority’s service area with more than 8.5 million acre-feet of water over the 110-year life of the agreement.

Exchange Agreement. The 2003 Exchange Agreement between the Water Authority and MWD provides for transportation of Colorado River water from the Canal Lining Projects and the IID water transfer through MWD facilities. Under the Exchange Agreement, MWD is required to deliver water from the IID water transfer and Canal Lining Projects for up to 45 years and 110 years, respectively. The Water Authority agreed to pay MWD’s lawful wheeling rate for transportation of these water supplies.

The Water Authority and MWD are engaged in a legal dispute regarding lawful rates for transportation. The dispute was heard by the 1st District Court of Appeal in San Francisco on May 10, 2017, and was affirmed in part and reversed in part, with remand back to the superior court for further proceedings. See “Litigation Challenging MWD Rate Structure”.

Salton Sea Environmental Issues. Implementation of the QSA requires certain mitigation of the impacts of QSA programs on the Salton Sea, which is an important habitat for a wide variety of fish- eating birds as a stopover spot along the Pacific flyway. Some of these birds are listed as threatened or endangered species under the federal or California Endangered Species Acts (respectively, the “Federal ESA” and the “California ESA” and, collectively, the “ESAs”). Located at the lowest elevations of an inland basin and fed primarily by agricultural drainage with no outflows other than evaporation, the Salton Sea is on a trend towards hyper-salinity, which has already impacted the Salton Sea’s fishery. This fishery in the Salton Sea has historically been suitable habitat for the fish-eating birds. The transfer of water from IID to the Water Authority will reduce the volume of agricultural run-off from IID into the Salton Sea, which in turn may accelerate the natural trend of the Salton Sea to hyper-salinity and potentially increase particulate matter (“PM10”) emissions or “dust” as the sea’s shoreline recedes. The appropriate mitigation for impacts to the Salton Sea from the Water Authority/IID water transfer and the larger issue of Salton Sea restoration has been addressed by State legislation implementing the QSA. In passing that legislation, the State Legislature committed the State to undertake restoration of the Salton Sea ecosystem. Restoration of the Salton Sea is subject to selection and approval of an alternative by the State Legislature and funding of the associated capital improvements and operating costs.

A primary initial strategy to mitigate the reduction in inflows resulting from QSA water transfers in the Imperial and Coachella valley was to deliver water to the Salton Sea for a 15-year period from 2003 through 2017. This 15-year period was intended to allow the State to identify and select a preferred alternative for Salton Sea restoration. Since 2003, however, the State has made only minimal progress toward the Salton Sea’s restoration.

On November 18, 2014, IID filed a petition with the SWRCB seeking modification of SWRCB Revised Order WRO 2002-2013, which approved the long-term transfers from IID to the Water Authority and to CVWD. In its petition, IID requested the SWRCB modify this order to require the State of California to fulfill its commitment to restore the Salton Sea as a condition of transfer. On March 15, 2017 IID filed a motion for an evidentiary hearing to revisit SWRCB Revised Order WRO 2002-2013 and push for continued progress from the State. On November 7, 2017, the SWRCB responded to the petition through a revised WRO stipulating additional requirements for the State of California including: provide dust control and restore habitat on 30,000 acres of exposed playa over 10 years; grant the SWRCB continued oversight of State’s restoration efforts; and develop a long-term restoration plan by 2022. The stipulated order also allows for continued implementation of the mitigation program approved as part of the original WRO for the Quantification Settlement Agreement water transfers.
The State has made some progress in moving forward to meet its obligations to restore the Salton Sea. In May 2015, the California Governor created a Salton Sea Task Force, led by a newly appointed Assistant Secretary for Salton Sea Policy, and consisting of representatives from the California Natural Resources Agency, the California Environmental Protection Agency and related state departments. Further, State legislation signed in October 2015 tasked the Natural Resources Agency with providing a list of “shovel ready” projects at the Salton Sea. In August 2016, a memorandum of understanding was signed by the U.S. Department of the Interior and the California Natural Resources Agency to solidify these goals and call for $30 million in federal funding over the next ten years for activities associated with the Salton Sea Management Program. An addendum to this MOU was signed in January 2017 to establish that the California Natural Resources Agency would coordinate with the QSA Joint Powers Authority and expedite the use of JPA mitigation funds for air quality mitigation. Following these agreements, the California Natural Resources Agency released its draft Salton Sea Management Program Phase I: 10-Year Plan in March 2017. As required under the SWRCB 2017 Stipulated Order, the State’s Salton Sea Management Program is currently working on plans for projects to meet its annual acreage milestones for dust control and habitat creation.

Quantification Settlement Agreement Joint Powers Authority. The Quantification Settlement Agreement JPA Agreement, which was executed in October 2003, established the Quantification Settlement Agreement Joint Powers Authority (“Quantification Settlement Agreement JPA”). The purpose of the Quantification Settlement Agreement JPA is to administer the funding of environmental mitigation requirements related to QSA water transfers. The Quantification Settlement Agreement JPA collects, holds, invests, and disburses funds needed for mitigation projects. The Quantification Settlement Agreement JPA is comprised of representatives from the DFW, CVWD, IID and the Water Authority. Under terms of the Quantification Settlement Agreement JPA Agreement, the collective financial obligation of the three water agencies (CVWD, IID and the Water Authority) is capped at $133 million (in 2003 dollars, discounted at six percent per annum), or $288 million in nominal dollars, of which the Water Authority is responsible for $52.2 million in 2003 dollars ($94 million in nominal dollars). The Water Authority has spent $81 million to date towards its Quantification Settlement Agreement JPA environmental mitigation obligations through calendar year 2018. The Quantification Settlement Agreement JPA modified its payment schedules on May 20, 2015 to advance $40.5 million to pay for environmental mitigation requirements. Advance payments made by the water agencies are discounted at a rate of six percent. This modification includes an advance from the Water Authority of $10 million over six years beginning in fiscal year ending June 30, 2016, which will result in a nominal savings to the Water Authority of approximately $4.61 million. The Water Authority’s obligations are payable from Net Water Revenues subordinate to Bonds and Contracts and the Subordinate Obligations. See “General Resolution Definitions”.

089247/563826-57652804.20

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The table below shows a history of payments the Water Authority has made to date and scheduled payments through 2025:

**HISTORICAL AND SCHEDULED**

**WATER AUTHORITY PAYMENTS PER QUANTIFICATION SETTLEMENT AGREEMENT JPA (MODIFIED IN 2007 AND 2015)**

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Historical Payments*</th>
<th>Calendar Year</th>
<th>Scheduled Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>$2,340,273</td>
<td>2019</td>
<td>2,810,053</td>
</tr>
<tr>
<td>2004</td>
<td>1,032,775</td>
<td>2020</td>
<td>1,900,836</td>
</tr>
<tr>
<td>2005</td>
<td>1,100,347</td>
<td>2021</td>
<td>3,801,632</td>
</tr>
<tr>
<td>2006</td>
<td>1,314,855</td>
<td>2022</td>
<td>1,517,597</td>
</tr>
<tr>
<td>2007</td>
<td>5,599,469</td>
<td>2023</td>
<td>1,221,837</td>
</tr>
<tr>
<td>2008</td>
<td>4,363,369</td>
<td>2024</td>
<td>1,345,439</td>
</tr>
<tr>
<td>2009</td>
<td>8,141,875</td>
<td>2025</td>
<td>1,047,693</td>
</tr>
<tr>
<td>2010</td>
<td>2,770,483</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>3,084,803</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>3,496,247</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2013</td>
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<td>2014</td>
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</tr>
<tr>
<td>2015</td>
<td>8,076,346</td>
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<td>2016</td>
<td>10,054,386</td>
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</tr>
<tr>
<td>2017</td>
<td>10,164,814</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td>8,664,667</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*In addition to the payments listed here, the Water Authority received a $3.35 million credit for payments made to the Bureau of Reclamation for Implementation of Conservation and Mitigation Measures for the Colorado River described in the U.S. Fish and Wildlife Service 2001 Biological Opinion.

The water agencies are also responsible for providing $30 million (in 2003 dollars) for the Salton Sea Restoration Fund, which is administered by DFW. CVWD and the Water Authority paid their full obligations to this fund in fiscal year ended June 30, 2005 ($8.3 million for CVWD, and $11.8 million for the Water Authority (in 2003 dollars)). IID is paying its share of these funds according to a payment schedule.

*Potential Colorado River Shortage.* In December 2007, the Secretary of the Interior executed a Record of Decision (“**ROD**”) for guidelines that determine potential shortage allocations among the Lower Basin states of California, Arizona, and Nevada (Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead). Prolonged drought conditions have plagued the Colorado River Basin since 2000, which caused Lake Mead to fall to a record low elevation level in July 2016 and created an increased likelihood of future shortage allocations, which have never occurred on the Colorado River. The Bureau of Reclamation has been meeting with the Colorado River Basin States and water agencies on a Lower Basin Drought Contingency Plan to address a potential shortage of Colorado River water due to anticipated elevation and storage levels at Lake Mead. Though under the existing Law of the River, California is not legally required to initially reduce Colorado River diversions during a declared shortage, the draft Drought Contingency Plan includes California voluntarily reducing its Colorado River water use if future reservoir levels reach specified conditions. Per the Quantification Settlement Agreement and Conserved Water Transfer Agreement with IID, the Water Authority would be required to take a pro-rata

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reduction in its water transfer supplies if the Secretary of the Interior declares an official shortage in the Lower Colorado River Basin that affects deliveries to IID.

**The Metropolitan Water District of Southern California**

As described above, the Water Authority is a member agency of and obtains water from MWD, which derives its supply from the Colorado River via MWD’s Colorado River Aqueduct, and the SWP, via the Edmund G. Brown California Aqueduct. The information contained herein regarding MWD was derived from publicly available information regarding MWD.

MWD’s primary purpose is to provide wholesale imported water to its member agencies. The MWD service area comprises approximately 5,200 square miles and includes portions of the six counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura. There are 26 member agencies of MWD, consisting of 14 cities, 11 municipal water districts and the Water Authority. A Board of Directors, currently numbering 38 members, governs MWD. Each member agency has at least one representative on the MWD’s Board. Representation and voting rights are based upon the assessed valuation of property within each member agency. The Water Authority has four members on the MWD’s Board and its voting entitlement is 17.42 percent as of August 20, 2018. The population of the MWD service area is currently estimated to be approximately 19 million.

Historically, the Water Authority has been the largest purchaser of water from MWD. In the fiscal year ended June 30, 2018, the Water Authority’s estimated water purchases from MWD represented approximately 12.8 percent of MWD’s total sales. In addition, under an exchange agreement, MWD transported about 180,000 acre-feet of the Water Authority’s independently obtained Colorado River water to the Water Authority.

In the fiscal year ended June 30, 2018, MWD supplied approximately 1.34 million acre-feet of water to its member agencies. MWD faces a number of challenges in providing a reliable and high quality water supply for Southern California. These include, among others: (1) population growth within the service area; (2) increased environmental regulations, which may impact treatment techniques and operations of facilities; (3) regulatory restrictions on the operation of the SWP; (4) variable weather conditions; (5) climate change that influences the availability and timing of imported supplies; (6) cost associated with maintaining its supplies; and (7) increasing water rates, improved water use efficiency and member agencies’ local supply development’s impact on MWD water sales. Supply deficiencies can occur during periods of drought. While MWD plans and manages reserve supplies to account for normal occurrences of drought conditions, increased regulatory restrictions and prolonged droughts may impact MWD’s ability to provide water to its member agencies. Additionally, planning by MWD member agencies to increase their own local supplies may affect MWD water sales.

The MWD Act provides a preferential right for the purchase of water by each of the MWD member agencies. This preferential right is based upon a ratio of all payments made to MWD by each member agency on tax assessments and payments toward the capital and operating expenses of MWD, except purchases of water, to all such payments made by all member agencies. As part of the Water Authority’s rate litigation against MWD (See “Litigation Challenging MWD Rate Structure”), the Water Authority challenged MWD’s method of calculation preferential rights. The court ruled in the Water Authority’s favor. MWD has since corrected its calculation, and as of June 30, 2017, the Water Authority has a statutory preferential right to 24.22% of MWD’s total available supply.

It is MWD’s declared policy to meet all its member agencies’ wholesale water needs, including those of the Water Authority. In the most recent three water supply shortages in the early
1990’s and 2000’s, the MWD Board has adopted allocation plans using financial penalties to limit the amount of water MWD supplies to its member agencies. Operating under the 2008 Water Supply Allocation Plan (the “Water Supply Allocation Plan” or the “WSAP”) as amended in December 2014, MWD’s allocation of water takes into consideration population growth, local supply investments, changes in local supply conditions, demand hardening from conservation, groundwater replenishment needs of some of its member agencies, and each member agency’s dependence on MWD supplies. MWD implemented Level 2 of its WSAP in fiscal year 2010 and most of fiscal year 2011. MWD terminated the WSAP Level 2 allocation in April 2011 based on the water supply outlook, improved storage conditions, and reduced water demands. Due to renewed and worsening statewide drought conditions, on February 11, 2014, MWD declared a water supply alert that urged its service area’s cities, counties, local public water agencies and retailers to achieve extraordinary voluntary conservation. On April 14, 2015, MWD’s Board approved Level 3 WSAP effective on July 1, 2015. On May 10, 2016, MWD rescinded its WSAP Level 3 allocation, effective immediately, due to improved supply conditions.

MWD Water Supply

MWD imports water from primarily two sources: the Colorado River via the Colorado River Aqueduct, and the Bay-Delta via the Edmund G. Brown California Aqueduct of the SWP owned by the State of California.

*Colorado River Water.* Under applicable laws, agreements and treaties governing the use of water from the Colorado River, California is entitled to 4.4 million acre-feet of Colorado River water annually, plus one-half of any surplus that may be available collectively for Arizona, California and Nevada as declared on an annual basis by the United States Secretary of the Interior. Under a priority system that governs the distribution of Colorado River water made available to California, MWD holds the fourth priority right of 550,000 acre-feet per year and a fifth priority right of 662,000 acre-feet per year. MWD’s fourth priority right is within California’s basic annual apportionment of 4.4 million acre-feet; however, its fifth priority right is outside of this entitlement and therefore is not considered a firm supply. (For a description of the priority of various California water users see the table under “Quantification Settlement Agreement”.) Until 2003, MWD had been able to take full advantage of its fifth priority right as a result of the availability of surplus water and apportioned but unused water by other states. However, Arizona and Nevada increased their use of water from the Colorado River, thus reducing the availability of unused apportionment for California. In addition, beginning in 2003, a severe drought in the Colorado River Basin reduced storage reserves in system reservoirs, thus eliminating MWD’s access to surplus water since that time. Prior to 2003, MWD was able to divert approximately 1.25 million acre-feet (its aqueduct capacity) in any year, but since that time, MWD’s Colorado River water deliveries, inclusive of the Water Authority’s QSA water, have been limited to a low of approximately 633,000 acre-feet in 2006 and a high of approximately 1,179,000 acre-feet in 2015, and totaled over 677,000 acre-feet in 2017. Average annual net deliveries from 2008 to 2017 were approximately 959,000 acre-feet, with annual volumes dependent primarily on increasing transfers of conserved water and on availability of unused higher priority agricultural water within California. MWD has entered into agreements with other Colorado River water users to mitigate its loss of access to Colorado River surplus supplies. As of May 20, 2018, MWD plans to divert a little under 877,000 acre-feet of Colorado River supplies, inclusive of transporting approximately 209,000 acre-feet of the Water Authority’s QSA supplies, to its service area in 2018.

The Colorado River Aqueduct is owned and operated by MWD. Work on the Colorado River Aqueduct commenced in 1933 and water deliveries started in 1941. Additional facilities were completed by 1961 to meet additional requirements of MWD’s member agencies. The Colorado River Aqueduct is 242 miles long, starting at Lake Havasu in Mohave County, Arizona, and terminating at
Lake Mathews in Riverside County, California. After deducting evaporation and seepage losses in transporting and storing the water and considering maintenance requirements, the maximum aqueduct capacity available for delivery by MWD to its member agencies is approximately 1.25 million acre-feet per year.

**Colorado River Water Environmental Considerations.** Several fish species and other wildlife species either directly or indirectly have the potential to affect Colorado River operations, thus changing power operations and the amount of water deliveries to the Colorado River Aqueduct. A number of species that are on either “endangered” or “threatened” lists under the Federal ESA or the California ESA are present in the area of the Lower Colorado River. To address this issue, a broad-based state/federal/tribal/private regional partnership, which includes water, hydroelectric power and wildlife management agencies in Arizona, California and Nevada, developed a multi-species conservation plan for the main stem of the Lower Colorado River (the **Lower Colorado River Multi-Species Conservation Program** or “MSCP”). The MSCP allows MWD to obtain federal and state permits for any incidental take of protected species resulting from current and future water and power operations and diversions on the Colorado River for a term of 50 years. The MSCP also covers operations of federal dams and power plants on the Colorado River, and environmental coverage for the Water Authority for the change in point of diversion from Imperial Dam to Lake Havasu for Colorado River supplies from the IID water transfer and Canal Lining Projects.

**Colorado River Water Seismic Considerations.** Portions of the Colorado River Aqueduct are located near earthquake faults, including the San Andreas Fault. The five pumping plants on the Colorado River Aqueduct have been buttressed to better withstand seismic events. Other components of the Colorado River Aqueduct are monitored for any necessary rehabilitation and repair. Supplies are dispersed throughout MWD’s service area, and a six-month reserve supply of water normally held in local storage provides reasonable assurance of continuing water supplies during and following seismic events. MWD has developed an emergency plan that calls for specific levels of response appropriate to an earthquake’s magnitude and location. However, no assurance can be made that a significant seismic event would not cause damage to project structures, which could thereby interrupt the supply of water from the Colorado River Aqueduct.

**State Water Project.** MWD’s other major source of water is the SWP. The State-owned SWP is operated by DWR. The SWP transports Feather River water stored in, and released from Oroville Dam and unregulated flows diverted directly from the Bay-Delta south via the California Aqueduct to four delivery points near the northern and eastern boundaries of MWD’s service area. The total length of the California Aqueduct is 444 miles.

In 1906, MWD signed a water supply contract with DWR. MWD is one of 29 agencies that have long-term contracts for a water supply with DWR. MWD is the largest of the 29 agencies in terms of the population it serves (approximately 18.8 million), the share of SWP water to which it is entitled, and the total amount of annual payments made to DWR. MWD’s water supply contract with DWR provides for the delivery of up to 1,911,500 acre-feet per year, or about 46 percent of project deliveries. MWD also has a “call” on 100,000 acre-feet per year of water it transferred to CVWD and the Desert Water Agency, if needed, and is required to pay for the financial obligations associated with that water supply during the call period.

The SWP was originally intended to produce 4.2 million acre-feet of water supply annually. The first SWP facilities were completed in the early 1970s; at that time, it was envisioned that additional facilities would be constructed as the demand for SWP water increased. Several factors, including public opposition and increased costs, combined to delay the construction of additional facilities. The quantity of SWP water supply available for delivery each year is determined largely
hydrology, operational considerations and, pumping restrictions due to environmental concerns. Uncertainties from climate change that influences future temperature and precipitation patterns also present challenges. Water supplies received from the SWP by MWD from 2004 through 2017, including water from water transfers, groundwater banking and exchange programs, varied from a high of 1,800,000 acre-feet in calendar year 2004 to a low of 593,000 acre-feet in calendar year 2015. MWD’s water supply from the SWP for calendar year 2017 was 685 percent of its contracted amount, or 1,625,000 acre-feet.

MWD’s SWP allocation for calendar year 2018 is 35 percent, or approximately 669,025 acre-feet.

**Bay-Delta Regulatory and Planning Activities.** The water supply and reliability challenges affecting the SWP are largely a result of longstanding environmental issues in the Bay-Delta estuary. In addition to its importance to urban and agricultural water users, the Bay-Delta is of critical ecological importance. The Bay-Delta is the largest estuary on the West Coast of the United States and provides habitat for more than 750 plant and animal species. One hundred fifty years of human activity have contributed to the destruction of habitat, the decline of several estuarine and anadromous fish species, and the deterioration of water quality. These activities have historically included increasing water demands from urban and agricultural water uses, the dredging and filling of tidal marshes, the construction of levees, urban runoff, wastewater discharges, agricultural drainage, runoff from abandoned mines, and the introduction of non-native species.

**Endangered Species Act Considerations.** The listing of several fish species as threatened or endangered under the Federal Endangered Species Act (“ESA”) and California ESA have adversely impacted SWP operations and limited its flexibility. Currently, five species (the winter-run and spring- run Chinook salmon, Delta smelt, North American green sturgeon and Central Valley steelhead) are listed under the ESAs. In addition, the longfin smelt is listed as a threatened species under the California ESA.

The Federal ESA requires that before any federal agency authorizes funds or carries out an action it must consult with the appropriate federal fishery agency to determine whether the action would jeopardize the continued existence of any threatened or endangered species, or adversely modify habitat critical to the species’ needs. The result of the consultation is known as a “biological opinion”. In the biological opinion the federal fishery agency determines whether the action would cause jeopardy to a threatened or endangered species or adverse modification to critical habitat and recommends reasonable and prudent alternatives or measures that would allow the action to proceed without causing jeopardy or adverse modification. The biological opinion also includes an “incidental take statement”. The incidental take statement allows the action to go forward even though it will result in some level of “take,” including harming or killing some members of the species, incidental to the agency action, provided that the agency action does not jeopardize the continued existence of any threatened or endangered species and complies with reasonable mitigation and minimization measures recommended by the federal fishery agency.

The United States Fish and Wildlife Service released a biological opinion on the impacts of the SWP and Central Valley Project on Delta smelt on in December 2008 following the filing by several environmental interest groups of legal challenges to those biological opinions under the Federal ESA. In June 2009, the National Marine Fisheries Service released a biological opinion for salmonid species. These biological opinions on delta smelt and salmonid species contain water supply restrictions that have a range of impacts on MWD’s deliveries from the SWP depending on hydrologic conditions, and are estimated to result in reductions of an average of one million acre-feet per year.
State Water Resources Control Board. The State Water Resources Control Board (“SWRCB”) is the agency responsible for setting water quality standards and administering certain water rights throughout California. SWRCB decisions can affect the availability of water to users of SWP water, including MWD. SWRCB exercises its regulatory authority over the Bay-Delta by means of public proceedings leading to regulations and decisions. These include the Bay/Delta Water Quality Control Plan (“WQCP”), which establishes the water quality standards and proposed flow regime of the estuary, and water rights decisions that assign responsibility for implementing the objectives of the WQCP to users throughout the system by adjusting their respective water rights. Since 2000, the SWRCB’s Water Rights Decision 1641 (“D-1641”) has governed the SWP’s ability to export water from the Bay-Delta for delivery to SWP contractors. See “State Water Project Operational Constraints”. The SWRCB is updating the WQCP via two separate processes, called plan amendments. On July 6, 2018 the SWRCB released a final proposal for the first set of amendments for new and revised flow water quality objectives for the Lower San Joaquin River and its three salmon-bearing tributaries, the Stanislaus, Tuolumne, and Merced Rivers, revised salinity water quality objectives in the southern Bay-Delta, and a program of implementation. The SWRCB plans to take action on the proposed flow on December 12, 2018 after it postponed action in August and again in November. Concurrently, the SWRCB has released a framework focused on the Sacramento River and its tributaries, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne rivers), Delta outflows, and interior Delta flows. The framework indicates potential amendments the SWRCB may propose related to the Sacramento River and its tributaries – the SWRCB plans to release a draft proposed plan and staff report analyzing alternatives for public review later in 2018.

State Water Project Operational Constraints. DWR has altered the operations of the SWP to accommodate species of fish listed under the ESAs. These changes in project operations have adversely affected SWP deliveries. The impact on total SWP deliveries attributable to the Delta smelt and salmonid species biological opinions combined is estimated to be one million acre-feet in an average year, reducing SWP deliveries from approximately 3.3 million acre-feet to approximately 2.3 million acre-feet, and are estimated to range from 0.3 million acre-feet during critically dry years to 1.3 million acre-feet in above normal water years.

Operational constraints may be required to remain in place until a long-term solution to the problems in the Bay-Delta is identified and implemented. New litigation, listings of additional species or new regulatory requirements could further adversely affect future SWP operations by requiring additional export reductions, releases of additional water from storage or other operational changes impacting water supply availability. The Water Authority cannot predict the ultimate outcome of any of the litigation or regulatory processes described above but believes they could have a materially adverse impact on the availability and cost of SWP and MWD water supplies.

Bay Delta Planning Activities. In 2000, several State and federal agencies released the CALFED Bay Delta Programmatic ROD and related environmental documents that outlined a 30-year plan to improve the Bay-Delta’s water supply, water quality, ecosystem, and levee stability. The CALFED ROD remains in effect and many of the State, federal and local projects begun under CALFED continue.

Building on CALFED and other Bay Delta planning activities, in 2006 multiple State and federal agencies, water agencies and other stakeholder groups entered into a planning agreement for the Bay- Delta Conservation Plan (“BDCP”). The BDCP was originally conceived as a comprehensive conservation strategy for the Bay Delta designed to restore and protect ecosystem health, water supply and water quality within a stable regulatory framework over a 50-year timeframe with corresponding long-term permit authorizations from fish and wildlife regulatory
agencies. The BDCP includes a new water conveyance infrastructure and extensive habitat restoration for the Bay Delta.

In 2015, the State and federal lead agencies proposed an alternative implementation strategy and new alternatives to the BDCP to provide for the protection of water supplies conveyed through the Bay-Delta and the restoration of the ecosystem of the Bay-Delta, termed "California WaterFix" and "California EcoRestore," respectively. In this alternative approach, DWR and the Bureau of Reclamation would implement planned water conveyance improvements as a stand-alone project (California WaterFix, as further described below) that would seek incidental take authorization for an unspecified period and would include only limited amounts of habitat restoration. The habitat restoration to be required would be that directly related to construction mitigation and the associated costs of such mitigation which would be underwritten by the public water agencies participating in the California WaterFix project. Ecosystem improvements and habitat restoration more generally (California EcoRestore) would be undertaken under a more phased approach than previously contemplated by the BDCP and would not be linked with the California WaterFix project or permits. Accelerated restoration actions totaling 30,000 acres of tidal marsh habitat were proposed to be undertaken in the coming decade to provide public benefits for listed fish in the Bay-Delta. Subsequent actions would be based on the proven merits of restoration. Delta Stewardship Council. On November 4, 2009, the State Legislature passed a comprehensive package of water legislation that included five bills addressing California’s statewide water situation, with particular emphasis on the Bay-Delta. The water legislation signed into law (the “2009 State Water Legislation”) includes, among other things, a 20 percent water conservation mandate for most localities in the State by 2020, new regulations regarding voluntary monitoring of groundwater levels by localities, and a State general obligation bond measure that would provide funding for projects and programs throughout the State and in the Bay-Delta.

The 2009 State Water Legislation also directed that the Bay-Delta be managed with the dual goals of water supply reliability and ecosystem protection. It created two new governmental agencies – the Sacramento-San Joaquin Delta Conservancy and the Delta Stewardship Council. The Sacramento-San Joaquin Delta Conservancy will implement ecosystem restoration activities in the Bay. The Delta Stewardship Council, formed in February 2010, is CALFED’s successor agency; it was directed to adopt and oversee implementation of a comprehensive management plan for the Bay-Delta (the “Delta Plan”) by January 1, 2012. The Delta Plan was intended to lay the foundation for projects and programs that will meet the State’s co-equal goals of improving statewide water supply reliability while providing a healthy ecosystem. The Delta Plan was adopted by the Delta Stewardship Council on May 16, 2013. Subsequently, its 14 regulatory policies were approved by the Office of Administrative Law. The Delta Plan became effective with legally-enforceable regulations on September 1, 2013. The 2009 State Water Legislation also provides that the BDCP, when completed and successfully permitted as a habitat conservation plan, be incorporated into the Delta Plan.

California WaterFix. California WaterFix is a project that was approved by DWR in July 2017 as an improvement to the State Water Project. Upon completion, it would provide new conveyance facilities for the transportation of State Water Project and Central Valley Project water from the north Delta, principally from three new intakes through two 30-mile long tunnels running under the Delta, to the existing aqueduct systems in the south Delta. The existing State Water Project Delta water conveyance system needs to be improved and modernized to address operational constraints on pumping in the south Delta. The State Water Project is subject to biological opinions and incidental take permits that substantially limit the way DWR operates the State Water Project. Therefore, under the California WaterFix, DWR will extend the delivery system from new north Delta water intakes on the Sacramento River to a new forebay in the south Delta to provide additional flexibility in operating the State Water Project. As configured, the total maximum north Delta diversion intake capacity would be 9,000 cfs.
In early 2018, DWR announced that it may consider staged implementation of the project in the future. The initial phase would consist of 6,000 cfs of diversion capacity through two intakes and one tunnel under the Delta. The remaining 3,000 cfs facilities would be constructed at a later date. Depending on the manner of implementing the project, the benefits to Metropolitan could be materially impacted.

Metropolitan indicates that the California WaterFix is expected to improve the reliability of Southern California’s water delivery system by updating aging infrastructure. In addition to the more efficient and effective delivery of water supplies through the Delta, DWR has identified other benefits of the California WaterFix, including allowing for more operational flexibility to deliver water through the Delta, and enabling a more natural flow of rivers in the Delta to protect sensitive fish species. DWR indicates that it would provide greater opportunity to capture and convey water from storm flows in wet and above-normal hydrological weather years to the State Water Contractors to refill reservoirs and replenish groundwater basins. DWR also indicates that it would improve the quality of water for export, and reduce climate change risk of increased salinity from rising sea levels. Metropolitan indicates that the California WaterFix would additionally help reduce the risks from a catastrophic seismic event in the Delta.

DWR estimates that it will take approximately 15 years to substantially complete the California WaterFix after commencement of construction. In July, 2017 DWR filed a validation action to legally establish its authority to issue revenue bonds to finance California WaterFix. More than a dozen public agencies and six environmental groups filed answers opposing the validation action; Metropolitan and three other public water agencies filed answers in support. A number of other lawsuits with respect to the project have also been filed as described below. Certain permits and other approvals necessary to commence construction remain to be obtained. Accordingly, DWR has not yet commenced construction of the project.

Based upon DWR's preliminary estimate, the capital costs of California WaterFix are estimated to be approximately $17 billion (in 2017 dollars). The preliminary cost estimate includes contingencies for construction costs and unknown expenses related to land acquisition. Given the scope of the project and the length of time it will take DWR to construct the project, this cost estimate may change based on numerous factors and the actual cost of construction of the project may differ materially. Metropolitan’s Estimated Costs and Rate Impacts. Metropolitan has projected that the impact on overall water rates and charges of an investment of this magnitude, based on Metropolitan's 2017-18 revenue requirements and assuming financing over a 40-year term at an assumed annual interest cost of 4.0 percent, would be an incremental increase in overall water rates and charges of approximately 2.2 percent per year over the anticipated construction timeline, or an approximate cumulative 33 percent at the end of 15 years. Metropolitan indicates that it is not possible to calculate the precise water rate impacts on retail ratepayers within Metropolitan's service area because of the wide variation of costs and water sources for each retail agency, and the fact that each retail agency makes its own retail rate decisions based on various factors. However, Metropolitan has estimated cost impacts for the average Southern California household. Metropolitan estimates that the average cost impact on households within its service area is approximately $4.80 per month, assuming approximately 70 percent of water users are residential and an estimated 6.2 million occupied households within the Metropolitan service area.

The incremental projected costs associated with participation by Metropolitan in the California WaterFix at the level approved on April 10, 2018 are estimated to increase Metropolitan's long-term projected average 3.0 percent annual rate increases by approximately 1.1 percent to 4.1 percent. Upon the successful completion of the California WaterFix, any water revenues that may be generated in the future from potential wheeling or delivery of water by Metropolitan utilizing the additional acquired capacity in the project could offset some of the projected financial impact of Metropolitan's participation; however,
specific future actions are speculative and subject to separate approvals, hence receipt of any such revenues cannot be assured and is not included in the above estimates.

Metropolitan's projections of future costs of the California WaterFix are based upon a number of assumptions, including those identified above. The actual cost impacts to Metropolitan of the California WaterFix will depend on a variety of factors, including among other things, the total costs of construction of the project and the interest rates at which any future financing of project costs can be implemented. Construction projects are subject to ordinary construction risks and delays applicable to projects of their kind, examples of which include contractor nonperformance; inclement weather affecting timeliness of completion; the costs and availability of, or delivery schedule for, land acquisition, equipment, components, materials, labor or subcontractors; issues regarding compliance with applicable environmental standards; natural hazards or seismic events during construction; and changing economic conditions (such as rising interest rates and inflation), the occurrence of any of which could increase construction costs substantially. Moreover, actual construction bids could be higher than projected for purposes of the preliminary cost estimate described herein. The scope and magnitude of, and the extended construction period required for, a project of the nature of the California WaterFix may exacerbate these risks. Further, as described below, the California WaterFix is the subject of ongoing litigation. Any delays in the implementation due to litigation or other causes will increase the risk of cost escalation. Finally, in the event the project is forestalled from implementation or abandoned prior to completion, expenditures incurred by Metropolitan prior to that time may represent sunk costs.

Completion of California WaterFix is subject to numerous lawsuits and other actions. The California WaterFix is currently subject to several lawsuits and Metropolitan indicates that it expects that additional lawsuits may be filed in the future with respect to the project. The current lawsuits primarily relate to DWR's powers to finance and construct the project and various environmental approvals and related matters. These lawsuits challenge multiple aspects of the project and, if DWR is unsuccessful in any of these actions, it could cause delays, increases of costs of the project, changes in scope to the project and/or mitigation, or even cancellation of the project. Actions taken by Metropolitan in connection with its approved participation in the project could also be the subject of litigation. Subsequent to the actions taken on April 10, 2018 by Metropolitan's Board in connection with the California WaterFix, as described above, Metropolitan received a notice from two organizations alleging certain violations of the Ralph M. Brown Act (the California state law governing how meetings of governmental agencies in the State are agendized and conducted) in connection with that meeting. There can be no assurance all of the permits and approvals will be obtained from the responsible parties in a timely manner and acceptable form, or at all. Further, the outcome of any litigation opposing the project cannot be known. Any such litigation could result in delays or, if successful, otherwise materially adversely impair the development, implementation or completion of the project.

State Water Project Contract Extension. During the 1960s, as the SWP was being constructed, long term contracts were signed with 29 public water agencies known as the “SWP Contractors”. The term of the majority of the SWP Contractors’ contracts with DWR currently extends to December 31, 2035 or until all DWR bonds issued to finance construction of project facilities are repaid, whichever is longer. In June 2014, DWR and the SWP Contractors reached an Agreement in Principle to extend the contract to 2085 and to make certain changes related to the financial management of the SWP going forward. DWR and 26 of the SWP Contractors, including MWD have signed the Agreement in Principle. DWR issued a Notice of Availability of the Draft Environmental Impact Report on August 17, 2016. The public review period ended October 17, 2016. On September 11, 2018, the Joint Legislature Budget Committee conducted a hearing to review the SWP contract amendment, clearing the way for the contracts to be extended. Through a separate process, DWR and SWP Contractors have also reached an Agreement in Principle on contract amendments for water management and California WaterFix. While DWR has historically defined and

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billed projects similar to WaterFix (e.g., Peripheral Canal) as Conservation Facilities, or a supply cost, the Agreement in Principle reached for WaterFix proposes to define California WaterFix under a separate category that could be a supply and/or transportation cost. MWD has indicated that it plans to discuss with its Board and member agencies on the proper allocation of WaterFix costs in 2019. DWR issued a Notice of Preparation for Environmental Impact Report on July 13, 2018. The Water Authority cannot predict the ultimate outcome of the finalized contract extension or amendments for WaterFix described above but either or both could have a materially adverse impact on the cost of SWP and MWD water supplies.

Seismic Considerations. Major portions of the California Aqueduct are located parallel to and near the San Andreas and other faults. All major faults are crossed either by canal at ground level or by pipeline at very shallow depths to ease repair in case of damage from movement along a fault. SWP facilities are designed to withstand earthquakes without major damage. Dams, for example, are designed to accommodate movement along their foundations and to resist earthquake forces on their embankments. Earthquake loads have been taken into consideration in the design of project structures such as pumping and power plants. The location of check structures on the canal allows for hydraulic isolation of the fault-crossing repair. No assurance can be made that a significant seismic event would not cause damage to SWP structures and interrupt the water supply available from the SWP.

2017 Oroville Dam Spillway Incident. Oroville Dam is a facility of the SWP. On February 7, 2017 the main flood control spillway at Oroville Dam was significantly damaged as DWR released water to manage higher inflows. The damaged main spillway impaired DWR’s ability to manage lake levels causing water to flow over the emergency spillway. The use of the emergency spillway resulted in erosion that threatened the stability of the emergency spillway structure. On February 12, 2017, an evacuation order was issued for approximately 200,000 people living in Oroville and surrounding communities. In April 2017, DWR released details of a recovery plan designed to ensure that the main spillway would be reconstructed sufficiently to handle flows of 100,000 cfs by November 1, 2017. DWR operated Oroville at a lower level during winter of 2018. Reconstruction work is ongoing and expected to be largely completed by November 1, 2018 [UPDATE]. In September 2018, DWR reported that the total costs of recovery and restoration are now at $1.1 billion, exceeding the earlier estimate of 870 million. The Federal Emergency Management Agency ("FEMA") has already approved and provided reimbursement to DWR for a portion of the emergency response costs. FEMA is evaluating information related to the recovery and construction phases of the project to determine eligibility. Any costs to be paid for by the SWP Contractors under the SWP contracts are expected to be financed long-term with DWR bonds.

Integrated Resources Plan. MWD’s “Integrated Water Resources Plan” (the “IRP”) was first adopted by the MWD Board in January 1996 as a long-term planning guideline for water resources and capital investments. IRP has evolved. The stated purpose of the IRP was to develop a “preferred resource mix” to meet the water supply reliability objective at the retail level, under foreseeable hydrologic conditions. In 2004, MWD’s Board adopted an updated IRP that added a proposal for a “planning buffer” to develop an additional 500,000 acre-feet of water to address “uncertainty” in future water supply availability. In October 2010, MWD’s Board adopted a second IRP update that recommended an “Adaptive Management” approach, with a strategy to implement the core and 500,000 acre-feet of buffer supplies and a third category of water supply development called, “Foundational Actions”. Because of the lack of nexus between MWD investments and its member agencies’ willingness to pay, if implemented successfully, the 2010 IRP could result in MWD having stranded costs in connection with supply assets. In March 2015, MWD convened an IRP Committee to update its 2010 IRP. The MWD Board adopted the 2015 IRP in January 2016. The 2015 IRP added that MWD would ensure the region’s local supply production target of 2.43 million acre-feet is reached by 2040 based on the premise that local supply projects may not perform as projected. However, while the
2015 IRP identified more than 205,000 acre-feet of local supplies member and sub agencies have in advanced planning stages, the 2015 IRP local supply target is based on production levels of local supply projects operating and being constructed during the IRP update and only includes 20,000 acre-feet of new local supply production by 2040. Instead of working with its member agencies to assess the probabilities and risks of local supply production, MWD is taking on an “all of the above” approach by shoring up its imported water supplies, developing a “regional” recycling project, and encouraging its member agencies to develop additional local supplies, thus continuing its approach to potentially over-develop supplies.

**Additional MWD Water Supplies.** MWD has a number of water transfer and storage and exchange programs with state, federal, public and private water districts and individuals in order to augment its imported water supplies. In 1988 MWD entered into a conserved water transfer agreement with IID under which it receives approximately 105,000 acre-feet per year until December 31, 2041, or 270 days beyond the termination of the QSA, whichever is later. MWD has entered into groundwater basin storage agreements with the Arvin Edison Water Storage District and Semitropic Water Storage District, an agreement with San Bernardino Valley Municipal Water District to coordinate the use of facilities and SWP supplies, and groundwater banking and exchange transfer agreements with the Antelope Valley-East Kern Water Agency, Kern Delta Water District, the Mojave Water Agency, CVWD and the Desert Water Agency. In February 2016, the MWD Board approved the purchase of up to 100,000 acre-feet of transfer supplies from Sacramento Valley to augment its supplies. Due to improved hydrologic conditions and the Governor’s conservation mandate, supplies exceed demands in 2016, ultimately, MWD did not pursue these supplies transfers. MWD also entered into an agreement with DWR, in December 2007, to purchase a portion of the water released by the Yuba County Water Agency (“YCWA”); MWD’s agreement allows MWD to purchase at least 6,555 acre-feet to 67,068 acre-feet per year of water supplies in dry years through 2025.

**MWD Storage.** In addition to making its imported water supplies available for annual consumptive uses, MWD also purchases and stores excess imported water in wet years for use in dry years. MWD reports that its storage capacity is 6.1 million acre-feet, which includes reservoirs, conjunctive use and other groundwater storage programs within its service area, and groundwater and surface storage programs along the SWP and Colorado River Aqueduct. In 2018, MWD had approximately 626,000 acre-feet of additional water in its emergency storage that is reserved for use in the event of supply interruptions from earthquakes or similar emergencies. In 2014 and 2015, MWD withdrew 1.13 million acre-feet and 294,000 acre-feet, respectively, of water to meet demands. With the improved hydrologic conditions in 2016, MWD added 350,000 acre-feet to its storage reserves, bringing its dry-year storage reserves levels to approximately 1.27 million acre-feet as of January 1, 2017. In 2017, MWD stored more than 1 million acre-feet of supplies in storage, bringing its dry-year storage to approximately 2.35 million acre-feet.

**Litigation Challenging MWD Rate Structure**

The Water Authority filed San Diego County Water Authority v Metropolitan Water District of Southern California, et al. on June 11, 2010, challenging MWD’s 2011 and 2012 rates. Because the case was still pending and MWD continued to adopt new rates based on the same cost of service methodology, the Water Authority filed additional lawsuits against MWD in 2012, 2014, 2016, 2017, and 2018 challenging MWD’s 2013-2020 rates. The core legal issues and facts in the first two cases are similar. Each lawsuit asserts that MWD’s rates assign water supply costs to transportation in violation of State law and the State constitution. All of the cases allege that MWD has breached its contract with the Water Authority by setting its water rates to discriminate against the Water Authority by artificially inflating the price charged for wheeling (transporting) water independently obtained by the Water Authority through MWD’s pipes by an improper allocation of certain supply related costs,
including the majority of SWP costs and MWD’s costs for conservation and local supply projects to the wheeling rate it charges the Water Authority. The Water Authority’s 2010 lawsuit included a claim that MWD’s calculation of preferential rights fails to properly account for payments made by the Water Authority under the 2003 Amended and Restated Agreement between MWD and the Water Authority for the Exchange of Water.

The Water Authority’s lawsuits also challenge MWD’s termination and withholding of further funding agreements with the Water Authority for local water supply development projects and conservation programs as a result of its rate challenge; MWD’s local supply development and conservation subsidies are funded primarily through its Water Stewardship Rate. MWD collects tens of million dollars annually from the Water Authority through the Water Stewardship Rate.

In another cause of action, the Water Authority asserts that MWD incorrectly excluded the wheeling revenues it collects from the Water Authority in its calculation of the Water Authority’s statutory preferential right to MWD water supplies, further discriminating against the Water Authority.

MWD has defended the rate litigation on a number of grounds, including but not limited to assertions that its rates are lawful, that the Exchange Agreement does not mean what the Water Authority contends, and that if that contract did mean what the Water Authority contends then it is an illegal and void contract. The Water Authority has contended that MWD’s assertions are without merit, and countered that the Exchange Agreement is lawful and was conclusively determined to be valid pursuant to the provisions of the California Code of Civil Procedure. During the pendency of this litigation the Water Authority has continued to receive water deliveries under the Exchange Agreement.

The 2010 and 2012 lawsuits were tried in the San Francisco Superior Court. The cases were heard in two phases, with all claims against MWD’s rates heard in the first phase, followed by the breach of contract and preferential rights claims in the second phase. The 2014 and 2016 cases (challenging MWD’s 2015-2018 rates) have been stayed in San Francisco Superior Court pending the outcome of the 2010 and 2012 cases. In October 2018, the case was transferred from Los Angeles Superior Court to San Francisco Superior Court.

On April 24, 2014, San Francisco Superior Court Judge Curtis E.A. Karnow issued his phase one decision and ruled that in setting rates for 2011, 2012, 2013 and 2014, MWD violated cost of service requirements of California law, including the wheeling statute, common law and, for the 2013 and 2014 rates, the California Constitution (Proposition 26, now Article XIIIc) by assigning water supply costs to transportation. The court invalidated the System Access Rate, System Power Rate, Water Stewardship Rate, and MWD’s wheeling rate for 2011, 2012, 2013, and 2014. The court also held that the Water Authority had not met its prima facie burden of establishing that MWD’s failure to account for standby costs of dry-year peaking renders MWD’s Transportation Rates unconstitutional and unlawful. On August 28, 2015, Judge Karnow issued a final ruling for phase two, which ruling included, among other things, that MWD has been under-calculating the Water Authority’s preferential right to MWD water supplies. The ruling awarded $188.3 million plus interest to the Water Authority for illegal water rates MWD charged from 2011 through 2014. Judge Karnow also ruled that MWD under-calculated the Water Authority’s right to MWD water supplies. As part of the Water Authority’s Exchange Agreement with MWD wherein MWD agreed to transport the Water Authority’s independently obtained supplies through MWD’s facilities, MWD is contractually required to set aside the disputed amount of the Water Authority’s payments to MWD in a separate interest-bearing account during the pendency of the litigation. On November 19, 2015, Judge Karnow issued his final judgment that affirmed his two prior rulings in the Water Authority’s favor. Included in the judgment was an order for MWD to recalculate the Water Authority’s preferential right to MWD water supply rates.
supply. The final judgment concluded the initial trial court phase of the lawsuits that were filed in 2010 and 2012.

The trial court’s decision was appealed by MWD. The First District Court of Appeal issued a ruling in 2017 that held in both parties’ favor on different issues. The reported decision can be found at San Diego County Water Authority v. Metropolitan Water Dist. of Southern California, 12 Cal.App.5th 1124 (2017). The Court of Appeal agreed with MWD that State Water Project costs could be charged as transportation under the Water Authority’s Exchange Agreement. However, the Court of Appeal agreed with the Water Authority that: (1) MWD breached the Exchange Agreement by charging Water Stewardship Rates; (2) the Exchange Agreement was not invalid; (3) MWD violated the MWD Act by not crediting Exchange Agreement payments to the calculation of the Water Authority’s Preferential Rights; (4) MWD’s "Rate Structure Integrity" contract provisions were unconstitutional and the Water Authority was entitled to relief; and (5) the Water Authority is entitled to statutory interest on the damages MWD must pay. The matter was remanded back to the trial court for further proceedings in accord with the Court of Appeal’s direction. (A Writ Petition to the California Supreme Court by the Water Authority on the sole issue MWD prevailed on was denied.) The matter is now before Judge Mary Wiss in San Francisco Superior Court, with proceedings still pending.

The Water Authority and MWD have met on several occasions to try to reach consensual resolution of all their pending disputes. The contents of such meetings are confidential. However, there have also been some communications in public discussing non-confidential possible settlement terms. The most recent such communication was by Water Authority Board Chair Jim Madaffer, and can be found at: https://www.sdcwa.org/water-authority-board-chair-outlines-compromise-terms-potentially-end-mwd-litigation.

The Water Authority is unable to predict the outcome of this litigation and there can be no assurance that an unfavorable outcome would not have material adverse consequences to the Water Authority.

Recent California Drought

In January 2014, the California Governor proclaimed a state of emergency throughout California, calling for increased conservation across the State. In response to the Governor’s drought declaration and call for conservation, the Water Authority activated its WSCP for the second time since its adoption in 2006. It also declared in February 2014, a regional drought response Stage I, Voluntary Supply Management, and notified the member agencies of a voluntary Drought Watch condition under the Model Drought Response Ordinance (“Model Ordinance”). The Water Authority recognized that voluntary measures to reduce water use would be instrumental to help preserve critical water reserves should dry conditions continue.

As drought conditions intensified across the State, with smaller communities in the Central Valley at risk of significant water supply shortages, in April 2014, the Governor directed the SWRCB to adopt emergency regulations to prevent “the waste and unreasonable use of water,” calling for a voluntary 20 percent reduction in urban water use statewide. In July 2014, the SWRCB adopted an emergency regulation for urban water conservation aimed at reducing outdoor water use, which established prohibitions on water waste and identified actions local water agencies should take to reduce water demand in their service areas. Consistent with the Governor’s call for statewide conservation, in July 2014, the Water Authority increased the regional drought response to Stage II, Supply Enhancement, and Drought Alert under the regional Model Ordinance, which included mandatory water-use restrictions with a regional savings target of up to 20 percent.
Dry conditions continued to worsen into a fourth year in the spring of 2015, as reflected by a record low level of snow water content in the northern Sierra Nevada of 5 percent of average for April 1, the date that usually marks the maximum accumulation of snowpack. In April 2015, the Governor directed the SWRCB to impose restrictions on urban suppliers to achieve a statewide reduction in potable urban use of 25 percent. Also in April 2015, the MWD Board of Directors announced that it would implement its WSAP, calling for a 15 percent cutback in fiscal year 2016 deliveries in its service area. In response to these cutbacks and the SWRCB emergency regulation, in May 2015, the Water Authority declared the Mandatory Supply Cutback stage under its WSCP and approved member agency municipal and industrial (M&I) and TSAWR supply allocations for fiscal year 2016. The Water Authority’s member agencies also were required to limit outdoor irrigation of ornamental landscapes and turf with potable water to no more than two days per week.

An important element to drought response planning is determining the regional shortage level based on available supplies and projected demands. This analysis was conducted in 2015 for fiscal year 2016, based on the supply allocation from MWD. The MWD supply allocation was combined with member agency dry-year local supplies, supplies from the Water Authority’s Colorado River transfers of conserved water, and deliveries from the Plant. Normal water demands were calculated for fiscal year 2016 based on fiscal year 2014 demands. The analysis showed a shortage of less than one percent for the region, which demonstrated that the planning and actions taken by the Water Authority and its member agencies were effective to manage severe multi-year droughts. The SWRCB emergency regulation did not take into account the supplies water agencies had available during the drought and the required agency reduction levels did not reflect the supply reliability investments water agencies had taken to avoid or mitigate shortage due to drought.

In May 2015, the SWRCB amended and readopted its emergency regulation to require a 25 percent reduction statewide in potable water use effective June 2015 through February 2016. The regulation included water conservation standards for retail urban water suppliers based on a reduction in water use that varied between 4 and 36 percent depending on residential gallons-per-capita-per-day (GPCD), compared with 2013 water-use levels. This marked the first time in California’s history that conservation measures were mandated statewide to respond to drought conditions. In November 2015, the Governor issued Executive Order B-36-15, which extended the regulation until October 2016 and directed the SWRCB to consider modifications to the regulation. The Water Authority advocated for revisions to the regulation that took into account investments in drought resilient supplies. In February 2016, the SWRCB amended the emergency regulation to allow for adjustments to the conservation standards, including for new local drought-resilient supplies developed after 2013. In March 2016, the SWRCB certified supply from the Plant as drought-resilient, which lowered the range of member agencies’ conservation standards to between eight percent and 28 percent, with the regional aggregate water conservation goal reduced from 20 percent to approximately 13 percent. Under the regulations, a water supplier’s conservation standard required at least an eight percent reduction in water use, regardless of supply availability.

Water supply conditions improved during the winter of water year 2016, with an El Niño weather pattern that brought rain and snow to parched California. In March 2016, the Water Authority Board revised its regional drought management actions and rescinded its declaration of a regional Level 2 Drought Alert condition under the Model Ordinance. In May 2016, due to the improved supply conditions and sufficient supply availability, MWD terminated its member agency allocations. In response, the Water Authority ended allocations to its member agencies, consistent with the WSCP. Also in May 2016, the SWRCB adopted an emergency regulation that replaced the prior percentage reduction-based water conservation standard with a localized “stress test” approach. The Water Authority and its member agencies advocated for the stress test approach since it took into account local supply investments and actual shortages being experienced within a community. Utilizing the conservative stress test criteria, the
Water Authority and its member agencies demonstrated the availability of adequate supplies to meet demands for the years 2017, 2018, and 2019, should dry conditions continue.

In January 2017, supported by the results of the self-certification stress test analysis and improved statewide water supply conditions that bolstered and enhanced the analysis, the Water Authority’s board adopted Resolution No. 2017-01, which declared an end to drought conditions in San Diego County. Also in January, the Department of Water Resources (“DWR”) increased its allocation to State Water Contractors to 60 percent of the requested amounts. At that level, MWD will receive approximately 1.15 million acre-feet of supply. Based on estimated operations, MWD anticipated taking all of its State Water Project allocation this year and any additional contract supplies that become available.

In February 2017, despite objections by the Water Authority and other water suppliers throughout the State, the SWRCB re-adopted and extended the emergency regulation for another 270 days, or until the Governor rescinded or modified the drought declaration. The action maintained the stress test approach and kept in place existing water use reporting requirements and prohibitions on wasteful water use practices.

On March 30, 2017, the DWR conducted the fourth of five seasonal manual surveys of the Sierra Nevada snowpack. DWR staff measured snow water content at the Phillips Station, located in the central Sierra region, to be 183 percent of average for that time of year, up slightly from 179 percent a month earlier.

In April 2017, the California Governor issued Executive Order B-40-17, which lifted the statewide drought emergency in all California counties except Fresno, Kings, Tulare, and Tuolumne. The action ended the emergency drought proclamation put in place by the Governor in January 2014. Through establishment of its drought awareness effort, the Water Authority continued its messaging and outreach to residents and businesses to promote an ongoing community commitment to advance water-use efficiency across the region during fiscal year 2018.

Two significant bills related to long-term water use efficiency (SB 606 and AB 1668) were the subject of much discussion and deliberation in the State Legislature during fiscal year 2018. The Water Authority and its member agencies were engaged in the associated stakeholder process to represent San Diego regional interests. On May 31, 2018, the two bills were signed into law by the Governor. The laws are intended to help the State better prepare for droughts and climate change through various provisions, including the creation of water-use objectives for retail water agencies (not individual households or businesses). As a wholesale water supplier, the Water Authority is not subject to the water-use objective provision of the laws. However, there are other provisions of the laws that address water supply planning that do apply to the Water Authority.

The new water-use objectives for retail water agencies will be calculated based on aggregated standards for indoor and outdoor use, system water loss, variances, and potable reuse credit. The State has initiated work on developing the standards, which are required to be adopted by the State Water Resources Control Board by June 2022. Retail water suppliers will report compliance beginning in November 2023, and by November 1 every year thereafter. Starting in 2027, fines could be issued to retail water agencies that do not meet their water-use objectives. The fines would be levied on retail water suppliers and not individual households or businesses. The laws also establish new planning and submittal requirements for agricultural water management and urban water management plans. Water Authority staff are working closely with local retail water agencies to engage in the State’s implementation of the long-term framework water-use objectives and reporting requirements.

**WATER AUTHORITY FINANCIAL POSITION**
The Water Authority’s principal source of revenue is net revenues from the sale of water by the Water Authority to its member agencies. The Water Authority’s rates and charges to member agencies for delivered water are set to equal the cost of water to the Water Authority plus additional components (e.g., debt service costs, QSA commitments). The Water Authority also levies Water Standby Availability Charges, capacity charges and Infrastructure Access Charges (“IAC”) and receives hydroelectric power sales revenues, property tax revenues and Build America Bonds interest subsidy payments. The Water Authority’s ability to generate revenue may be limited by certain provisions of the State Constitution.

Revenues from capacity charges are related directly to development activity in the Water Authority service area. Reductions in building activity may result in the receipt by the Water Authority of significantly lower capacity charge revenues.

Water rates are established by the Board and are not subject to regulation by the California Public Utilities Commission or by any other local, state or federal agency. The Water Authority bills member agencies for water deliveries by the tenth business day of every month for water purchased during the prior month. Payments are due from the member agencies by the last business day of the month and are delinquent if not paid by the tenth business day of the following month.

In June 2018, a comprehensive rate and charge cost of service study was completed by an independent rate consultant. The scope of the study included an evaluation of the cost allocation methodologies and the calculation of all Water Authority rates and charges. After comparing the cost allocation methodologies and rate calculation methodologies to Board policies and statutory requirements, the consultant concluded that the Water Authority’s rates and charges were in full compliance with legal and policy requirements. The validated rate calculation methodologies are applied each year to determine rates and charges. The Water Authority also uses an independent cost of service consultant periodically to validate the calculation of rates and charges.

Financial Management Policies

In August 2006, the Board adopted two enhancements to the Water Authority’s financial management policies. These policy enhancements were phased-in over a three-year period. The adopted enhancements include setting a 1.50x coverage target for senior lien debt service (1.00x coverage excluding capacity charges) and setting a new target and maximum fund balance for the Rate Stabilization Fund.

The target for debt service coverage is designed to both enhance the Water Authority’s credit ratings and increase the cash funding of the Water Authority’s Capital Improvement Program (the “CIP”). Because of the aforementioned policy enhancements, as of the date of this Official Statement the CIP program currently is funded entirely from cash.

The Rate Stabilization Fund (the “RSF”) is designed and is utilized from time to time to mitigate the negative financial impacts of decreased water sales resulting from wet weather, supply restrictions and conservation. The enhanced Rate Stabilization Fund target balance is equal to the negative financial impact of 2.5 years of wet weather and the maximum fund balance is set equal to the negative financial impact of 3.5 years of wet weather. Since 2006 a 25 percent reduction in water sales was used as the potential wet weather decrease. However, data from events in 2005 and 2011 demonstrated a reduction of water demand in wet years of just 14-15 percent. The Water Authority revised the reserve policy down to a 20 percent reduction in water sales effective January 1st, 2019, and will revise the policy to a 15 percent reduction in water sales effective January 1st, 2021.

As of September 30, 2018 [Update before printing], the Water Authority had approximately $155.5 million on deposit in the Rate Stabilization Fund with a target Rate Stabilization Fund balance of approximately $147.0 million and a maximum level of $211.2 million. While the Water Authority is not
obligated to maintain any funds in the Rate Stabilization Fund, achieving the target level is a significant financial management milestone for the Water Authority and was accomplished earlier than expected.

As of June 30, 2017, the Water Authority’s pension funded ratio was 71.55%. Since the CalPERS Board of Administration lowered its discount rate assumption in December 2016, the Water Authority has been exploring various funding vehicles and options to respond to the changes. The impact on the Water Authority of the changes affects the Water Authority’s normal costs, and its unfunded accrued liability. Following study and committee work on this issue, on October 25, 2018, the Board of Directors of the Water Authority adopted a pension funding policy framework that is designed to support the long-term fiscal health of the Water Authority and strike a balance between the cost of additional contributions and the reduction to the unfunded pension liability. As adopted, the policy is designed to achieve a target pension funded ratio of 75-85%, over a period of twenty years. The funding sources will include annual budgetary savings, application of unanticipated one-time revenues and an annual additional budgeted amount of $1 million to $2 million. The additional annual budgeted amount is expected to be used to make supplemental payments to CalPERS. By taking these steps the Board expects to reduce future annual pension contributions, increase the pension funded level and reduce future interest costs. See the Water Authority’s Comprehensive Annual Financial Report for the Fiscal Years ended June 30, 2018 and 2017, attached as Schedule 1 to this Appendix C.

Operating Expenses
The main components of the Water Authority’s operating expenses consist of the cost of water sales and the cost of wheeling IID water to the Water Authority via MWD’s transportation system. The cost of water sales primarily consists of water purchases from MWD and IID. The balance of operating expenses consists of operations and maintenance, planning and reclamation and general and administrative costs. The water rates charged by MWD for delivered water are the principal cost to the Water Authority of MWD water. However, the Water Authority is also obligated to pay MWD’s Readiness-to-Serve Charge and Capacity Reservation Charge. The Water Authority’s policy is to pass through all of MWD’s charges to the Water Authority’s member agencies.

The cost of the IID water mainly consists of (1) the price paid to IID, (2) the MWD charge for exchanging the transfer water at Lake Havasu for a like amount delivered to the Water Authority in its service area, and (3) QSA mitigation payments. Beginning in 2035, either the Water Authority or IID can, if certain criteria are met, elect a market rate price through a formula described in the Water Transfer Agreement. The 2018 and 2019 adopted cost for MWD’s exchange of water, or the wheeling rate, are $486 and $453 per acre-foot from January 1 through December 31, respectively. The decrease in 2019 is due to a settlement outcome and MWD’s corresponding decision to not collect the Water Stewardship Rate on IID transported water. Future wheeling rates shall be equal to the charge set by MWD pursuant to applicable law and regulation generally applicable to the conveyance of water by MWD on behalf of its member agencies.

The Water Authority does not pay a supply cost for water received from the AACLP and CCLP; however, an estimated $15 per acre-foot is necessary for operations and maintenance expenses at the canals. Any construction cost that exceeds State funding will be recovered in the Melded M&I Supply Rate. The total project cost of the CCLP was $129 million of which $87 million was available from the State General Fund and Proposition 50 funds. The total project cost for the AACLP was $319 million of which $170 million was available from the State General Fund, Proposition 50 funds, and Proposition 87 funds. The Water Authority financed the costs that exceeded State funding on both canal lining projects. The Water Authority will pay MWD the same wheeling rate for this water as it will pay for the IID transfer water.

The Plant’s Water Purchase Agreement establishes a contract price for water delivered and establishes both conditions precedent for contract price changes and limits on the cumulative change in contract price over the contract term. While there are efficiency requirements in the Water Purchase
Agreement governing the Plant’s energy consumption, Poseidon will ultimately pass-through the energy costs to the Water Authority. Other costs associated with the project, including replacement chemicals and labor, are indexed to inflation.

The unit cost of desalinated water from the Plant, inclusive of debt service on the Desalination Bonds and the Pipeline Bonds, was $2,317 in the fiscal year ending June 30, 2018 and is estimated to be $2,430 per acre-foot in the fiscal year ending June 30, 2019, for production at a 48,000 acre-feet per year level. The Plant came online in December 2015. For the first full year of desalinated water deliveries in 2016, typical monthly costs were about $5 per household, at the low end of the Water Authority’s 2012 forecast. Product water delivered to the Water Authority from the Plant beyond the 48,000 acre-feet annual commitment, up to 56,000 acre-feet at the request of the Water Authority will be supplied, subject to availability, at rates equal to the variable costs of producing such water, including charges for electricity.

Monthly Water Purchase Payments and other payments by the Water Authority for water under the Water Purchase Agreement constitute “Maintenance and Operation Costs”.

**Bankruptcy or Financial Failure of a Member Agency**

The financial failure or bankruptcy of a member agency could adversely affect the ability of such member agency to honor its obligations to the Water Authority (including its obligation to pay the purchase price of water delivered by the Water Authority to such member agency). The Water Authority is not aware of the existing or impending financial failure or bankruptcy of any member agency, but there can be no assurance that a financial failure or bankruptcy of a member agency will not occur. If a member agency were to become bankrupt, the Water Authority’s right to receive payment for water delivered prior to bankruptcy but not invoiced or invoiced but not paid, for example, may be limited to the rights of an unsecured creditor of the bankrupt entity. Further, there can be no assurance that the Water Authority will be physically able or legally permitted to cease or interrupt deliveries of water to a non-paying member agency. The Water Authority believes that any reduction in Water Revenues as a result of the inability to collect payment for water delivered to a bankrupt member agency or as a result of any temporary interruption or reduction of water deliveries will not be material. The Water Authority further believes that, following such bankruptcy, the amount of water delivered for the service area currently served by such member agency will not be reduced and that the Water Authority will be able to obtain payment for such water.

**The Water Authority’s Comprehensive Annual Financial Report for Fiscal Year ended June 30, 2018 is attached to this Appendix C as Schedule 1.**

**CAPITAL IMPROVEMENT PROGRAM**

The CIP is designed to meet the mission of the Water Authority to provide a safe and reliable supply of water to its member agencies serving the San Diego Region.

The present CIP budget is $2.5 billion for 38 projects that are in various stages of planning, design, and construction. Of such amount, approximately $1.1 billion has been expended on various projects, leaving an unspent balance in the CIP budget of approximately $1.4 billion. The Water Authority expects to spend approximately $312.8 million over the next five years on capital improvement projects. Approximately 44% of that amount, $137.6 million, is expected to be spent in the period for fiscal years ending June 30, 2018 and June 30, 2019.

**OBLIGATIONS PAYABLE FROM WATER REVENUES**

On May 11, 1989, the Water Authority adopted its Resolution No. 89-21, entitled “A Resolution of the Board of Directors of the San Diego County Water Authority Providing for the Allocation of Water System Revenues and Establishing Covenants to Secure the Payment of Obligations Payable from Net Water Revenues,” which was supplemented by Resolution No. 97-52 of the Water Authority, adopted on
December 11, 1997 and by Resolution No. 09-23 of the Water Authority, adopted on December 17, 2009 (as supplemented, the “General Resolution”).

The following obligations, consisting of certificates of participation representing interests in installment payments made by the Water Authority, bonds issued by the San Diego County Water Authority Financing Agency and secured by installment payments made by the Water Authority, revenue bonds issued by the Water Authority, commercial paper notes issued by the Water Authority and obligations under revolving credit agreements providing liquidity for the Water Authority’s commercial paper program, are presently secured by a pledge of Net Water Revenues under the General Resolution:
Water Revenue Obligations*
Outstanding as of June 30, 2018

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<th>Initial Principal Amount</th>
<th>Principal Amount Outstanding as of June 30, 2018</th>
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<td>Water Revenue Certificates of Participation, Series 1998A</td>
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<td>Series 8</td>
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<td>Series 9</td>
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<td><strong>Total Subordinate Lien</strong></td>
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*The CPCFA issued 2012 Pipeline Bond is not shown as it is a super-subordinate bond and therefore excluded from debt service coverage calculations.

The Water Authority currently has three forms of short-term debt: fixed-rate bonds, Tax-Exempt Commercial Paper (TECP) and Extendable Commercial Paper ECP.


The Water Authority established its TECP Program in 1995. Commercial paper is a form of variable-rate debt, and is issued with maturities of 1 to 270 days. When the commercial paper matures, it is rolled over to new investors by the Water Authority’s commercial paper dealers. The Water Authority has authorized the issuance of up to $460,000,000 of TECP, with $345,000,000 issued and outstanding. The TECP has been issued in two series Series 8 ($110,000,000), and Series 9 ($135,000,000). Series 8 was issued in 2014 and series 9 was issued in 2016. Each of these series is supported with a bank revolving credit and term loan agreement. As of June 30, 2016, no advances have been made under any of the revolving credit and term loan agreements.

The Water Authority established an ECP Program in June 2014. ECP is considered a market access product. A market access product such as ECP does not require bank liquidity to backstop the notes. This allows the Water Authority to save on bank costs for revolving credit and term loan agreements which support the TECP program. ECP is issued with a final maturity between 1 and 120 days. If the notes cannot be remarketed at their maturity date, the notes will be automatically extended to 270 days from the initial issuance and bear interest at a penalty rate until the notes can be remarketed or redeemed. The product’s final maturity of 270 days assures that ECP complies with SEC Rule 2a7, making the notes eligible investments for money market funds. The ECP has been issued as Series 1, for $100,000,000 par amount.

The Water Authority has remarketing agreements with Bank of America Merrill Lynch, Morgan Stanley & Co. LLC, and J.P. Morgan Securities, LLC which serve as the dealers for ECP. Any Water Authority repayment obligation under any such agreement would be a subordinate lien obligation.

**Payments Under the Water Purchase Agreement**

Payments by the Water Authority of Monthly Water Purchase Payments and other payments by the Water Authority for water under the Water Purchase Agreement constitute “Maintenance and Operation Costs” under the General Resolution. The General Resolution does not limit the ability of the Water Authority to utilize Water Revenues to pay Maintenance and Operation Costs. The obligation of the Water Authority to make Monthly Water Purchase Payments and to pay other amounts under the Water Purchase Agreement is, however, limited by the term of the Water Purchase Agreement.

**Payment of Installment Sale Payments**

Installment Sale Payments payable by the Water Authority under the Installment Sale and Assignment Agreement are payable solely out of amounts on deposit in the General Reserve Fund established under the General Resolution.

The Water Authority’s obligation to make the Installment Sale Payments from Water Revenues is subordinate to the payment from Water Revenues of Maintenance and Operation Costs, Bond Payments, Installment Sale Payments, Reimbursement Payments and Subordinate Obligations, including all of the obligations described above under “Obligations Payable from Water Revenues” and similar obligations incurred by the Water Authority in the future, and the maintenance of reserve funds in connection with such obligations. The obligation of the Water Authority to make the Installment Sale Payments is also limited by the terms of the Installment Sale and Assignment Agreement.

The Water Authority may issue, enter into or incur additional Bonds, Contracts, Reimbursement Obligations and Subordinate Obligations in an unlimited amount upon satisfaction of the requirements of the General Resolution. The Installment Sale and Assignment Agreement does not limit the issuance, entering into or incurring of such obligations.

The Water Authority covenants in the Installment Sale and Assignment Agreement to comply with the covenants made by the Water Authority in the General Resolution, including those described below under “Rate Covenant” and “Additional Covenants in the General Resolution”.

**Future Financial Commitments Related to the Quantification Settlement Agreement**

The following described future financial commitments of the Water Authority related to the QSA are all payable from Net Water Revenues on a subordinate basis to Monthly Water Purchase Payments
under the Water Purchase Agreement and on parity with Installment Sale Payments under the Installment Sale and Assignment Agreement.

**Socioeconomic Mitigation Payments.** On May 8, 2007 the Water Authority and IID executed an agreement that settled all disputes related to the payment by the Water Authority for potential third-party socioeconomic impacts from the water transfer. The value of the settlement was $50 million, of which the Water Authority agreed to pay $40 million. The Water Authority completed its $40 million with annual payments through 2017. As part of the agreements, $10 million will be reimbursed by IID via annual invoice credits from 2018 through 2047 calculated by dividing the cumulative transfer volume scheduled from 2018-2047 by the $10 million credit equaling $1.70/acre-foot credit. IID and the Water Authority recognize that in exchange for the commitments in the settlement agreement between the two parties, IID will remain solely responsible for any additional socioeconomic mitigation funding necessary to mitigate the impacts of the IID fallowing program for transfer of conserved water to the Water Authority and to mitigate impacts on the Salton Sea in connection with the water transfer should the SWRCB, the California Legislature, or any court order additional funding for such purpose.

**Water Authority Prepayment for Water.** Pursuant to the Revised Fourth Amendment to the Conserved Water Transfer Agreement between IID and the Water Authority, in December 2007 the Water Authority made a payment of $10 million to IID for future deliveries of water. Beginning in calendar year 2019 through the end of 2033, if not repaid sooner, IID will credit the Water Authority’s monthly invoice for transfer of conserved water $55,555.56 plus interest accrued after 2018.

**Quantification Settlement Agreement JPA Environmental Mitigation Payments.** Pursuant to the Quantification Settlement Agreement Funding Agreement, the Water Authority is scheduled to make annual payments through 2025 in support of the environmental mitigation requirements related to the Quantification Settlement Agreement.

*[ADD TEXT RE: CONTEXT OF THIS PARAGRAPH]* **Lower Colorado River Multi-Species Conservation Program Payments.** The Water Authority has environmental coverage for the change in point of diversion from Imperial Dam to Lake Havasu for Colorado River supplies from the IID water transfer and Canal Lining Projects through the Lower Colorado River Multi-Species Conservation Program. The Water Authority received a funding credit for contributions toward implementation of Conservation and Mitigation Measures for the Colorado River described in the U.S. Fish and Wildlife Service 2001 Biological Opinion. In fiscal year 2009, the Water Authority began using these funding credits to meet its Lower Colorado River Multi-Species Conservation Program (LCR MSCP) annual contribution, and will continue to use these credits to meet its annual obligations until the credits are exhausted in 2022. Beginning in 2022, the Water Authority will make annual payments to the program according to the MSCP Funding and Management Agreement.

**General Resolution Definitions**

The following are definitions of certain terms used in the General Resolution.

“**Accreted Value**” means, with respect to any Capital Appreciation Bonds or Capital Appreciation Certificates, as of the date of calculation, the initial amount thereof plus the interest accrued thereon to such date of calculation, compounded from the date of initial delivery at the appropriate interest rate thereof on each semiannual date specified with respect thereto, as determined in accordance with the table of accreted values for any Capital Appreciation Bonds or Capital Appreciation Certificates prepared by the Water Authority at the time of sale thereof, assuming in any year that such Accreted Value increases in equal daily amounts on the basis of a year of three hundred sixty (360) days composed of twelve (12) months of thirty (30) days each.

“**Accreted Value Payment Date**” means any Installment Payment Date on which Accreted Value is payable.
“Bond or Contract Reserve Fund” means any debt service reserve fund established to secure the payment of Bond Payments or Installment Sale Payments.

“Bond Payments” means the principal and interest payments scheduled to be paid by the Water Authority on Bonds.

“Bonds” means all revenue bonds of the Water Authority authorized, executed, issued and delivered by the Water Authority under and pursuant to applicable law, the interest and principal and redemption premium, if any, payments under and pursuant to which are payable from Net Water Revenues on a parity with all other Bonds and Contracts.

“Capital Appreciation Bonds” means any Bonds described as such when issued.

“Capital Appreciation Certificates” means any certificates of participation in Installment Sale Payments described as such when issued.

“Contracts” means all Installment Sale Agreements, Leases and Contracts of Indebtedness.

“Contracts of Indebtedness” means contracts of indebtedness or similar obligations of the Water Authority authorized and executed by the Water Authority under and pursuant to applicable law, the interest and principal payments under and pursuant to which are payable from Net Water Revenues on a parity with all other Contracts and Bonds.

“Current Water Revenues” means all gross income and revenue received or receivable by the Water Authority from the ownership or operation of the Water System, determined in accordance with Generally Accepted Accounting Principles, including all rates, fees and charges (including connection fees and charges and standby charges) received by the Water Authority for the Water Service and the other services of the Water System and all other income and revenue howsoever derived by the Water Authority from the ownership or operation of the Water System or arising from the Water System, and also including (1) all income from the deposit or investment of any money in the Water Revenue Fund, the General Reserve Fund and the Rate Stabilization Fund, and (2) all income from the deposit or investment of money held in the Installment Payment Fund, the Subordinate Obligation Fund or any Bond or Contract Reserve Fund or other fund established pursuant to a Trust Agreement to the extent such income will be available to pay Bond Payments or Installment Sale Payments, but excluding any proceeds of taxes and any refundable deposits made to establish credit and advances or contributions in aid of construction.

“Debt Service” means, for any Fiscal Year or other period, the sum of (1) the interest accruing during such Fiscal Year or period on all outstanding Bonds, assuming that all outstanding serial Bonds are retired as scheduled and that all outstanding term Bonds are redeemed or paid from sinking fund payments as scheduled, (2) that portion of the principal amount of all outstanding serial Bonds maturing on the next succeeding principal payment date that would have accrued during such Fiscal Year or period if such principal amount were deemed to accrue daily in equal amounts from the next preceding principal payment date or during the year preceding the first principal payment date, as the case may be, (3) that portion of the principal amount of all outstanding term Bonds required to be redeemed or paid on the next succeeding redemption date (together with the redemption premiums, if any, thereon) that would have accrued during such Fiscal Year or period if such principal amount (and redemption premiums) were deemed to accrue daily in equal amounts from the next preceding redemption date or during the year preceding the first redemption date, as the case may be, and (4) that portion of the Installment Sale Payments required to be made at the times provided in the Contracts that would have accrued during such Fiscal Year or period if such Installment Sale Payments were deemed to accrue daily in equal amounts from, in each case, the next preceding Installment Payment Date of interest or principal or the date of the pertinent Contract, as the case may be; provided, that (a) if any of such Bonds are Capital Appreciation Bonds or if the Installment Sale Payments due under any of such Contracts are evidenced by Capital Appreciation Certificates, then the Accreted Value payment shall be deemed due on the scheduled
redemption or payment date of such Capital Appreciation Bond or Capital Appreciation Certificate; (b) if any of such Bonds or if the Installment Sale Payments due under such Contracts bear interest payable pursuant to a variable interest rate formula, the interest rate on such Bonds or such Contracts for periods when the actual interest rate cannot yet be determined, shall be assumed to be equal to the greater of (1) the current interest rate calculated pursuant to the provisions of the terms of such Bonds or Contracts (with respect to the issuance of Bonds or the execution of Contracts pursuant to the General Resolution, the initial interest rate on such Bonds or Contracts), or, (2) if available, the average interest rate on such Bonds or Contracts during the thirty-six (36) months preceding the date of calculation or, (3) if such Bonds or Contracts have not been outstanding for such thirty-six month period (or with respect to the issuance of Bonds or the execution of Contracts pursuant to the General Resolution), such average interest rate on comparable debt of a state or political subdivision of a state which debt is then rated by the rating agencies rating such Bonds or Contracts in a rating category equivalent to the rating on such Bonds or Contracts; and (c) if 20% or more of the original principal of such Bonds or the Installment Sale Payments due under such Contracts is not due until the final stated maturity of such Bonds or the Installment Sale Payments due under such Contracts, such principal may, at the option of the Water Authority, be treated as if it were due based upon a level amortization of such principal over the term of such Bonds or Contracts or twenty (20) years, whichever is greater; provided further, that “Debt Service” shall not include (1) payments due on voter-approved general obligation bonds and other voter-approved general obligation debts for which taxes are then being levied and collected, or (2) interest on Bonds or Contracts which is to be paid from amounts constituting capitalized interest held pursuant to a Trust Agreement.

Interest Subsidy Payments received by the Water Authority with respect to the San Diego County Water Authority Financing Agency Water Revenue Bonds, Series 2010B, constitute Current Water Revenues. The Water Authority has amended the General Resolution pursuant to Resolution 09-23, adopted on December 17, 2009, to provide that Interest Subsidy Payments are treated as a reduction to Debt Service rather than as Current Water Revenues. Such amendment will become effective, however, only if and when requisite approvals for an amendment of the General Resolution have been obtained by the Water Authority.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other annual accounting period selected and designated by the Board of Directors of the Water Authority as the Fiscal Year of the Water Authority.

“Installment Payment Date” means any date on which Bond Payments or Installment Sale Payments are scheduled to be paid by the Water Authority under and pursuant to any Contract or Bonds.

“Installment Sale Payments” means Contract Payments, Installment Sale Payments or Lease Payments.

“Interest Subsidy Payments” means cash subsidy payments entitled to be received by the Water Authority from the United States Treasury with respect to Bonds issued and Contracts executed by the Water Authority, including, but not limited to, “Build America Bonds” issued as contemplated by the American Recovery and Reinvestment Act of 2009.

“Lease Payments” means the rental payments scheduled to be paid by the Water Authority under and pursuant to Leases.

“Leases” means capital leases or similar obligations of the Water Authority authorized and executed by the Water Authority under and pursuant to applicable law, the interest and principal payments under and pursuant to which are payable from Net Water Revenues on a parity with the payment of all other Contracts and Bonds.

“Maintenance and Operation Costs” means all costs paid or incurred by the Water Authority for maintaining and operating the Water System, determined in accordance with Generally Accepted
Accounting Principles, including all costs of water purchased by the Water Authority for resale, and including all expenses of management and repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and including all administrative costs of the Water Authority, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, and including all other costs of the Water Authority or charges required to be paid by it to comply with the terms of the General Resolution or of any resolution authorizing the execution of any Contract or of such Contract or of any resolution authorizing the issuance of any Bonds or of such Bonds, such as compensation, reimbursement and indemnification of the trustee, seller, lender or lessor for any such Contracts or Bonds and fees and expenses of independent certified public accountants, but excluding in all cases (1) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, premiums and discounts, (2) interest expense and (3) amounts paid from other than Water Revenues (including, but not limited to, amounts paid from the proceeds of *ad valorem* property taxes).

“Monthly Accrued Debt Service” means, with respect to any month, an amount equal to the sum of Debt Service with respect to all Bonds and Contracts accrued and to accrue to the end of such month; provided, in calculating the amount of Monthly Accrued Debt Service (i) Accreted Value with respect to Capital Appreciation Bonds and Capital Appreciation Certificates shall be deemed to accrue over the twelve-month period immediately preceding the scheduled redemption or prepayment date of such Capital Appreciation Bond or Capital Appreciation Certificate, (ii) the adjustment to principal described in provision (c) of the definition of Debt Service shall not be made and (iii) if the interest on any Bonds or Installment Sale Payments due under any Contract bear interest payable pursuant to a variable rate formula, the amount of interest deemed to accrue during any period shall be the actual interest borne by such Bonds or Installment Sale Payments during such period.

“Net Water Revenues” means, for any Fiscal Year or other period, the Water Revenues during such Fiscal Year or period less the Maintenance and Operation Costs during such Fiscal Year or period.

“Reimbursement Agreement” means an agreement between the Water Authority and a bank or financial institution providing for the issuance of a letter of credit, reserve fund insurance policy, guaranty or surety bond for the purpose of making Bond Payments or Installment Sale Payments and requiring the Water Authority to make payments to reimburse or compensate such bank or financial institution for draws under such instruments from Net Water Revenues on a parity with all Contracts and Bonds.

“Reimbursement Payments” means amounts payable by the Water Authority as compensation or reimbursement for a draw on a letter of credit, reserve fund insurance policy, guaranty or surety bond for the purpose of making Bond Payments or Installment Sale Payments in accordance with any Reimbursement Agreement.

“Subordinate Obligations” means obligations of the Water Authority authorized and executed by the Water Authority under applicable law, the interest and principal payments under and pursuant to which are payable from Net Water Revenues, from the Subordinate Obligation Payment Fund, subject and subordinate to Bond Payments and Installment Sale Payments.

“Trust Agreement” means any indenture or trust agreement providing for the issuance of Bonds or Certificates.

“Water Service” means the water service furnished, made available or provided by the Water System.

“Water System” means all property rights, contractual rights and facilities of the Water Authority, including all facilities for the conservation, storage, transmission and distribution of water and the generation and delivery of hydroelectric power in connection therewith now owned by the Water Authority and all other properties, structures or works for the conservation, storage, transmission and distribution of water and the generation and delivery of hydroelectric power in connection therewith hereafter acquired and constructed by or for the Water Authority and determined by the Water Authority.
to be a part of the Water System; together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.

Application of Water Revenues Under the General Resolution

The General Resolution established five special funds which are held by the Water Authority: a Water Revenue Fund; a Rate Stabilization Fund; an Installment Payment Fund; a Subordinate Obligation Payment Fund; and a General Reserve Fund.

Water Revenue Fund. Under the General Resolution, all Current Water Revenues are deposited initially in the Water Revenue Fund. The Water Revenue Fund may also receive transfers from the Rate Stabilization Fund, and the Water Authority may make transfers from the Water Revenue Fund to the Rate Stabilization Fund.

Amounts in the Water Revenue Fund are utilized to pay Maintenance and Operation Costs as they become due and payable. Payments by the Water Authority of Monthly Water Purchase Payments and other payments by the Water Authority for water under the Water Purchase Agreement will constitute “Maintenance and Operation Costs”. Remaining amounts, constituting Net Water Revenues, are set aside and deposited or transferred by the Water Authority, as the case may be, at the following times in the following order of priority:

(a) Installment Payment Fund. On or before the last business day of each month, the Water Authority shall deposit in the Installment Payment Fund a sum equal to the Monthly Accrued Debt Service for such month, plus a sum equal to all Reimbursement Payments then due and payable, provided that no such deposit need be made if amounts on deposit in the Installment Payment Fund equal the amount of Bond Payments or Installment Payments due with respect to all Bonds and Contracts on the next succeeding Interest Payment Date (with respect to interest), Principal Payment Date (with respect to principal) and Accreted Value Payment Date (with respect to Accreted Value) for such Bonds or Contracts, and the Reimbursement Payments then due and payable.

(b) Bond or Contract Reserve Fund. On or before the last business day of each month, the Water Authority shall transfer to each trustee for deposit in the applicable Bond or Contract Reserve Fund an amount equal to the amount, if any, required to be deposited therein to build up or replenish such Bond or Contract Reserve Fund as, and to the extent, required by the applicable Contract or Trust Agreement.

(c) Subordinate Obligation Payment Fund. On or before the last business day of each month, the Water Authority shall deposit in the Subordinate Obligation Payment Fund the sum or sums required to be deposited under or pursuant to the indenture, trust agreement or other instrument securing each Subordinate Obligation.

(d) Subordinate Obligation Reserve Fund. On or before the last business day of each month, the Water Authority shall transfer to each trustee with respect to Subordinate Obligations for deposit in the debt service reserve fund with respect to such Subordinate Obligations an amount equal to the amount, if any, required to be deposited therein to build up or replenish such debt service reserve fund as and to the extent required by the applicable Subordinate Obligation or indenture, trust agreement or other instrument securing such Subordinate Obligation.

(e) General Reserve Fund. On the last business day of each month, the Water Authority shall, after making each of the foregoing deposits and transfers, transfer all money remaining in the Water Revenue Fund to the General Reserve Fund. The Water Authority may withdraw money in the General Reserve Fund for any lawful purpose of the Water Authority except to make transfers to the Rate Stabilization Fund.

The Water Authority’s operating revenues reduced by operating expenses and operating revenue-supported Senior and Subordinate debt service results in the balance available for other obligations (e.g., payment of the Series 2019 Pipeline Bonds). The calculation is disclosed annually in the Continuing
Disclosure table included in the Comprehensive Annual Financial Report for “Historical Operating Results by Fiscal Year”. See Schedule 1 of this Appendix C (Water Authority’s Comprehensive Annual Financial Report).

<table>
<thead>
<tr>
<th>Dollars in thousands</th>
<th>FY2016</th>
<th>FY2017</th>
<th>FY2018^4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Water Revenue Available for Debt Service</td>
<td>$173,085</td>
<td>$189,967</td>
<td>$192,456</td>
</tr>
<tr>
<td>Less: Revenue Supported Senior Lien Debt Service</td>
<td>-115,213</td>
<td>-126,604</td>
<td>-128,304</td>
</tr>
<tr>
<td>Revenue Supported Subordinate Lien Debt Service</td>
<td>-6,131</td>
<td>-7,738</td>
<td>-9,028</td>
</tr>
<tr>
<td>Net Funds Available</td>
<td>$51,741</td>
<td>$55,625</td>
<td>$55,124</td>
</tr>
</tbody>
</table>

In addition to current year revenues available for Pipeline Bond debt service, certain funds held by the Water Authority are also available to pay debt service on the Series 2019 Pipeline Bonds. The funds available for payment of the Pipeline Bonds include Series 2019 Operating and Pay-As-You-Go. The funds balance over the past 5 years is shown in the table below:

<table>
<thead>
<tr>
<th></th>
<th>FY2014</th>
<th>FY2015</th>
<th>FY2016</th>
<th>FY2017</th>
<th>FY2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pay-As-You-Go</td>
<td>$201,515,355</td>
<td>$143,301,875</td>
<td>$156,647,460</td>
<td>$147,352,064</td>
<td>$119,984,952</td>
</tr>
<tr>
<td>Operating</td>
<td>$23,533,027</td>
<td>$8,150,206</td>
<td>$49,282,921</td>
<td>$55,645,254</td>
<td>$56,369,103</td>
</tr>
<tr>
<td>“Total”</td>
<td>$225,048,382</td>
<td>$151,452,081</td>
<td>$205,930,381</td>
<td>$202,997,318</td>
<td>$176,354,055</td>
</tr>
</tbody>
</table>

These balances can be found in Table 1 of the Continuing Disclosure section in the Water Authority’s Comprehensive Annual Financial Report in Schedule 1 of this Appendix C. It should be noted that these balances will fluctuate based on future fiscal year activity.

*Installment Sale Payments payable by the Water Authority under the Installment Sale and Assignment Agreement are payable out of amounts on deposit in the General Reserve Fund.*

The Water Authority covenants in the General Resolution to keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Water System. To fulfill this requirement, the Water Authority employs enterprise accounting principles and practices in accordance with Generally Accepted Accounting Principles. Consistent with such accounting principles and practices and as authorized by the General Resolution, the Water Authority does not maintain on its books the specific funds named in the General Resolution. The Water Authority does, however, account for Water Revenues, Maintenance and Operation Costs, Debt Service and Monthly Accrued Debt Service in a manner consistent with and authorized by the General Resolution, and the accounting system employed by the Water Authority enables the Water Authority to calculate Net Water Revenues and to allocate Water Revenues in the priority specified in the General Resolution.

**Rate Covenant**

The Water Authority covenants under the General Resolution that it will at all times fix, prescribe and collect or cause to be collected rates, fees and charges for Water Service which are reasonably fair and nondiscriminatory and which will be at least sufficient to yield, during the next succeeding fiscal year

^4 [Footnote if unaudited.]
of the Water Authority, Net Water Revenues sufficient for the payment of all amounts payable from Net Water Revenues (including Subordinate Obligations) and at least equal to 120 percent of the Debt Service on all Bonds and Contracts for such fiscal year. The Water Authority may make adjustments from time to time in such rates, fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Water Revenues from such reduced rates, fees and charges will at all times be sufficient to meet the requirements of such covenant.

The Water Authority has amended the General Resolution to provide that Interest Subsidy Payments are treated as a reduction to Debt Service rather than as Current Water Revenues. Such amendment has not yet, however, become effective.

**Additional Parity Obligations**

The Water Authority may at any time issue any Bonds or execute any Contract the payments under and pursuant to which are payable from the Net Water Revenues on a parity with any Bonds; provided:

(a) For any period of 12 consecutive calendar months within the 24 calendar month period next preceding the month in which such Bonds are issued or such Contract is executed, as the case may be, as evidenced by a certificate of the Water Authority (together with supporting calculations prepared by the Water Authority), (1) the Net Water Revenues shall have been equal to at least 120 percent of the Maximum Annual Debt Service on all Bonds and Contracts outstanding after the issuance of such Bonds or the execution of such Contract, as the case may be, and (2) the Net Water Revenues shall have been sufficient for the payment of all amounts payable from Net Water Revenues during such 12-month period and at least equal to 120 percent of Debt Service on all Bonds and Contracts outstanding during such 12-month period; or

(b) (1) For any period of 12 consecutive calendar months within the 24 calendar month period next preceding the month in which such Bonds are issued or such Contract is executed, as the case may be, as evidenced by a certificate of the Water Authority (together with supporting calculations prepared by the Water Authority), the Net Water Revenues shall have been sufficient for the payment of all amounts payable from Net Water Revenues during such 12-month period and at least equal to 120 percent of Debt Service on all Bonds and Contracts outstanding during such 12-month period, and (2) as evidenced by a certificate of the Water Authority (together with supporting calculations and assumptions prepared by the Water Authority), in each of the five succeeding fiscal years, projected Net Water Revenues shall be sufficient for the payment of all amounts payable from Net Water Revenues in each such fiscal year and at least equal to 120 percent of Debt Service on all Bonds and Contracts to be outstanding in each such fiscal year; and

(c) The Water Authority shall certify that it is not then in default under any Trust Agreement or with respect to any Bonds or Contracts; and

(d) No Bond or Contract shall allow the declaration of Bond Payments or Installment Payments to be immediately due and payable in the event of default by the Water Authority thereunder or under the applicable Trust Agreement unless such remedy is made applicable to all Bonds and Contracts then outstanding. (None of the Water Authority’s Outstanding Bonds or Contracts allows such a declaration.)

Notwithstanding the foregoing provisions, there shall be no limitations on the ability of the Water Authority to execute any Contract or to issue any Bonds at any time to refund any outstanding Bonds or any outstanding Contract or to execute Reimbursement Agreements.

**Additional Subordinate Obligations**

Other than the 2016S-1 Bonds and the Commercial Paper Notes (except to the extent the aggregate principal amount of Commercial Paper Notes at the time outstanding exceeds $345,000,000),
the Water Authority covenants in the Indenture that it will not issue or incur any additional Subordinate Obligations the payments under and pursuant to which are payable from the Net Water Revenues on parity with the 2016S-1 Bonds and the Water Authority’s other outstanding Subordinate Obligations, unless the Water Authority shall determine that such issuance or incurrence will not adversely impact its ability to comply with the covenants under the Indenture that it will at all times fix, prescribe and collect or cause to be collected rates, fees and charges for the Water Service which are reasonably fair and nondiscriminatory and which will be at least sufficient to yield during the next succeeding fiscal year of the Water Authority Net Water Revenues sufficient for the payment of all amounts payable from Net Water Revenues during such fiscal year, including payment of interest on and principal of the 2016S-1 Bonds expected by the Water Authority to be paid with Net Water Revenues (e.g., excluding capitalized interest and principal expected to be paid from the proceeds of refunding obligations).

Notwithstanding the foregoing provisions, there shall be no limitation on the ability of the Water Authority to enter into agreements with banks or other financial institutions to provide for liquidity or credit support for Subordinate Obligations and to incur repayment or reimbursement obligations with respect thereto or to issue or incur Subordinate Obligations to refund any outstanding Subordinate Obligations.

The Indenture defines “Total Debt Service” to mean (i) Debt Service (as defined in the General Resolution, including as amended by Resolution No. 09-23 whether or not Resolution No. 09-23 has taken effect) on Prior Obligations, plus (ii) interest on and principal of Subordinate Obligations expected by the Water Authority to be paid with Net Water Revenues (e.g., excluding capitalized interest and amounts expected to be paid from the proceeds of refunding obligations).

Additional Covenants in the General Resolution

The Water Authority has made the following additional covenants in the General Resolution:

Against Encumbrances. The Water Authority will pay or cause to be paid when due all sums of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished, or alleged to have been furnished, to or for the Water Authority in, upon, about or relating to the Water System and will keep the Water System free of any and all liens against any portion of the Water System. In the event any such lien attaches to or is filed against any portion of the Water System, the Water Authority will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the Water Authority desires to contest any such lien it may do so. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the Water Authority will forthwith pay or cause to be paid and discharged such judgment.

Against Sale or Other Disposition of Property. The Water Authority will not sell, lease or otherwise dispose of the Water System or any part thereof essential to the proper operation of the Water System or to the maintenance of the Net Water Revenues; provided, that any real or personal property which has become nonoperative or which is not needed for the efficient and proper operation of the Water System, or any material or equipment which has become worn out, may be sold if such sale will not reduce the Net Water Revenues below the requirements of the Water Authority’s rate covenant.

Maintenance and Operation of the Water System. The Water Authority will maintain and preserve the Water System in good repair and working order at all times and will operate the Water System in an efficient and economical manner and will pay all Maintenance and Operation Costs as they become due and payable.

Compliance with Contracts. The Water Authority will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it
contained in all contracts for the use of the Water System and all other contracts affecting or involving the Water System to the extent that the Water Authority is a party thereto.

Insurance. The Water Authority will procure and maintain such insurance relating to the Water System which it shall deem advisable or necessary to protect its interests, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with facilities, properties, structures and works similar to the Water System; provided, the Water Authority shall not be required to procure or maintain any such insurance unless such insurance is commercially available at reasonable cost; provided, further, that any such insurance may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner usually maintained in connection with facilities, properties, structures and works similar to the Water System.

Payment of Taxes and Compliance with Governmental Regulations. The Water Authority will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Water System or any part thereof when the same shall become due. The Water Authority will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Water System or any part thereof, but the Water Authority shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith.

Collection of Rates, Fees and Charges. The Water Authority will charge and collect or cause to be collected the rates, fees and charges applicable to the Water Service and will not permit any part of the Water System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof); provided, that the Water Authority may without charge use the Water Service.

Eminent Domain and Insurance Proceeds. If all or any part of the Water System shall be taken by eminent domain proceedings, or if the Water Authority receives any insurance proceeds resulting from a casualty loss to the Water System, the proceeds thereof shall be used to substitute other components for the condemned or destroyed components of the Water System.
SCHEDULE 1 TO APPENDIX C

Water Authority’s Comprehensive Annual Financial Report

Fiscal Years ended June 30, 2018 and 2017
APPENDIX D

BOOK-ENTRY SYSTEM

[TO BE UPDATED BY DISCLOSURE COUNSEL PRIOR TO PRINTING]

The following description of the Depository Trust Company ("DTC"), the procedure and record keeping with respect to beneficial ownership interests in the Project Bonds, payment of principal, interest and other payments on the Project Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Project Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be. None of the Issuer, the Water Authority, the Plant Trustee or the Pipeline Trustee takes any responsibility for the information contained in this Appendix.

No assurances can be given that DTC, DTC Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Project Bonds, (b) certificates representing ownership interest in or other confirmation of ownership interest in the Project Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Project Bonds, or that they will do so on a timely basis, or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current "rules" applicable to DTC are on file with the Securities Exchange Commission and the current "procedures" of DTC to be followed in dealing with DTC Participants are on file with DTC.

General

Ownership interests in the Project Bonds will be available to purchasers only through a book-entry system (the "Book-Entry System") maintained by DTC, which will act as securities depository for the Project Bonds. The Project Bonds will be issued as fully registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. Initially, one fully registered bond certificate will be issued for the Series 2019 Pipeline Bonds of each maturity and will be deposited with DTC. The following discussion will not apply to any Project Bonds issued in certificated form following the discontinuance of the DTC Book-Entry System, as described below.

So long as Cede & Co., as nominee of DTC, is the registered owner of the Project Bonds, the Beneficial Owners of the Project Bonds will not receive or have the right to receive physical delivery of the Project Bonds, and references herein to the Bondholders or Owners or registered owners of the Project Bonds will mean Cede & Co. and will not mean the Beneficial Owners of the Project Bonds.

DTC and its Participants

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.6 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money
market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating: AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

Purchase of Ownership Interests

Purchases of Project Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Project Bonds on DTC’s records. The ownership interest of each actual purchaser of each Project Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Project Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Project Bonds, except in the event that use of the book-entry system for the Project Bonds is discontinued.

Transfers

To facilitate subsequent transfers, all Project Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Project Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee does not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Project Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Project Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Notices

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Project Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Project Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Plant Bond Documents or the Pipeline Bond Documents, as applicable. For example, Beneficial Owners of Project Bonds may wish to ascertain that the nominee holding the Project Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to
provide their names and addresses to the Registrar and request that copies of notices be provided directly to them.

**Redemption**

Redemption notices shall be sent to DTC. If less than all of the Series 2019 Pipeline Bonds within an issue are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such Series 2019 Pipeline Bonds to be redeemed.

**Voting**

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Project Bonds unless authorized by a Direct Participant in accordance with MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts Project Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

**Payments of Principal and Interest**

The principal and redemption price of, and interest on, the Project Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts upon DTC’s receipt of funds and corresponding detail information from Issuer or Collateral Agent on payable date in accordance with their respective holdings shown on DTC’s records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such Participant and not of DTC (or its nominee), the Plant Trustee, the Pipeline Trustee, the Water Authority, the Company or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of the principal and redemption price of, and interest on, the Project Bonds to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer, Plant Trustee, the Pipeline Trustee, the Water Authority, the Company, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

**Discontinuation of Book-Entry System**

The book-entry system for registration of the ownership of the Project Bonds through DTC may be discontinued at any time that (i) DTC determines to resign as securities depository for the Project Bonds and gives notice of such determination to the Issuer and the Registrar or (ii) the Issuer determines that continuation of the system of book-entry-only transfers through DTC is not in the best interests of the Issuer or the holders of the Project Bonds and gives notice of such determination to the Registrar and DTC. In either of such events the Issuer may appoint a successor securities depository. In that event Project Bonds will be printed and delivered to DTC.

The information in this section concerning DTC and DTC’s book-entry system has been obtained from sources that Issuer believes to be reliable, but the Company, the Water Authority, the Issuer and the Underwriters take no responsibility for the accuracy thereof, and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters but should instead confirm the same with DTC or the DTC Participants, as the case may be.
None of the Plant Trustee, the Pipeline Trustee, the Water Authority, the Company or the Issuer will have any responsibility or obligations to any Direct Participants or Indirect Participants or the persons for whom they act with respect to (i) the accuracy of any records maintained by DTC or any such Direct Participant or Indirect Participant; (ii) the payment by any Participant of any amount due to any Beneficial Owner in respect of the principal and redemption price of, and interest on, the Project Bonds; (iii) the delivery by any such Direct Participant or Indirect Participants of any notice to any Beneficial Owner that is required or permitted under the terms of the Bond Indenture to be given to Bondholders; (iv) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Project Bonds; or (v) any consent given or other action taken by DTC as Bondholder.
APPENDIX E

I. Summary of Certain Provisions of the Collateral Trust Agreement
II. Summary of Certain Provisions of the Security Agreement
III. Summary of Certain Provisions of the Deed of Trust
IV. Summary of Certain Provisions of the Pledge Agreement
I. SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL TRUST AGREEMENT

General

The Plant Trustee and the Pipeline Trustee have appointed the Collateral Agent to hold the Collateral described below in trust as security for the Company’s obligations under the Loan Agreement and its obligations to pay Contracted Shortfall Payments under the Pipeline Agreement to the Pipeline Trustee (as assignee of the Water Authority). Subject to the satisfaction of certain conditions, the Company is permitted to incur additional debt under the Loan Agreement or under other financing arrangements that, in either case, would be secured under the Collateral Trust Agreement and the other Collateral Documents on a parity with the Company’s obligations under the Loan Agreement and its obligations to make Contracted Shortfall Payments (“Additional Plant Senior Debt”). If the Company incurs Additional Plant Senior Debt under such other financing arrangement, the lender or its agent or trustee (an “Additional Plant Senior Lender”) will become a party to the Collateral Trust Agreement.

Senior Debt Majority

Each of the Plant Trustee and the lender of any Additional Plant Senior Debt (a) grants to the Senior Debt Majority (as defined below) the sole right to direct the exercise of remedies under the Plant Financing Documents to which it is a party, (b) grants to the Collateral Agent the sole right to enforce such remedies, including an acceleration of the Plant Senior Debt and (c) agrees that it will not pursue any remedy under any Plant Financing Document to which it is a party with respect to a Plant Financing Event of Default. The Pipeline Trustee (i) grants to the Senior Debt Majority the sole right to direct the exercise of remedies under the Pipeline Indenture if a Contracted Shortfall Payment Default occurs, (ii) grants to the Collateral Agent the sole right to enforce such remedies, including an acceleration of the Pipeline Bonds if a Contracted Shortfall Payment Default occurs and (iii) agrees that it will not pursue any remedy under the Pipeline Indenture with respect to a Contracted Shortfall Payment Default except as directed by the Senior Debt Majority. The Senior Debt Majority also has the right to give certain approvals under the Collateral Trust Agreement.

The “Senior Debt Majority”, at any time, is a majority in interest of the Outstanding Senior Debt based on the outstanding principal amount of such Senior Debt, including for these purposes the outstanding principal amount of the Pipeline Bonds, acting by written notice to the Collateral Agent.

Pledge of Collateral

The Issuer has pledged its rights under the Loan Agreement (including the right to receive Plant Loan Repayments but excluding the Plant Retained Rights) to the Plant Trustee as part of the Plant Trust Estate pledged under the Plant Indenture. The Plant Trustee has pledged those rights to the Collateral Agent and any Additional Plant Senior Lender will pledge its rights under the Plant Financing Documents for the related Additional Plant Senior Debt (excluding any rights identified therein as reserved to the Additional Plant Senior Lender) to the Collateral Agent.

The Collateral Agent holds as trustee in trust for the Secured Parties all of the Company’s and the Collateral Agent’s right, title and interest in, to and under all of the following (collectively, the “Collateral”):

- Plant Trust Estate;
Plant Account Collateral;

Capital Proceeds;

the Security Agreement, the Plant Revenues and the other collateral subject to Liens granted to the Collateral Agent thereunder;

the Deed of Trust;

the Pledge Agreement, including the collateral subject to Liens granted to the Collateral Agent thereunder;

each Reserve Surety;

each Consent;

any other Collateral Documents to which it is a party and the collateral subject to Liens granted to the Collateral Agent under those documents;

the financing statements, registrations, filings, recording instruments or other appropriate instruments or documents covering all the collateral subject to Liens granted under the Collateral Documents; and

all proceeds and products of each of the foregoing.

However: the Plant Debt Service Reserve Fund established for the Series 2012 Plant Bonds and all Reserve Sureties, cash, investments and securities and any proceeds thereof at any time on deposit therein are held by the Collateral Agent secure solely the Series 2012 Bonds and any Plant Debt Service Reserve Fund established in connection with any Additional Plant Senior Debt will be secure solely such Additional Plant Senior Debt; In addition, to comply with California law requiring that an escrow account be established and funded to secure the Company’s obligations to make timely payment of amounts due the Plant Contractor, an Account for the Plant Contractor will be established in the Plant Project Fund for that purpose (the “Plant Contractor Security Account”) and, until the Contractor has been paid in full, amounts in the Plant Contractor Security Account will secure only those payment obligations.

**Funds and Accounts.**

The following funds and accounts will be established under the Collateral Trust Agreement:

- Plant Project Fund and, within it, the Plant Contractor Security Account;
- Plant Revenue Fund;
- Operating Fund;
- Plant Debt Service Reserve Fund;
- Working Capital Reserve Fund and, within it, the Permanent Account and the Project Reserve Account;
- Wetlands Mitigation Reserve Fund;
REC/VER Reserve Fund;

Ground Lease Restoration Reserve Fund;

Distribution and Stabilization Fund;

Plant Restoration Fund and, within it, the Pump Shutdown Account; and

Prepayment Fund.

Plant Project Fund

The Plant Project Fund has been closed out following achievement of Commercial Operation except for the Plant Contractor Security Account which has a retained balance of $[____________].

On each monthly Construction Disbursement Date, the Collateral Agent disburses funds to pay Project Costs from the Plant Contractor Security Account in the amounts and to the Persons identified in a Construction Withdrawal Certificate, executed by the Company and approved by the Independent Engineer.

Deficiencies

If amounts on deposit in the Poseidon Project Account fall below the amount by which the estimated cost to achieve completion of the Plant exceeds the amount of the Available Construction Funds, the Company must deposit the amount of the deficiency into the Poseidon Project Account within 120 business days or such shorter period as will not cause an event of default under the Pipeline DBA or the Water Purchase Agreement.

“Available Construction Funds” means, in summary, as of any Construction Disbursement Date, the sum of amounts on deposit (a) in the Poseidon Project Account and (b) in the Plant Contractor Security Account. Available Construction Funds also include, among other things, any Net Capital Proceeds and proceeds of Additional Plant Senior Debt, in each case deposited in or reasonably anticipated to be deposited in the Plant Project Fund. See Appendix A for a complete definition of Available Construction Funds.

Plant Revenue Fund

The Consent to be delivered to the Collateral Agent by the Water Authority will require the Authority to pay directly to the Collateral Agent all amounts owing to the Company under the Water Purchase Agreement. If the Company does receive any Plant Revenues, it must deposit them into the Plant Revenue Fund. Following the Commercial Operation Date, on each Monthly Disbursement Date, all moneys on deposit in the Plant Revenue Fund will be applied as follows:

1. to the Plant Bond Trustee, such amount as it may request for deposit into the Rebate Fund held under the Plant Indenture;

2. to the Operating Account to pay O&M Costs for the following month in an amount designated in a Disbursement Request;

3. on a pro rata basis based on the proportion of each of the following amounts to the sum of such amounts:
(A) (1) to each Fiduciary and the Issuer, an amount equal to all Fees and Expenses for its own account due and payable before the next Monthly Disbursement Date and (2) upon receipt of a Contracted Shortfall Payment Notice, executed by the Water Authority with respect to the previous month an amount equal to the product of (x) the Contracted Shortfall Payment set forth in such Contracted Shortfall Payment Notice and (y) the Pipeline Trustee Fee Factor;

(B) if Additional Plant Bonds are issued that bear interest at a variable rate, to each liquidity facility provider the amount of all its Fees and Expenses that will be due and payable before the next Monthly Disbursement Date; and

(C) to each Additional Plant Lender, the amount of its Fees and Expenses that will be due and payable before the next Monthly Disbursement Date;

(D) to the Bond Insurer, if any, an amount equal to all scheduled fees, expenses, indemnity payments and premiums, if any, due and payable under the related reimbursement agreement prior to the next Monthly Disbursement Date;

4. except as described below under “Insufficient Plant Revenues,” on a pro rata basis, based on the proportion of each of the following amounts to the sum of such amounts:

(A) with respect to each Series of Plant Bonds, upon notice from the Plant Bond Trustee to the Collateral Agent, which notice may be given by standing instructions, to the Plant Bond Trustee, an amount equal to the unfunded portion of one-sixth of the semi-annual interest payments due and owing on such Plant Bonds on the next succeeding Interest Payment Date; provided that, with respect to any Additional Plant Bonds bearing interest at a variable rate, the amount to be transferred as described in this clause (A) will be an amount estimated by the Company, based on the actual interest rate or rates for that portion of the month for which interest has accrued or is estimated will accrue and, with respect to any Additional Plant Senior Debt bearing interest at a weekly, daily or flexible rate, the interest payable for such Additional Plant Senior Debt will also include any interest payable thereon on or before the next succeeding Monthly Disbursement Date;

(B) upon receipt of a Contracted Shortfall Payment Notice executed by the Water Authority, to the Pipeline Trustee, an amount equal to the product of (x) the Contracted Shortfall Payments as set forth in such Contracted Shortfall Payment Notice and (y) the Pipeline Interest Payment Factor;

(C) upon notice from an Additional Plant Lender to the Collateral Agent, which notice may be given by standing instructions, to such Additional Plant Lender, the amount required to be disbursed to such Additional Plant Lender in respect of debt service on the related Additional Plant Senior Debt payable on or before the next succeeding Monthly Disbursement Date; and

(D) to counterparties to Interest Hedging Arrangements entered into in connection with Additional Plant Bonds issued as variable rate bonds, any amounts required to be paid to such counterparties under their respective Interest Hedging Arrangements Debt payable on or before the next succeeding Monthly Disbursement Date;
5. on a pro rata basis, based on the proportion of each of the following amounts to the sum of such amounts:

(A) with respect to each Series of Plant Bonds, upon notice from the Plant Bond Trustee to the Collateral Agent, which notice may be given by standing instructions, to the Plant Bond Trustee an amount equal to one-twelfth of the annual principal payments and make-whole or spread premium, if any, due and owing on the next succeeding Bond Payment Date with respect to such Series;

(B) upon receipt of a Contracted Shortfall Payment Notice executed by the Water Authority, to the Pipeline Trustee, an amount equal to the product of (x) the Contracted Shortfall Payments set forth in such Contracted Shortfall Payment Notice and (y) the Pipeline Principal Payment Factor;

(C) upon notice from an Additional Plant Lender to the Collateral Agent, which notice may be given by standing instructions, to such Additional Plant Lender, the amount required to be disbursed to such Additional Plant Lender in respect of principal of the related Additional Plant Senior Debt;

(D) to a Bond Insurer, if any, an amount equal to all payments made by it under the related Bond Insurance Policy for which it was not reimbursed prior to such Monthly Disbursement Date; and

(E) to any Plant Letter of Credit Issuer, an amount equal to all payments made by such issuer under its Plant Letter of Credit for which it was not reimbursed prior to such Monthly Disbursement Date;

6. except as described below under “Insufficient Plant Revenues,” on a pro rata basis, based on the proportion of each of the following amounts to the sum of such amounts:

(A) to the Plant Debt Service Reserve Fund, the amount necessary, if any, to increase the balance therein to an amount equal to the related Debt Service Reserve Requirement;

(B) to any Additional Debt Service Reserve Fund, the amount necessary, if any, to increase the balance therein to an amount equal to the related Debt Service Reserve Requirement; and

(C) upon receipt of a Contracted Shortfall Payment Notice, executed by the Water Authority, to the Pipeline Trustee, an amount equal to the product of the Contracted Shortfall Payment set forth in such Contracted Shortfall Payment Notice and (y) the Pipeline Reserve Increase Factor; and

7. on a pro rata basis, based on the sum of the following amounts:

(A) to the Permanent Account of the Working Capital Reserve Fund, the amount necessary, if any, to increase the balance therein to an amount equal to the Working Capital Reserve Requirement; and

(B) to the Project Reserve Account of the Working Capital Reserve Fund, the amount, if any, necessary to increase the balance therein to $11.5 million or,
following the first anniversary of the Commercial Operation Date, an amount equal to the greater of (1) $11.5 million and (2) the aggregate Fixed O&M Costs for the immediately following six-month period as set forth in the then-current Operating Budget (the “Required Project Reserve Account Balance”);

8. if such Monthly Disbursement Date occurs in a Budget Year with respect to which the Company has delivered notice to the Collateral Agent that it has elected not to acquire RECs or VERs in accordance with the Greenhouse Gas Plan and the State Lands Commission Lease, to the REC/VER Reserve Fund, an amount equal to the REC/VER Reserve Requirement for such year;

9. following receipt by the Collateral Agent from the Company of a Shutdown Notice, to the Permanent Pump Shutdown Reserve Account, the Monthly Permanent Pump Shutdown Amount; provided that no transfer will be made after the aggregate amount transferred to the Permanent Pump Shutdown Reserve Accounts equals the Permanent Pump Shutdown Reserve Amount;

10. following the 17th anniversary of the Commercial Operation Date, to the Ground Lease Restoration Reserve Fund, the Monthly Ground Lease Restoration Amount, provided that no more transfers will be made after the aggregate amount transferred to such Account equals the Ground Lease Restoration Reserve Amount;

11. (A) beginning on the first Monthly Disbursement Date following the occurrence of a 10-Year Coverage Shortfall, to the Special Maintenance Reserve Fund until the balance therein equals $10 million (Escalated), provided that no more than $5 million (Escalated) will be transferred to the Maintenance Reserve Fund during any Fiscal Year following the occurrence of a 10-Year Shortfall; where “10-Year Coverage Shortfall” means, on the first January Calculation Date occurring on or after the 10th anniversary of the Commercial Operation Date (1) the Debt Service Coverage Ratio for each of the two immediately preceding Fiscal Years was less than 1.35 and (2) the Debt Service Coverage Ratio for four or more out of the six immediately preceding Fiscal Years (including the Fiscal Years described in clause (1)) was less than 1.35; and

(B) if:

(1) funds have been drawn from the Special Maintenance Reserve Fund prior to the Special Maintenance Reserve Release Date; and

(2) on the first January Calculation Date occurring on or after the first anniversary of the completion of the Capital Project or other work for such funds were expended, the Debt Service Coverage Ratio for the immediately preceding Fiscal Year is less than 1.35,

to the Special Maintenance Reserve Fund, an amount sufficient (but not to exceed $5 million in any Fiscal Year) to cause the balance in the Special Maintenance Reserve Fund to equal $10 million (Escalated);

12. to the counterparty of any Interest Hedging Arrangements, any termination payment then owing to such counterparty; and

13. to the Distribution and Stabilization Account, all remaining Plant Revenues.
Insufficient Plant Revenues

If, on any Monthly Disbursement Date, moneys in the Plant Revenue Fund are insufficient to make the disbursements and transfers described in Items 1 through 3 above, the Collateral Agent will make up the deficiency by transferring funds to the Plant Revenue Fund (a) first, from the Distribution and Stabilization Fund, (b) second, from the Special Maintenance Reserve Fund, if any, (c) third, the Permanent Account of the Working Capital Reserve Fund and (d) fourth, from the Project Reserve Account of the Working Capital Reserve Fund.

If, on the Monthly Disbursement Date immediately preceding any Bond Payment Date, moneys in the Plant Revenue Fund (after giving effect to the foregoing transfers and the disbursements and transfers described in Items 1 through 3) are insufficient to make the disbursements required to be made on such date as described in Items 4 and 5 and a Contracted Shortfall Payment Notice has been delivered by the Water Authority with respect to the payments to be made on such Monthly Disbursement Date, then notwithstanding the provisions described in Items 4 and 5 above, the Collateral Agent will disburse amounts available in the Plant Revenue Fund, after giving effect to any transfer thereto as described in the preceding paragraph and making the transfers described in Items 1 through 3 above as follows:

to the payment of interest on the Plant Senior Debt until the proportion of interest payments made for the benefit of the holders of the Plant Senior Debt for such month is equal to the proportion of interest on the Pipeline Bonds paid by the Water Authority for such month;

1. pro rata in proportion to the total monthly Debt Related Payment due with respect to the Plant Senior Debt and Pipeline Bonds, to the remaining interest payments due on the Plant Senior Debt and the interest portion of the Contracted Shortfall Payment for such month;

2. to the payment of principal on the Plant Senior Debt until the proportion of principal payments made for the benefit of the holders of the Plant Senior Debt for such month is equal to the proportion of principal on the Pipeline Bonds paid by the Water Authority for such month; and

3. pro rata in proportion to the total monthly Debt Related Payments due with respect to the Plant Senior Debt and the Pipeline Bonds, to the remaining principal payments due on the Plant Senior Debt and the principal portion of the Contracted Shortfall Payment for such month.

If, on the Monthly Disbursement Date, amounts in the Plant Revenue Fund (after giving effect to the foregoing transfers and the transfers and disbursement described in Items 1 through 4 under “Plant Revenue Fund” above) are insufficient to make the transfers required to be made to the Plant Debt Service Reserve Fund, and a Contracted Shortfall Payment Notice has been delivered by the Water Authority with respect to the payments to be made on such Monthly Disbursement Date, then notwithstanding the provisions described in Item 6 under “Plant Revenue Fund” above, the Collateral Agent will disburse amounts available in the Plant Revenue Fund as follows:

to the payment of required increases in the Plant Debt Service Reserve Fund (but not replenishments) until the proportion of reserve increase payments for such month is equal to the proportion of required increases to the Pipeline Debt Service Reserve Fund paid by the Water Authority for such month; and
pro rata in proportion to the total monthly Debt Related Payments due with respect to the Plant Senior Debt and the Pipeline Bonds, to the remaining reserve increase payments due with respect to the Plant Senior Debt and the reserve increase portion of the Contracted Shortfall Payment for such month.

**Operating Fund**

Upon receipt by the Collateral Agent of a Disbursement Request signed by an Authorized Representative of the Company detailing the amounts and Persons to be paid, the Collateral Agent will disburse funds in the Operating Fund to any Person to whom a payment is due in respect of O&M Costs.

**Plant Debt Service Reserve Fund**

On the Series 2012 Closing Date, the Collateral Agent will deposit the Debt Service Reserve Surety into the Plant Debt Service Reserve Fund.

If, on the last Monthly Disbursement Date preceding any principal or interest payment date with respect to any Plant Senior Debt, the moneys in the Plant Revenue Fund are insufficient to make the disbursements and transfers described in clauses 4 and 5 under “Plant Revenue Fund” above (after giving effect to any transfers thereto as described above under “Plant Revenue Fund – Insufficient Funds” and distributions and transfers of a higher priority), the Collateral Agent will disburse from the Plant Debt Service Reserve Fund or Additional Debt Service Reserve Fund, as applicable, and transfer to the Plant Trustee or the related Additional Senior Lender, the amount of the deficiency. The Collateral Agent will provide prompt notice to the Senior Debt Majority and the other Secured Parties of any such disbursement.

On each Monthly Disbursement Date, the Collateral Agent will transfer to the Plant Revenue Fund any amounts in the Plant Debt Service Reserve Fund in excess of the related Debt Service Reserve Requirement.

**Working Capital Reserve Fund**

**Permanent Account**

On and after the Commercial Operation Date, the Permanent Account is funded from Plant Revenues as described above under “Plant Revenue Fund.” The Collateral Agent will transfer amounts from the Permanent Account to the Plant Revenue Account if Plant Revenues therein are insufficient to make certain disbursements as described above under “Insufficient Plant Revenues.”

**Project Reserve Account**

On the Commercial Operation Date, the Collateral Agent shall (a) transfer from the Poseidon Project Account the balance of the Construction Contingency Amount and the amount of $11.5 million to the Project Reserve Account and (b) transfer all amounts remaining in the Capitalized Interest Account to the Project Reserve Account. The Collateral Agent will transfer amounts from the Project Reserve Account to the Plant Revenue Fund if Plant Revenues therein are insufficient to make certain disbursements as described above under “Insufficient Plant Revenues.” Funds on deposit in the Project Reserve Account may also be used to pay the cost of a Capital Project, subject to the satisfaction of certain conditions.
On the first Monthly Disbursement Date following receipt of a certificate signed by an Authorized Representative of the Company, with the concurrence of the Independent Engineer, certifying that the Debt Service Coverage Ratio for the 12-month period preceding the month in which the certificate is delivered was at least 1.35 and the projected Debt Service Coverage Ratio for the 12-month period beginning with the month in which the certificate is delivered, is at least 1.35, the Collateral Agent will transfer all amounts in excess of the Required Project Reserve Account Balance then on deposit in the Project Reserve Account to the Plant Revenue Fund.

**REC/VER Reserve Fund**

The REC/VER Reserve Fund will be funded with Plant Revenues as described above under “Plant Revenue Fund.” Upon receipt of a Disbursement Request from the Company, the Collateral Agent will disburse from the REC/VER Reserve Fund to the Company, or such Persons as it may designate, the amount set forth in the Disbursement Request, to be used solely to pay costs incurred in connection with acquiring the carbon offsets or renewable energy certificates required to be acquired by the Company under the State Lands Commission Lease. On each Monthly Disbursement Date, the Collateral Agent will transfer to the Plant Revenue Fund any amounts of net interest or gain from investments held in the REC/VER Reserve Fund since the last preceding Monthly Disbursement Date.

If, on or before any Monthly Disbursement Date, the Collateral Agent receives a certificate signed by an Authorized Representative of the Company certifying, with the concurrence of the Independent Engineer, that the amounts then on deposit in the REC/VER Reserve Fund with respect to any Budget Year or Years exceed the total amounts which the Company could reasonably be expected in the future to incur in satisfying its obligations under the State Lands Commission Lease to acquire carbon offsets or renewable energy certificates with respect to such year or years, the Collateral Agent will transfer to the Plant Revenue Fund the amount of excess funds in the REC/VER Reserve Fund identified in such certificate. Upon receipt of a Disbursement Request in which the Company certifies that it has met its obligations under the offset requirements in the State Lands Commission Lease with respect to any year or years, any amounts then remaining in the REC/VER Reserve Fund with respect to such year(s) will be transferred to the Plant Revenue Fund.

**Wetlands Mitigation Reserve Fund**

On the Commercial Operation Date, the Collateral Agent transferred the amount of the Wetlands Mitigation Reserve Requirement, if any, to the Wetlands Mitigation Reserve Fund. Upon receipt by the Collateral Agent of a Disbursement Request signed by an Authorized Representative of the Company detailing the amounts and Persons to be paid, the Collateral Agent will disburse funds in the Wetlands Mitigation Reserve Fund to the Company, or such Persons as it may designate, to be used to pay costs and expenses of undertaking the wetlands restoration work which the Company is required to perform pursuant to its Coastal Development Permit by the California Coastal Commission in accordance with the terms of the State Lands Commission Lease. On each Monthly Disbursement Date, following any such transfer of funds, the Collateral Agent will transfer to the Plant Revenue Fund any amounts of net interest or gain from investments held in the Wetlands Mitigation Reserve Fund since the last preceding Monthly Disbursement Date.

On any Monthly Distribution Date next succeeding the delivery to the Collateral Agent of a certificate signed by an Authorized Representative of the Company, with the concurrence of the Independent Engineer, certifying that the amounts then on deposit in the Wetlands Mitigation Reserve Fund exceed the amounts which the Company could reasonably be expected in the future to incur in satisfying such wetlands restoration obligations under the State Lands Commission Lease and the Marine
Life Mitigation Plan, the Collateral Agent will transfer the excess funds in the Wetlands Mitigation Reserve Fund identified in such certificate to the Plant Revenue Fund.

**Ground Lease Restoration Fund**

The Ground Lease Restoration Fund will be funded with Plant Revenues as described above under “Plant Revenue Fund.” On the Monthly Disbursement Date next succeeding the delivery to the Collateral Agent of a certificate signed by an Authorized Representative of the Company and approved by the Independent Engineer certifying that the amounts then on deposit in the Ground Lease Restoration Fund exceed the cost of obtaining the Subsequent Restoration Security, the Collateral Agent will transfer the amount of excess funds identified in the certificate to the Plant Revenue Fund and not further Plant Revenues will be deposited into the Ground Lease Restoration Reserve Fund. On each Monthly Disbursement Date following the delivery of such certificate, the Collateral Agent will transfer to the Plant Revenue Fund any amounts of net interest or gain from investments held in the Ground Lease Restoration Reserve Fund since the last preceding Monthly Disbursement Date.

Upon receipt by the Collateral Agent of a Disbursement Request signed by an Authorized Representative of the Company, (a) the Collateral Agent will disburse funds in the Ground Lease Restoration Reserve Fund to the Company, or such Persons as it may designate, to be used to pay the cost of obtaining the Subsequent Restoration Security in the amount set forth in the Disbursement Request and (b) will transfer the remaining funds, if any, to the Plant Revenue Fund, and no further Plant Revenues will be deposited into the Ground Lease Restoration Reserve Fund.

**Special Maintenance Reserve Fund**

If a 10-Year Coverage Shortfall occurs, the Collateral Agent will establish an Account in the name of the Company designated the “Special Maintenance Reserve Fund” which will be funded from Plant Revenues as described above under “Plant Revenue Fund.” The Collateral Agent will transfer funds from the Special Maintenance Reserve Fund to the Plant Revenue Fund as described above under “Insufficient Plant Revenues.”

On the first January Calculation Date following the occurrence of a 10-Year Coverage Shortfall with respect to which (A) the Debt Service Coverage Ratio for the two immediately preceding Fiscal Years was at least 1.35, (B) the projected Debt Service Coverage Ratio for each Fiscal Year of the remaining term of the then Outstanding Senior Debt is at least 1.35 and (C) the Collateral Agent has received an opinion from the Independent Engineer stating that it believes that the technical problem or problems that resulted in the 10-Year Coverage Shortfall have been corrected and that the Debt Service Coverage Ratio will be at least 1.35 for each Fiscal Year of the remaining term of the Outstanding Senior Debt (the “Special Maintenance Reserve Release Date”), the Collateral Agent shall transfer the balance in the Special Maintenance Reserve Fund to the Plant Revenue Fund.

On any Monthly Disbursement Date on which funds on deposit in the Special Maintenance Reserve Fund exceed $10 million (Escalated), the Collateral Agent shall transfer the amount of the excess to the Plant Revenue Fund.

**Distribution and Stabilization Fund**

The Distribution and Stabilization Fund is funded with Plant Revenues as described above under “Plant Revenue Fund.” On each Monthly Disbursement Date, the Collateral Agent will transfer funds on deposit in the Distribution and Stabilization fund as described above under “Plant Revenue Fund — Insufficient Revenues.”
On each Monthly Disbursement Date occurring in January and July (each, a “Calculation Date”), the Collateral Agent will make the following disbursements from the Distribution and Stabilization Fund, in the following priority:

*first*, to the Water Authority an amount equal to sum of all accrued obligations to pay certain subordinated annual true up charges to the Water Authority under the Water Purchase Agreement, together with interest thereon; and

*second*, to the Company, all remaining Funds Available for Distribution (as defined below), if any;

but, in each case, only if certain conditions are met, including the following:

- no Plant Financing Default or Plant Financing Event of Default then exists;
- the Debt Service Coverage Ratio for (x) the Fiscal Year (if the Calculation Date is in January) or (y) Budget Year (if the Calculation Date is in July) or, (z) in the case of the first Calculation Date, the period from the Commercial Operation Date to the earlier of the next June 30 or December 31 that is at least six months after the Commercial Operation Date that, in each case, ended on the last day of the calendar month prior to such Calculation Date, is at least 1.25;
- the projected Debt Service Coverage Ratio for the Fiscal Year (if the Calculation Date is in January) or Budget Year (if the Calculation Date is in July) commencing on the first day of the calendar month in which such Calculation Date occurs is at least 1.25;
- if Cabrillo has delivered a Shutdown Notice, the Permanent Pump Shutdown Reserve Account has been funded in an amount equal or greater than the Permanent Pump Shutdown Reserve Amount; and
- in the case of the first disbursements described under clauses *first* and *second* above, (a) the Debt Service Coverage Ratios for purposes of Items 2 and 3 above are at least 1.35 and (b) for the period on which the condition in clause (a) is met, the Plant has achieved the Capacity and Availability Requirements; where “Capacity and Availability Requirements” means that, for any such period, the sum of the monthly unexcused water delivery shortfalls for such period does not exceed the sum of the monthly allowance for unscheduled outages for such period.

“Funds Available for Distribution” means (A) on any Calculation Date occurring in the month of January, an amount equal to (1) the amount then on deposit in the Distribution and Stabilization Fund minus (2) Semi-Annual Supply Commitment True-Up Accrual for the Semi-Annual Accrual Period ending on the last day of the month prior to the month in which the Calculation Date occurs, minus (3) the Semi-Annual Shortfall True-Up Accrual for the Semi-Annual Accrual Period ending on the last day of the month prior to the month in which the Calculation Date occurs, and (B) on any Calculation Date occurring in the month of July, the amount then on deposit in the Distribution and Stabilization Fund. Definitions for certain other capitalized terms used in this definition are set forth below and the italicized terms within such definitions are defined in the summary of the Water Purchase Agreement in Appendix G:
“Adjusted Semi-Annual Supply Commitment” means, for any Semi-Annual Accrual Period, the sum of the Adjusted Monthly Supply Commitments for such Semi-Annual Accrual Period.

“Capacity and Availability Requirements” means that, for the period described in clause (b) of Item 5 or the most recently concluded Fiscal Year or Budget Year, the sum of Monthly Unexcused Supply Shortfall Units for such period does not exceed the sum of the Monthly Unscheduled Outage Units for such period.

“Semi-Annual Accrual Period” means, for each January Calculation Date, the six-month period (or, if applicable, the shorter period from the Commercial Operation Date to the first January Calculation Date) ending on December 31 such January Calculation Date.

“Semi-Annual Accrual Period Ratio” means, for any Semi-Annual Accrual Period, (a) the aggregate Monthly Delivered Water Units, Monthly Unexcused Demand Shortfall Units and Monthly Unscheduled Outage Units for such Semi-Annual Accrual Period divided by (b) the Adjusted Semi-Annual Supply Commitment for such Semi-Annual Accrual Period.

“Semi-Annual Operating Period Shortfall Payment Target Amount” means, for any Semi-Annual Accrual Period, (a) one minus the Semi-Annual Accrual Period Ratio times (b) one-half of the Annual Pipeline Bond Costs as set forth in Table 1.3 of Appendix 10 of the Water Purchase Agreement for the year in which such Semi-Annual Accrual Period occurs.

“Semi-Annual Shortfall True-Up Accrual” means (a) the Semi-Annual Operating Period Shortfall Payment Target Amount minus (b) the sum of the Operating Period Shortfall Payments made by the Company during such Semi-Annual Accrual Period plus (c) the sum of the Monthly Operating Period Shortfall Restoration Payments for such Semi-Annual Accrual Period.

“Semi-Annual Supply Commitment True-Up Accrual” means, for any Semi-Annual Accrual Period, (a) the Base Product Water Deliveries for such Semi Annual Accrual Period, multiplied by the Fixed Unit Price minus (b) the Semi-Annual Accrual Period Ratio times one half of the Fixed Annual Costs.

Plant Restoration Fund; Capital Projects

Permanent Pump Shutdown Reserve Account

Unless a Reserve Surety in an amount equal to or greater than the Permanent Pump Shutdown Reserve Amount is on deposit in the Permanent Pump Shutdown Reserve Account, the Collateral Agent will make the deposits to the Permanent Pump Shutdown Reserve Account as described above under “Plant Revenue Fund.” Prior to its receipt of a copy of the Shutdown Notice, the Collateral Agent will transfer funds from the Permanent Pump Shutdown Reserve Account to the Company or any other Person designated by the Company in accordance with a Disbursement Request to reimburse the Company or pay for expenses incurred in connection with obtaining and maintaining the necessary Permits to construct and operate the Pump Relocation Project. After its receipt of a copy of the Shutdown Notice, the Collateral Agent will disburse funds on deposit in such Account as described below for a Capital Project below to pay the costs of a Capital Project undertaken in connection with a Permanent Pump Shutdown (the “Pump Relocation Project”).

The Collateral Agent will make the following transfers from the Permanent Pump Shutdown Reserve Account to the Plant Revenue Fund:

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upon receipt of a Disbursement Request, approved by the Independent Engineer, the amount identified therein as being in excess of the amount needed to complete the Pump Relocation Project;

upon the deposit into such Account of proceeds of Additional Plant Senior Debt, the lesser of the amount then on deposit in such Account and the amount of such proceeds;

upon receipt of notice from the Company that the Ground Lessor has rescinded the Shutdown Notice, all funds then on deposit in such Account; and

following the completion of the Pump Relocation Project, all funds then on deposit in such Account.

**Capital Projects**

All Net Capital Proceeds (whether arising from Events of Loss, Events of Eminent Domain, payment of Performance Guarantee Payments, additional Company equity contributions or otherwise) that are received on or after the Commercial Operation Date will be deposited into the Plant Restoration Fund, provided that Net Capital Proceeds (other than Performance Guarantee Payments) received in connection with a single Event of Loss, Event of Eminent Domain or any other event or condition in an aggregate amount less than $1,000,000 (Escalated), at the written direction of the Company, will be deposited in the Plant Revenue Fund instead of the Plant Restoration Fund.

The Company may undertake a Capital Project following the Commercial Operation Date and, except for any Capital Project to be funded with Net Capital Proceeds described in the proviso in the preceding paragraph (an “Exempt Capital Project”), such Capital Project will be subject to, and the related Net Capital Proceeds must be deposited to the Plant Restoration Fund and applied as described below. The Collateral Agent will establish and maintain a separate Account in the Plant Restoration Fund (which in the case of a Pump Relocation Project will be the Permanent Pump Shutdown Reserve Account) for each such Capital Project (with respect to any Capital Project, the “Related Capital Project Account”).

If, following an Event of Loss or Event of Eminent Domain after the Commercial Operation Date, the Company intends to restore, repair or replace the affected portion of the Plant or the Company Real Property to overcome the Event of Loss or Event of Eminent Domain and permit continued operation of the Plant, it may undertake a Capital Project and, except for any Exempt Capital Project, such Capital Project will be subject to the conditions described below and any related Net Capital Proceeds arising from such Event of Loss or Event of Eminent Domain will be retained in the Plant Restoration Fund and applied as described below. If, following receipt of any Performance Guarantee Payment, the Company desires to mitigate the deficiencies that gave rise to the EPC Contractor’s obligation to make such Performance Guarantee Payment, the Company may undertake a Capital Project subject to the conditions described below and such Performance Guarantee Payment will be retained in the Plant Restoration Fund and applied as described below.

If the Company determines that it will undertake a Capital Project (other than an Exempt Capital Project) following the Commercial Operation Date:

The Company must deliver to the Collateral Agent and the Secured Parties (a) a budget (as amended, modified or supplemented from time to time, the “Capital Project Budget”) identifying all categories and approximate amounts reasonably anticipated to be incurred in connection with such Capital Project, together with a statement of uses of Net
Capital Proceeds to be deposited into the Related Capital Project Account and any other moneys necessary to complete such Capital Project; (b) an estimated progress payment schedule for the projected requisitions to be made from the related Account in the Plant Restoration Fund; (c) a Capital Project plan (as amended, modified or supplemented from time to time, the “Capital Project Plan”) prepared by the Company and describing in reasonable detail its plan for completing such Capital Project; (d) a certification by the Independent Engineer that such Capital Project would not (i) adversely affect the ability of the Plant to sustain its current performance levels or the operational integrity of the Plant or (ii) reasonably be expected to result in a Material Decrease in Coverage for the term of the then Outstanding Senior Debt; and (e) if the cost of a Capital Project is greater than $2,000,000 (Escalated), (A) title insurance protection against Liens comparable to that provided in connection with the original construction, (B) if required by the Collateral Agent or the Senior Debt Majority, an opinion of Counsel that the Capital Project will comply with all Applicable Law, and (C) certificate of the Independent Engineer to the effect that all necessary Permits or Permit modifications for the Capital Project have been obtained;

1. The Company must deposit into the Related Capital Project Account sufficient Net Capital Proceeds to pay the costs set forth in the related Capital Project Budget, provided that that the Company may submit a Disbursement Request to the Collateral Agent requesting a transfer from the Project Reserve Account of the Working Capital Reserve Fund to such Account and the Collateral Agent shall make such transfer to the extent of available funds in the Project Reserve Account;

2. If the Capital Project Budget for such Capital Project exceeds $5,000,000 (Escalated) or if the Capital Project is to be funded with Performance Guarantee Payments, the Company may not proceed with the Capital Project unless the Independent Engineer has reviewed the Capital Project Plan for such Capital Project and the Capital Project Budget and delivered to the Collateral Agent a certificate (a “Capital Project Review Certificate”) in which it certifies that, among other things:

the budget is reasonable and the Capital Project can be completed within the budget and on the proposed schedule;

following completion of the Capital Project, the Plant will meet its required performance levels and there will be no Material Decrease in Coverage, taking into account any extension of the expiration date of the Water Purchase Agreement;

the Capital Project will not cause any adverse impact on the integrity, durability or reliability of the Plant;

if the Capital Project results from a Compensation Adjustment Event or a Directed Capital Modification, the Company has complied with the applicable provisions of the Water Purchase Agreement; and

if the Capital Project is not the result of Uncontrollable Circumstances or a Directed Capital Modification, the Capital Project will materially improve the performance, operation and/or maintenance of the Plant;

3. Before any withdrawal and transfer will be made from the Related Capital Project Account, the Company must deliver to the Collateral Agent at least three Business Days before any withdrawal and transfer will be made from the Related Capital Project Account, the Company must deliver to the Collateral Agent at least three Business Days before any withdrawal and transfer will be made from the Related Capital Project Account, the Company must deliver to the Collateral Agent at least three Business Days
prior to a Monthly Disbursement Date a requisition from the Company in the form
prescribed by the Collateral Trust Agreement (a “Capital Project Requisition”), signed
by an Authorized Representative of the Company;

4. On the Monthly Disbursement Date following receipt of a Capital Project Requisition,
the Collateral Agent will withdraw and transfer to the Related Capital Project Account
and pay to the Persons directed by it in writing the amounts set forth in such Capital
Project Requisition;

5. To the extent that the Company enters into any Additional Project Contract or any
modification or amendment to any Project Contract in connection with the undertaking of
a Capital Project, the Company must have complied with the requirements described
below under “Project Contracts” below with respect to such Additional Project Contract,
modification or amendment; and

6. Unless (i) the Capital Project is required as a result of one or more Uncontrollable
Circumstances and is funded, if debt funding is used, with Permitted Plant Debt or is a
Directed Capital Modification or (ii) the cost of the Capital Project is less than $20
million dollars, the Senior Debt Majority has approved the Capital Project.

Upon completion of any Capital Project (other than an Exempt Capital Project), the Company
must deliver to the Collateral Agent a certificate signed by an Authorized Representative of the Company
and approved by the Independent Engineer certifying that the completion of the Capital Project has been
performed in all material respects in accordance with the Capital Project Plan and that the Plant is capable
of operating in all material respects in accordance with the terms of the Plant Financing Documents.
Upon receipt of such certificate, the balance in the Related Capital Project Account will be applied by the
Collateral Agent in accordance with the written order of any Authorized Representative of the Company
in one or more of the ways set forth below:

   to the Prepayment Fund;

   to the Plant Restoration Fund, to be applied to any Capital Project, subject to (a) compliance
   with the requirements for undertaking a Capital Project described above and (b) if such
   funds derive from transfers to the Plant Restoration Fund from the Construction Fund as
   described above under “Plant Project Fund – Commercial Operation Date; Completion,”
   such Capital Project is not part of the Plant as it was authorized by the Issuer in its
   resolution authorizing the issuance of the Series 2012 Plant Bonds or any subsequent
   resolution of the Issuer, approval by the Issuer; and

   the Plant Revenue Fund;

except that, if a Capital Project is funded with Performance Guarantee Payments, any balance in the
Related Capital Project Account after the completion thereof will be deposited into the Prepayment Fund.

If either (a) the Company notifies the Collateral Agent and the Secured Parties that (i) it will not
rebuild, repair or restore the Plant following an Event of Loss in which all or substantially all of the Plant
was damaged or destroyed, (ii) an Event of Eminent Domain or a legal curtailment of the Company’s use
and occupancy with respect to all or substantially all of the Plant or Company Real Property for any
reason renders continued operation of the Plant uneconomic, or (c) it is either not practical or not
desirable to apply the Net Capital Proceeds received by the Company as a result of another event or
condition (including a loss of title, the Plant Contractor’s failure to achieve the Guaranteed Performance
Levels, a breach of warranty or a sale of assets) to a Capital Project for the purpose of mitigating the consequences of such event or condition, or (b) the Independent Engineer provides notice to the Collateral Agent (which notice may not, without the Company’s consent, be delivered prior to the 60th day after a Capital Project Plan and Capital Project Budget have been delivered to the Independent Engineer) stating that the Independent Engineer will not deliver the Capital Project Review Certificate, the Collateral Agent will transfer the Net Capital Proceeds related to such Event of Loss, Event of Eminent Domain or other event or condition that were deposited in the Plant Restoration Fund to the Prepayment Fund.

**Prepayment Fund**

Except as described below, amounts deposited into the Prepayment Fund will be promptly (and, in any event, within two Business Days) transferred by the Collateral Agent (upon receipt of written instruction from the Company or, if the Company fails to provide such notice within five Business Days of the date such funds are deposited in the Prepayment Fund, the Senior Debt Majority) as follows:

except in the case of a mandatory redemption under the Plant Indenture, on a pro rata basis, based on the amounts of Outstanding Plant Senior Debt then subject to repayment under the terms of the related Plant Financing Documents, to the Plant Trustee for prepayment or defeasance of Plant Bonds in accordance with the Plant Indenture and to any Additional Plant Lender for prepayment of Additional Plant Senior Debt that is not Plant Bonds; and

in the case of a mandatory redemption under the Plant Indenture, such funds will be transferred, on a pro rata basis based on the aggregate principal amounts of Outstanding Plant Senior Debt, to the Plant Trustee and to any Additional Senior Lenders.

If the Company incurs any Additional Plant Senior Debt that is not Plant Bonds, the Company may prepay such Debt without the need to prepay any or all of the other Plant Senior Debt, except that any such voluntary prepayment of Debt that is not Completion Debt, Water Connection Debt or Compliance Debt may only be made from disbursements from the Distribution and Stabilization Fund or from equity contributions to the Company.

**Investment of Accounts**

Amounts deposited in the Accounts shall, at the Company’s written request and direction, be invested by the Collateral Agent in Eligible Investments as specifically directed. Such investments must mature or be subject to repurchase, withdrawal without penalty or redemption, at the option of the Collateral Agent, on or before the dates on which the amounts invested are reasonably expected to be needed for the purposes of those accounts, provided that Eligible Investments held in the Plant Debt Service Reserve Fund shall either (i) have a final term not longer than five years or (ii) be subject to redemption or tender for the purchase by the obligor at the direction of the Collateral Agent at a price of not less than par with a term longer than five years for application for the purposes of the Plant Debt Service Reserve Fund. Except as otherwise provided in the Collateral Trust Agreement with respect to the Plant Debt Service Reserve Fund, the Permanent Account of the Working Capital Reserve Fund, the REC/VER Reserve Fund, the Special Maintenance Reserve Fund and, following the date on which the Ground Lease Restoration Reserve Amount has been deposited into such Fund, the Ground Lease Restoration Fund, net interest or gain, if any, from such investments shall be deposited into or charged to (as applicable) the applicable Account.

Absent written instructions from the Company, the Collateral Agent will invest the amounts held in the Accounts in certain Eligible Investments described in a schedule to the Collateral Trust Agreement.
The Company may amend such schedule at any time without the consent of any other party hereto. If, on any Business Day, amounts are deposited into an Account after 11:00 a.m. New York City time, the Collateral Agent will have no obligation to invest or reinvest such amounts on the date on which such amounts are funded. Instructions with respect to the investment of amounts received into an Account after 11:00 a.m. New York City time will be deemed to apply for the following Business Day.

If and when cash is required for the making of any transfer, disbursement or withdrawal in accordance with the Collateral Trust Agreement, the Company will cause Eligible Investments to be sold or otherwise liquidated into cash (without regard to maturity) as and to the extent necessary in order to make such transfers, disbursements or withdrawals. The Collateral Agent will comply with any instruction from the Company with respect to the liquidation of such Eligible Investments. If any such investments are so redeemed prior to the maturity thereof, the Collateral Agent will not be liable for any loss or penalties relating thereto.

For purposes of determining responsibility for any income tax payable on account of any income or gain on any Eligible Investment, such income or gain will be for the account of the Company.

**Reserve Sureties**

The Company may deliver to the Collateral Agent a Reserve Surety in lieu of all or a portion of the amounts required to be on deposit in the Plant Debt Service Reserve Account, an Account in Working Capital Reserve Fund, the Ground Lease Restoration Reserve Fund or the Permanent Pump Shutdown Reserve Account. If, at any time, the provider of such Reserve Surety is no longer an Acceptable Credit Provider, the Company must, within ten Business Days thereafter, deposit with the Collateral Agent (i) cash in the amount then required to be on deposit in the related Account or (ii) a replacement Reserve Surety in such amount. An opinion of counsel to the provider of the Reserve Surety (other than a Debt Service Reserve Surety) that the Reserve Surety is a valid, legal, binding and enforceable obligation of such provider must be delivered to the Collateral Agent at the time such Reserve Surety is delivered.

Each Reserve Surety (i) must be in effect for an initial period of not less than one year, (ii) may provide that it will be automatically renewed for successive periods of at least one year, subject to the provider’s nonrenewal rights described in the immediately succeeding sentence, without any action whatsoever on the part of the Collateral Agent, and (iii) may provide for an outside termination date, subject to draw rights for non-renewal or replacement. A Reserve Surety provider will have the right to elect not to renew a Reserve Surety only by giving written notice to the Collateral Agent at least 30 days prior to the then-current expiration date thereof; provided that the privilege of the Reserve Surety provider to elect not to renew such Reserve Surety will not diminish the obligation of the Company to maintain such Reserve Surety in accordance with the terms of the Collateral Trust Agreement or to deposit immediately available funds in the requisite amount. In addition, each Reserve Surety must expressly provide that (A) the Collateral Agent has the right to draw down up to the face amount of the Reserve Surety (and in multiple partial draws) at any time upon presentation to the provider thereof of the original of such Reserve Surety and the Collateral Agent’s certified statement that the Collateral Agent is entitled to draw such amount under the provisions of Collateral Trust Agreement and any related draw certificate attached to the Reserve Surety (and without any other condition or qualification as to any such draw) and (B) the Reserve Surety provider will honor such draw request by the Collateral Agent immediately upon such presentation and without inquiry as to the accuracy of the statement and regardless of whether the Company or other account party contests the draw.

If a Reserve Surety provider notifies the Collateral Agent that it will not renew any then-current Reserve Surety it has issued or a Reserve Surety that will otherwise expire, the Collateral Agent will accept a replacement thereof (to be in effect not later than 10 days prior to the expiration of the then-
expiring Reserve Surety), on the terms and conditions described above. If, on the 10th day prior to the expiration of a Reserve Surety, such Reserve Surety has not been renewed or replaced with another Reserve Surety or with cash and the Company has not delivered to the Collateral Agent cash or immediately available funds in an amount equal to the face amount of such Reserve Surety for deposit into the applicable Account, then on the next succeeding Business Day the Collateral Agent will immediately and regardless of any contest or protest by the Company draw on such existing Reserve Surety prior to its expiration and deposit the proceeds therefrom to the applicable reserve Account. Upon the delivery of a substitute Reserve Surety or cash, the Collateral Agent will promptly return the current Reserve Surety to the provider thereof for cancellation.

The Collateral Agent will (immediately and regardless of any contest or protest by the Company) draw upon a Reserve Surety (i) to the extent there are insufficient moneys in the Account for which such Reserve Surety was delivered to fund any disbursement required from such Account and (ii) in the full face amount thereof if it is not extended or replaced as provided above at least 10 days prior to its expiration. The proceeds of any draw by the Collateral Agent under any Reserve Surety will be deposited into the Account for which it was delivered. In the event that there is a Reserve Surety deposited into an Account and there is an excess amount in such Account that is permitted to be transferred by the Collateral Agent in accordance with the terms hereof, the Collateral Agent shall first transfer such excess from cash on deposit in such Account and second, to the extent of any remaining excess, issue a reduction certificate to the issuer of such Reserve Security reducing the maximum amount available for drawing under such Reserve Security by the amount of such remaining excess. In the event that there is more than one Reserve Surety deposited in an applicable Account, any draws on any date on such Reserve Sureties shall be allocated as directed by the Company, provided that in the absence of any such directions, such draws shall be allocated on a pro rata basis among such Reserve Sureties based on the amount to be drawn on such date.

**Remedies**

**Notices; Directions to the Collateral Agent**

The Collateral Agent will give each Secured Party notice of the occurrence of a Plant Financing Default (a “Plant Financing Default Notice”) or of a Plant Financing Event of Default (an “Plant Financing Event of Default Notice”) promptly upon becoming aware thereof. Each Secured Party will promptly give the Collateral Agent a Plant Financing Default Notice and a Plant Financing Event of Default Notice with respect to any Plant Financing Default and any Plant Financing Event of Default of which such Secured Party has knowledge.

If the Collateral Agent delivers or receives a Financing Default Notice, it will consult with, and follow the instructions of, the Senior Debt Majority as to the giving of notice to the Company and the taking of such other action as may be available under the related Plant Financing Document. If the Collateral Agent has received a Plant Financing Event of Default Notice, the Senior Debt Majority will, by direction contained in the Plant Financing Event of Default Notice or by a separate instrument in writing executed and delivered to the Collateral Agent (with copies simultaneously delivered to the other Secured Parties), as the Senior Debt Majority may elect:

- to direct the Collateral Agent to exercise, or to refrain from exercising, any right, remedy, trust or power available to or conferred on the Collateral Agent under Collateral Trust Agreement or under the other Collateral Documents; and

- to direct the time, method and place:
of conducting any proceeding for any right or remedy available to the Collateral Agent;
of exercising any trust or power conferred on the Collateral Agent;
for the appointment of a receiver; or
for the taking of any other action authorized under the Collateral Trust Agreement.

If the Collateral Agent has delivered or received a Plant Financing Event of Default Notice and has not received written notice from the Senior Debt Majority stating that the underlying Plant Financing Event of Default is no longer continuing or written directions from the Senior Debt Majority as to the pursuit of remedies with respect to such Plant Financing Event of Default, the Collateral Agent will be obligated to exercise the rights and remedies provided in the Collateral Trust Agreement and in the other Collateral Documents pursuant to and in accordance with Applicable Law and the Plant Financing Documents, except that the Collateral Agent may only accelerate the Plant Senior Debt and the Pipeline Bonds at the direction of the Senior Debt Majority.

Any exercise of remedies by the Collateral Agent will be for the benefit of all holders of Senior Debt, and the Collateral Agent must accelerate all Plant Senior Debt if it accelerates any Plant Senior Debt.

Appointment of a Receiver

If a receiver of the Collateral is appointed in judicial proceedings, the Collateral Agent may be appointed as such receiver. Notwithstanding the appointment of a receiver, the Collateral Agent will be entitled to retain possession and control of all cash held by, or deposited with, it or a Supplemental Collateral Agent pursuant to any provision of the Collateral Trust Agreement or any other Collateral Document.

Enforcement of Liens

At all times prior to the Discharge Date, the Collateral Agent, in accordance with a direction of the Senior Debt Majority, will have all rights to take action under any of the Collateral Documents with respect to the Collateral (other than as expressly provided for in the Collateral Trust Agreement), including the exclusive right to enforce, collect or realize on any Collateral or exercise any other right or remedy with respect to the Collateral in accordance with the Collateral Documents. In exercising any such rights or remedies (other than with respect to the Plant Contractor Security Account) after the occurrence and during the continuance of any Plant Financing Event of Default, the Senior Debt Majority may instruct the Collateral Agent to enforce (or to refrain from enforcing) the provisions of the Collateral Documents in respect of the Secured Obligations and exercise (or refrain from exercising) any such rights and remedies, all in such order and in such manner as the Collateral Agent may determine, unless otherwise directed by the Senior Debt Majority, including:

the exercise or forbearance from exercise of all rights and remedies in respect of the Collateral and/or the Secured Obligations;
the enforcement or forbearance from enforcement of any Lien in respect of the Collateral;
the exercise or forbearance from exercise of rights and powers of a holder of equity interests in the Company or any other form of securities or membership interests included in the Collateral to the extent provided in the Collateral Documents;
the acceptance of the Collateral in full or partial satisfaction of the Secured Obligations;

the exercise or forbearance from exercise of all rights and remedies of a secured lender under
the UCC or any similar law of any applicable jurisdiction or in equity; and

the drawing in full in accordance with Section 3.21 of the Collateral Trust Agreement or in
part of any available amounts under any Reserve Surety.

Secured Parties May Not Exercise Remedies

Each Secured Party (other than the Pipeline Trustee) (i) grants to the Senior Debt Majority the
sole right to direct the exercise of remedies under the Financing Documents to which such Secured Party
is a party, (ii) grants to the Collateral Agent the sole right to enforce such remedies, including an
acceleration of the Plant Senior Debt, in accordance with the terms of the Collateral Trust Agreement and
(iii) agrees that it will not pursue any remedy under any Plant Financing Document with respect to an
Event of Default. The Pipeline Trustee (A) grants to the Senior Debt Majority the sole right to direct the
exercise of remedies under the Pipeline Indenture if a Contracted Shortfall Payment Default occurs,
(B) grants to the Collateral Agent the sole right to enforce such remedies, including an acceleration of the
Pipeline Bonds, in accordance with the terms of the Collateral Trust Agreement if a Contracted Shortfall
Payment Default occurs and (C) agrees that it will not pursue any remedy under the Pipeline Indenture
with respect to a Contracted Shortfall Payment Default except as directed by the Senior Debt Majority.

Payments

The Collateral or any proceeds thereof received in connection with the sale or other disposition
of, or collection on, the Collateral upon the exercise of remedies in accordance with the Collateral Trust
Agreement and any amounts intended to be paid to any of the Secured Parties during the pendency of any
Insolvency or Liquidation Proceeding will, in each case, be applied in the following order:

1. on a pro rata basis based on amounts then owed each such Person, to (A) the payment of all

amounts (expenses and indemnity payments) due to the Issuer, the Collateral Agent, the
Plant Trustee or any other agent under any of the Plant Financing Documents and (B) to
the payment of all fees, expenses, indemnity payments and premiums, if any, due to any
other agent or Fiduciary for a Secured Party;

2. on a pro rata basis based on amounts of interest then due on the Plant Senior Debt, the
amount of Contracted Shortfall Payments due for application to interest on the Pipeline
Bonds and amounts payable by the Company under Interest Hedging Arrangements to
(A) the payment of all interest, fees and other amounts (other than principal or other
amounts described in Item 3 below) due to any of the Secured Parties under any Plant
Financing Documents, (B) to the payment of all Contracted Shortfall Payments for
application to interest on the Pipeline Bonds then due and (C) to the payment of any
Company Interest Hedging Payment due to an Interest Hedging Counterparty;

3. on a pro rata basis based on amounts of principal, premium and reimbursement payments
then due, to (A) the payment of all principal (and any applicable premium) due to any of
the Secured Parties with respect to Plant Senior Debt, (B) to the payment of all Contracted Shortfall Payments then due for application to principal payments on the
Pipeline Bonds, (C) the payment of any other payments made by the Bond Insurer under
the Bond Insurance Policy for which it was not reimbursed and (D) the payment of any
other payments made by a Facility Letter of Credit Issuer under its Facility Letter of Credit for which it was not reimbursed;

3. on a pro rata basis based on amounts then owed each Interest Hedging Counterparty, to each Interest Hedging Counterparty, any termination payment owing to such Interest Hedging Counterparty under the related Interest Hedging Arrangement; and

4. the balance, if any, after the Secured Obligations have been paid in full in cash, to the Company or as otherwise required by applicable law.

Notwithstanding the foregoing, (A) all amounts on deposit in the Plant Contractor Security Account will remain therein until final settlement is made under the Plant EPC Contract and (B) any amount in any other Account that secures particular Plant Senior Debt or the Company’s obligation to pay the Plant EPC Contractor will be disbursed to the related Secured Party.

Promptly following receipt of any of the moneys referred to above, the Collateral Agent will provide notice to each Secured Party of the receipt of such moneys. Within 10 Business Days of the receipt of such notice, each Secured Party will give the Collateral Agent written certification of the aggregate amount of the Secured Obligations then outstanding owed by the Company to such Secured Party under the applicable Plant Financing Documents and, upon receipt thereof, the Collateral Agent will provide a copy of each such certification to each other Secured Party. Unless otherwise directed by a court of competent jurisdiction or each Secured Party, the Collateral Agent will use the information provided for in such notices as the basis for applying such moneys as described above.

No remedy conferred upon or reserved to the Collateral Agent in the Collateral Trust Agreement or any other Collateral Documents is intended to be exclusive of any other remedy or remedies, but every such remedy will be cumulative and will be in addition to every other remedy conferred in the Collateral Trust Agreement or in the other Collateral Documents or existing at law or in equity or by statute. No delay or omission of the Collateral Agent or the Senior Debt Majority to exercise any right, remedy or power accruing upon any Plant Financing Event of Default will impair any such right, remedy or power or may be construed to be a waiver of or acquiescence in any Plant Financing Event of Default. Every right, power and remedy given by the Collateral Trust Agreement or any other Collateral Document to the Collateral Agent or the Senior Debt Majority may be exercised from time to time and as often as may be deemed expedient by the Collateral Agent.

If the Collateral Agent proceeds to enforce any right, remedy or power under the Collateral Trust Agreement or any other Collateral Document and such proceeding is discontinued or abandoned for any reason or is determined adversely to the Collateral Agent, then, and in every such case, the Company, the Collateral Agent and the Secured Parties will, subject to any effect of, or determination in, such proceeding, severally and respectively be restored to their former positions and rights under the Collateral Trust Agreement and such other Collateral Document with respect to the Collateral and in all other respects. Thereafter, all rights, remedies and powers of the Collateral Agent will continue as though no such proceeding had been taken.

The Company, to the fullest extent it may lawfully do so, on behalf of itself and all who may claim through or under it, including, without limitation, any and all subsequent creditors, vendees, assignees and lienors, expressly waives and releases any, every and all rights to demand any marshaling of the Collateral upon any sale, whether made under any power of sale granted under the Collateral Documents, or pursuant to judicial proceedings or upon any foreclosure or any enforcement of the Collateral Trust Agreement or the other Collateral Documents and consents and agrees that all the Collateral may at any such sale be offered and sold as an entirety or in parts.
Amendments to Collateral Trust Agreement

The Collateral Agent and the Senior Debt Majority may, with the consent of the Company but without the consent of (but with notice to) the other Secured Parties, amend the Collateral Trust Agreement for any one or more of the following purposes:

to grant to or confer or impose upon the Collateral Agent for the benefit of the Secured Parties any additional rights, remedies, powers, authority or duties that may lawfully be granted, conferred or imposed and that are not contrary to or inconsistent with the Collateral Trust Agreement as then in effect;

to cure any ambiguity or omission or to cure, correct or supplement any defective provision of the Collateral Trust Agreement, in each case, in such manner as does not adversely affect the Secured Parties;

to evidence the succession of a new collateral agent;

to modify, alter, amend or supplement the Collateral Trust Agreement in any other respect that does not involve a change that is materially adverse to the Secured Parties; and

to (A) effectuate the issuance of Additional Plant Bonds in accordance with the terms of the Collateral Trust Agreement (B) cause the Liens granted in the Collateral Trust Agreement to be in favor of the new Secured Parties and (C) cause the new Secured Parties to be treated in the same manner as the other Secured Parties under the Collateral Trust Agreement and the other Collateral Documents (other than as expressly provided hereby).

The Collateral Agent may receive and rely on an opinion of Counsel from the Company to the effect that any amendment to the Collateral Trust Agreement complies with the foregoing.

Project Contracts

Additional Project Contracts

The Company may not enter into any Additional Project Contract without the consent of the Senior Debt Majority unless:

such Additional Project Contract is entered into to implement the relocation of or modification to the pumping, intake and outfall equipment and facilities used by the Plant following or in anticipation of a Permanent Pump Shutdown, the Company has complied with the requirements for undertaking a Capital Project following the Commercial Operation Date described above under “Capital Projects” with respect to the Pump Relocation Project, and the Company has provided a certificate to the Collateral Agent (with a copy to the Senior Debt Majority) executed by an Authorized Representative of the Company (and the Independent Engineer has concurred in such certification) stating that such proposed Additional Project Contract is consistent with the Capital Project Budget and the Capital Project Plan for the Pump Relocation Project and would not reasonably be expected to impair in any material respect the Company’s ability to perform its obligations under the Principal Project Contracts or otherwise result in any non-economic impact that would have a Material Adverse Effect; or

the Company has complied with the requirements therefor in the Loan Agreement with
respect to the related Separate Project Modification and such Additional Project Contract described under “Loan Agreement” in Appendix G;

such Additional Project Contract is not described above and the Company has provided a certificate to the Collateral Agent (with a copy to the Senior Debt Majority) executed by an Authorized Representative of the Company and certifying (with the concurrence of the Independent Engineer) that such Additional Project Contract would not reasonably be expected to (A) result in a Material Decrease in Coverage or (B) otherwise result in any non-economic impact that would have a Material Adverse Effect, and the Independent Engineer has concurred in the Company’s certification; or

such Additional Project Contract has been approved by the Senior Debt Majority.

**Amendments; Change Orders**

The Company may not cause, consent to, or permit, any amendment, modification, variance or waiver of timely compliance with any terms or conditions of any Principal Project Contract, including any exhibit thereto, except:

1. amendments or modifications to cure any defective provisions contained therein or to permit other minor deviations from the terms thereof, if, in each case, such amendment, modification or waiver is in the best interests of the Project and is not inconsistent with the Project Construction Budget or the then effective Operating Budget, as applicable, and so long as a copy of any such amendment, modification or waiver is delivered to the Collateral Agent and the Senior Debt Majority not less than three Business Days after the execution thereof;

2. amendments, modifications, variances or waivers as may be necessary in connection with the relocation of or modification to the pumping, intake and outfall equipment and facilities used by the Project following or in anticipation of a Permanent Pump Shutdown, if the Company has delivered a certificate to the Collateral Agent executed by an Authorized Representative of the Company and certifying that the proposed amendment, modification, variance or waiver would not reasonably be expected to impair in any material respect the Company’s ability to perform its obligations under the other Principal Project Contracts or otherwise result in any non-economic impact that would have a Material Adverse Effect, and the Independent Engineer has concurred in such certification;

4. amendments, modifications, variances or waivers (including any thereof as may be necessary in connection with the implementation of any permitted Capital Project, but excluding any thereof described in Items 1 through 4 above), if the Company has delivered a certificate to the Collateral Agent executed by an Authorized Representative of the Company and certifying, with the concurrence of the Independent Engineer, that the proposed amendment, modification, variance or waiver would not reasonably be expected to result in a Material Decrease in Coverage;

5. any work by the EPC Contractor that would entitle it to a Repair Credit so long as the Company delivers to the Collateral Agent a certificate signed by an Authorized Representative of the Company (and the Independent Engineer must concur with such certificate) to the effect that the proposed actions by the EPC Contractor under the Plant
EPC Contract are technically feasible and reasonably expected to remedy the Deficiency proposed to be remedied; and

6. any other amendments, modifications, variances or waivers approved by the Senior Debt Majority.

Cancellation; Termination; Assignment

The Company may not cancel or terminate any Principal Project Contract to which it is a party or consent to or accept any cancellation or termination thereof or the termination or suspension in the performance of any obligations thereunder, except the termination of a Principal Project Contract at the end of the stated term thereof or upon the full and complete performance by each party thereto of all obligations thereunder unless (A) the Company has delivered to the Collateral Agent a certificate executed by an Authorized Representative of the Company certifying that the proposed cancellation or termination would not reasonably be expected to result in a Material Decrease in Coverage or otherwise have a non-economic impact that would have a Material Adverse Effect and the Independent Engineer has concurred in such certificate, (B) the Company is terminating the O&M Agreement for convenience or (C) such cancellation or termination is otherwise approved by the Senior Debt Majority.

The Company may not grant any consent to the assignment of any Principal Project Contract by the counterparty thereto to the extent that the Company has the right to consent or to withhold consent thereunder without the prior consent of the Senior Debt Majority.

Financial Projections

Whenever the Debt Service Coverage Ratio is required to be taken into account under the Collateral Trust Agreement, the Company will deliver to the Senior Debt Majority (with copies provided contemporaneously to the other Secured Parties) a certificate executed by an Authorized Representative of the Company setting forth the complete calculation of the required Debt Service Coverage Ratio and, if the calculation includes the projected Debt Service Coverage Ratio, the Current Case Financial Projections, together with a statement of any material updated information included in the Current Case Financial Projections since the most recently delivered Financial Projections and the Company’s certification that such Current Case Financial Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions are believed by the Company to be reasonable as of the date of delivery. The Company must in any event deliver such a certificate at the following times:

30 days prior to each Calculation Date;

in connection with any proposed issuance of Additional Plant Senior Debt requiring satisfaction of specified Debt Service Coverage Ratio criteria; and

in connection with any proposed Capital Project requiring the consent of the Senior Debt Majority.

The Senior Debt Majority may, in its discretion, request that the Independent Engineer review and confirm the calculation of the Debt Service Coverage Ratio and other information contained in the Company’s certificate. The Company will provide to the Senior Debt Majority such documentation and information in support of the calculation of the Debt Service Coverage Ratio and any proposed update of the Financial Projections as the Senior Debt Majority (or the Independent Engineer) may reasonably request.
The Senior Debt Majority will have the right to object to the use of the Current Case Financial Projections proposed by the Company if it reasonably believes that the information used to prepare a proposed update to the Financial Projections is inaccurate in any material respect or that any material assumption stated therein is not reasonable. If the Senior Debt Majority does not provide written notice to the Company of such objection to a certificate delivered by the Company within 15 days of its delivery, the Current Case Financial Projections contained therein will be deemed effective. If the Senior Debt Majority notifies the Company of an objection to a certificate within such time period, and the Company and the Senior Debt Majority are unable to resolve such objection within the 15-day period following the Senior Debt Majority’s notice to the Company, the dispute will be referred to the Independent, Engineer who will review (at the Company’s cost) the proposed update to the Financial Projections and render its opinion as to the accuracy of the information and reasonableness of the assumptions used therein.

The Company may not revise the Financial Model without the consent of the Senior Debt Majority unless the Independent Engineer has audited (at the Company’s cost) the proposed Financial Model and delivered an opinion, addressed to the Senior Debt Majority, that, based on customary assumptions and qualifications, (i) the logic and integrity of the proposed Financial Model are sound, (ii) the mathematical computations therein are accurate and (iii) the logic embodied therein is materially consistent with the Plant Financing Documents and the Project Contracts and, if the proposed revised Financial Model is delivered in connection with a proposed issuance of Additional Plant Senior Debt, the terms of such proposed Additional Plant Senior Debt.

**Additional Plant Senior Debt**

The Company may not incur Additional Plant Senior Debt except as described under this heading. Subject to the provisions of the Collateral Trust Agreement described in second and third paragraph under this heading and so long as no Plant Financing Event of Default exists, the Company may incur Additional Plant Senior Debt if the proceeds thereof are to be used to:

- finance the Project Costs to be incurred in completing the Plant or costs constituting Poseidon Pipeline Costs (“Completion Debt”);
  
  1. refund all or a portion of Plant Senior Debt, Pipeline Bonds that have been accelerated, or subordinated indebtedness of the Company (“Refunding Debt”);
  
  2. finance the costs of the development, design engineering, permitting, construction, financing, start-up and testing of a Capital Project (A) consisting of a relocation of water connections and other equipment and facilities in connection with a Permanent Pump Shutdown (“Water Connection Debt”) or (B) required to comply with Applicable Law or any Principal Project Contract, including the performance of any obligations of the Company under the Water Purchase Agreement (“Compliance Debt”);
  
  3. finance the costs of the development, design engineering, permitting, construction, financing, start-up and testing of other Capital Projects undertaken by the Company in compliance with the provisions of the Collateral Trust Agreement;
  
  4. finance the short-term cash flow requirements of the Company for payment of O&M Costs pursuant to any bank or other working capital credit facility; provided that the total amount of Debt permitted to be incurred under any such working capital credit facility, together with the total amount of reimbursement obligations of the Company under any letter of credit and reimbursement facility described in Item 6 below, may not exceed the sum of (A) $15 million (Escalated) in the aggregate plus (B) if a Facility Letter of Credit
Issuer agrees that its Facility Letter of Credit can be drawn on to pay the Company’s obligations under Project Contracts, the amount available to be drawn thereon;

5. finance letters of credit to secure the Company’s obligations under Project Contracts pursuant to any bank or other letter of credit and reimbursement facility; provided that the total amount of reimbursement obligations of the Company permitted to be incurred under any such letter of credit and reimbursement facility, together with the total amount of Debt under any working capital credit facility described in Item 5 above, may not exceed the sum of (A) $15,000,000 (Escalated) in the aggregate plus (B) if a Facility Letter of Credit Issuer agrees that its Facility Letter of Credit can be drawn on to pay the Company’s obligations under Project Contracts, the amount available to be drawn thereon; or

6. with a Favorable Opinion of Bond Counsel, finance facilities ancillary to the operation of the Plant.

The Company may incur Debt under Interest Hedging Arrangements entered into in connection with any Additional Plant Senior Debt as required by the terms of the Plant Financing Documents for such Additional Plant Senior Debt. The Company may also incur:

Completion Debt in an aggregate amount not to exceed $50 million (Escalated);

Water Connection Debt in an aggregate amount not to exceed $25 million (Escalated – currently $[26,964,771.27][calculated as of 1/16/19]) and;

Compliance Debt in an aggregate amount not to exceed $25 million (Escalated – currently $[26,964,771.27][calculated as of 1/16/19]);

so long as, in each case, (A) the Company has delivered to the Collateral Agent updated Current Case Financial Projections that (1) give effect to the issuance of such Debt and (2) show a minimum projected Debt Service Coverage Ratio for each Fiscal Year of the remaining term of the then Outstanding Plant Senior Debt of not less than 1.00 and (B) if the Debt Service Reserve Requirement for any such Additional Plant Senior Debt is different than the Debt Service Reserve Requirement for any then Outstanding Plant Senior Debt, the condition set forth in Item 4 below is satisfied.

Except as provided above with respect to debt under Interest Hedging Arrangements, Water Connection Debt and Compliance Debt, the Company may incur Additional Plant Senior Debt only if the following conditions have been satisfied:

1. the balance of each Plant Debt Service Reserve Fund (other than, in the case of Refunding Debt, the Plant Debt Service Reserve Fund in respect of the Plant Senior Debt that is to be refunded) is at least equal to the related Debt Service Reserve Requirement and the balances of the Permanent Account and the Project Reserve Account of the Working Capital Reserve Fund are at least equal to the Working Capital Reserve Requirement and the Required Project Reserve Account Balance after giving effect to the issuance of such debt;

2. the Debt Service Coverage Ratio for the last completed Budget Year or Fiscal Year preceding the issuance of Additional Plant Senior Debt was at least 1.35;
3. the Company delivers Current Case Financial Projections that (A) give effect to the proposed issuance of such Debt and (B) show a projected Debt Service Coverage Ratio for each Fiscal Year of the remaining term of the then Outstanding Senior Facility Debt of not less than 1.35 after giving effect to the issuance of such Additional Plant Senior Debt;

4. the Company delivers a confirmation from at least two rating agencies that initially rated the Series 2012 Plant Bonds that the issuance of such Additional Plant Senior Debt will not result in the lowering of their then-current respective ratings, and in any event not lower than a rating of BBB- by S&P or its equivalent, on the Series 2012 Plant Bonds and any previously issued Additional Plant Senior Debt;

5. if such Additional Plant Senior Debt is to be issued for the purpose of refunding any Plant Senior Debt then Outstanding, conditions described in Items 2, 3 and 4 above will not apply so long as the Company delivers Current Case Financial Projections showing Debt Service for the current and each succeeding Budget Year that, after giving effect to the issuance of the Additional Plant Senior Debt, is not greater than the Debt Service for the remaining term of the refunded Plant Senior Debt; and

6. the terms of the Plant Financing Documents regarding Additional Plant Senior Debt, except for Refunding Debt that will refinance all Plant Senior Debt then Outstanding, are reasonably satisfactory to the Senior Debt Majority and contain no right of acceleration in conflict with the Collateral Trust Agreement and impose no other covenants or events of default which would conflict with any other provision of the Collateral Trust Agreement.

The Issuer has no obligation to issue Additional Plant Bonds.

**Additional Senior Lenders**

Subject to the limitations set forth in the Plant Financing Documents, each Secured Party acknowledges and agrees in the Collateral Trust Agreement that the Collateral subject to Liens granted by the Company and the Partners may secure Additional Plant Senior Debt and any obligations to a Bond Insurer. Upon execution and delivery to the Collateral Agent, the Secured Parties and the Company of an Accession Agreement, in the form prescribed by the Collateral Trust Agreement, by the joining party, such joining party will become “Secured Parties” under the Collateral Trust Agreement, and the Company obligations to such Persons will become “Secured Obligations.”

**Subordinated Debt**

The Company may incur Debt, secured by a subordinated pledge of all or any portion of the Collateral subject to Liens granted by the Company and the Partners, only if the following conditions are satisfied:

the Company provides to the Senior Debt Majority Current Case Financial projections, reviewed by the Independent Engineer, that show an average annual Projected Debt Service Coverage Ratio of at least 1.35 for each Fiscal Year of the remaining life of then Outstanding Plant Senior Debt, treating for purposes of the calculation the proposed subordinated Debt and any outstanding subordinated Debt as Plant Senior Debt;

the Company delivers a letter to the Collateral Agent and the Senior Debt Majority from at least two Rating Agencies then rating any Outstanding Plant Bonds confirming that each
such Rating Agency will not lower, suspend or withdraw its then-current rating of such Plant Bonds if such proposed subordinated Debt is issued; and

the terms of the subordination provisions contained in the documents pursuant to which such proposed Debt is to be issued conform to the requirements of the Collateral Trust Agreement Exhibit L.

**Resignation and Removal of the Collateral Agent; Appointment of Successor Collateral Agent**

MUFG Union Bank, N.A., successor-in-interest to Union Bank, N.A., in its individual capacity ("MUFG Bank") may resign as Collateral Agent following 30 days’ notice to each other Secured Party and the Company. In addition, in accordance with a direction of the Senior Debt Majority, Union Bank (or any successor thereto) may be removed as Collateral Agent. If Union Bank, (or any successor thereto) resigns or is removed as Collateral Agent, the Senior Debt Majority will appoint a successor agent (in consultation with the Company). No resignation or removal of the Collateral Agent will be effective until (i) a successor Collateral Agent has been appointed, (ii) the resigning or removed Collateral Agent has transferred to its successor all of its rights and obligations in its capacity as the Collateral Agent under the Collateral Trust Agreement and the other Plant Financing Documents and (iii) the successor Collateral Agent has executed and delivered an agreement to be bound by the terms of Collateral Trust Agreement and perform all duties required of the Collateral Agent.

If no successor Collateral Agent has been appointed by the Senior Debt Majority and has accepted such appointment within 30 days after the retiring Collateral Agent’s giving of notice of resignation or the removal of the retiring Collateral Agent or if a Plant Financing Event of Default has occurred and is continuing, then the retiring Collateral Agent may apply to a court of competent jurisdiction to appoint a successor Collateral Agent, which must be a bank or trust company which has an office in New York, New York and that has a combined capital surplus of at least $500,000,000 or at least $100,000,000 and is a wholly owned subsidiary of a bank or trust company that has a combined capital surplus of at least $500,000,000 and is reasonably acceptable to the Senior Debt Majority; provided that if the Senior Debt Majority does not confirm such acceptance or reject such appointee in writing within 30 days following selection of such successor by the retiring Collateral Agent, then it will be deemed to have given acceptance thereof and such successor will be deemed appointed as the Collateral Agent.

**II. SUMMARY OF CERTAIN PROVISIONS OF THE SECURITY AGREEMENT**

Under the Security Agreement, dated as of December 24, 2012 (the "Agreement"), between Poseidon Resources (Channelside) LP, a Delaware limited partnership ("Grantor"), and MUFG Union Bank, N.A., successor-in-interest to Union Bank, N.A., as collateral agent ("Collateral Agent"), Grantor assigns, grants and pledges, subject to a continuing security interest in favor of Collateral Agent, all of Grantor’s estate, right, title and interest in Grantor’s assets (collectively, the "Collateral") in order to secure for the benefit of the Secured Parties payment in full and performance of the Secured Obligations, subject to the terms of the Collateral Trust Agreement.

So long as Collateral Agent has not exercised remedies with respect to the Collateral upon the occurrence of Plant Financing Default, Grantor reserves all rights with respect to the Collateral, including the right to use, apply, modify, dispose of or otherwise deal with the Collateral (except, in each case, as limited by the Plant Financing Documents). Upon the occurrence of a Plant Financing Default, the Collateral Agent shall have the following rights, among others: (a) to enforce the rights vested in it by the Agreement and the UCC; (b) to institute and prosecute any action or other proceeding to collect or enforce any obligation or right under the Agreement, including specific enforcement, foreclosure or sale
under a judgment or decree in any judicial proceeding; (c) in connection with any acceleration and foreclosure, to take possession of the Collateral and all books and records of Grantor relating thereto; (d) to secure the appointment of a receiver for Pledgor without prior notice to the Company or Pledgor; or (e) to take any other action that Collateral Agent deems necessary or desirable to protect or realize upon its security interest in the Collateral or any part thereof. The Collateral Agent may also, to the extent permitted by applicable Legal Requirements, arrange for and conduct a sale of the Collateral at a private or public sale. In addition, subject to the terms of the Financing Documents, the Collateral Agent may, but is not obligated to, (i) cure any event of default under the Project Contracts and certain permits, and (ii) upon the occurrence of an event of default under the Plant Loan Agreement between the Grantor and the Issuer, if Grantor fails to timely perform any agreement contained in the Agreement, Collateral Agent may itself perform, or cause performance of, such agreement, and the reasonable expenses of Collateral Agent incurred in connection therewith shall be part of the Secured Obligations.
III. SUMMARY OF CERTAIN PROVISIONS OF THE DEED OF TRUST

Under the Leasehold Deed of Trust, Assignment of Rents and Security Agreement, dated as of December 24, 2012 (the “Deed of Trust”), Poseidon Resources (Channelside) LP (“Trustor”) granted and assigned to Fidelity National Title Company (“Trustee”) for the benefit of the Collateral Agent for the benefit of the Secured Parties (collectively, “Beneficiary”) as security for payment in full and performance of the Secured Obligations, subject to the terms of the Collateral Trust Agreement, all of Trustor’s right, title and interest, whether now owned or hereafter acquired, in or to the following (collectively the “Property”):

all estate, right, title and interest of Trustor in, to, under or derived from the Site, including, all estate, right, title and interest of Trustor in, to, under or derived from the Ground Lease), together with all amendments, modifications, extensions, and renewals thereof, all credits, deposits, options, privileges, and rights thereunder or thereto, and all other, further, additional or greater estate, right, title or interest of Trustor in, to, under or derived from the Site or the Ground Lease covering the Site (the “Leasehold Estate” and, together with the Site, the “Land”);

all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements located on the Land (the “Improvements”); and to the extent permitted by law, the name or names, if any, used for each Improvement, and the goodwill associated therewith;

all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Land or the Improvements and the reversions, remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land to the center line thereof and all the estates, rights, titles, interests, property, possession, claim and demand whatsoever, both in law and in equity, of Trustor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

all machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory and articles of personal property and accessions thereof and renewals, replacements thereof and substitutions therefor, and other tangible property of every kind and nature whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Land or the Improvements, or appurtenances thereto, or used in connection with the present or future operation and occupancy of the Land or the Improvements;

all awards of payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property to the extent actually received by Trustor, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer of the Property or part thereof made in lieu of or in anticipation of the exercise of said right), or for any other injury to or decrease in the value of the Property;

all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any
portions thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof (collectively, the “Leases”), and all oil and gas or other mineral royalties, bonuses and rents, revenues, security deposits, issues and profits from the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases (collectively, the “Rents”), and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the obligations secured by the Deed of Trust;

all proceeds of and any unearned premiums on any insurance policies covering the Property including, without limitation, the right to receive and apply the proceeds of any insurance, judgments (including with respect to a casualty thereto or condemnation thereof), or settlements made in lieu thereof, for damage to the Property;

the right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Beneficiary in the Property; and

all right, title and interest of every nature of Trustor in all receivables and other accounts of Trustor relating to the Property and in all monies deposited or to be deposited in any funds or account maintained or deposited with Beneficiary, or its assigns, in connection herewith, if any.

Trustor also irrevocably assigned to Beneficiary all of Trustor’s right, title and interest in, to and under all leases and the rents produced by the Property, if any, upon the terms and conditions set forth in the Deed of Trust, and granted a security interest in certain of Trustor’s assets, including goods, fixtures, equipment, inventory, accounts, intangible assets and contractual rights in which the Trustor has an interest in connection with the Property. Such assignment and grant are intended to secure the payment or performance of obligations to pay or perform arising under the Plant Loan Agreement between Trustor and the Issuer, for the benefit of Beneficiary. The Property comprises, among other things, the Site, and all improvements now or hereafter located on such land.

Beneficiary granted to Trustor a revocable license to collect and receive any such rents, unless and until an event of default occurs under the Plant Loan Agreement. Upon such a default, Beneficiary is immediately entitled to all rent due and unpaid with regard to the Property. All rent collected by the Trustor after the occurrence of such an event of default will be held by Trustor in a constructive trust for the benefit of Beneficiary only. Trustor represented that it lawfully holds and possesses an unencumbered leasehold estate in the Site, and has good and marketable title to all of the other Property, free and clear of all liens, encumbrances and other exceptions, other than as permitted under the Plant Loan Agreement. In doing so Trustor also represented that the Ground Lease relating to the Site is in full force and effect and that there have been no events of default under such Ground Lease. Trustor will pay and discharge or cause to be paid and discharged all taxes, assessments and other charges that may become a lien upon the property, and agrees to keep and perform each and every material covenant agreement and obligation of the lessee set forth in the Ground Lease, provided that the Beneficiary may, at its option but without any obligation to do so, cure any default of the Trustor under the Ground Lease following the expiration of any cure period thereunder.

If the Trustor is prohibited from paying or is released from one or more of these obligations, all sums and obligations secured by the Deed of Trust may be accelerated at the sole option of the Beneficiary.
Notwithstanding anything to the contrary described under this heading, “Deed of Trust,” the Senior Debt Majority (if applicable) have the right to control and direct the enforcement of all rights and remedies granted to the Beneficiary under the Deed of Trust pursuant to the terms of the Collateral Trust Agreement.

IV. SUMMARY OF CERTAIN PROVISIONS OF THE PLEDGE AGREEMENTS

Poseidon Resources (Channelside) LP, a Delaware limited partnership (“Company”) has one general partner, Poseidon Resources Channelside GP, Inc., a Delaware corporation (the “General Partner”), and one limited partner, Poseidon Channelside Holdings LLC, a Delaware limited liability company (the “Limited Partner”). The General Partner and the Limited Partner (collectively, the “Pledgors”) hold 0.1% and 99.9% equity interests in the Company, respectively. Under the Pledge and Security Agreements, dated as of December 24, 2012, as amended (the “Agreements”), Pledgors granted to the Collateral Agent a continuing security interest in their respective estates, rights, titles and interests in the Company and all of the equity interests of the Company related thereto (such respective estates, rights, titles and interests referred to herein individually and collectively, as applicable, as the “Pledged Collateral”) in order to secure for the benefit of the Secured Parties payment in full in cash and performance in full of the Secured Obligations, subject to

the reservation by each Pledgor of certain voting and other rights, including the right to receive all income, dividends and other distributions from its respective Pledged Collateral (except, in each case, as expressly limited by the Financing Documents) until such time, if any, that such Pledgor receives a copy of a notice of default from the Collateral Agent, and

reduction of each Pledgor’s liability if and to the extent enforcement in full of the liability of such Pledgor under its Agreement would be an unlawful or voidable transfer under any applicable fraudulent conveyance or fraudulent transfer law or any comparable law.

Each Pledgor covenanted, until the payment in full in cash of all Secured Obligations (other than any unasserted contingent indemnity obligations) and the termination of all other obligations of the Company and such Pledgor under the Plant Financing Documents (other than any unasserted contingent indemnity obligations), to defend its respective title to the respective Pledged Collateral and the interest of Collateral Agent in the Pledged Collateral pledged under the applicable Agreement against the claims and demands of all persons (other than any Permitted Encumbrances). Upon the occurrence of a Plant Financing Default, the Collateral Agent shall have the following rights, among others: (a) to vote or exercise any and all of Pledgors’ rights or powers incident to their ownership of the Pledged Collateral, including management and control of the Company; (b) to institute and prosecute any action or other proceeding to collect or enforce any obligation or right under the Agreements, including specific enforcement or foreclosure or enforcement of the security interest in the Pledged Collateral; (c) to perform any obligation of Pledgors under the Agreements; (d) to secure the appointment of a receiver for Pledgors without prior notice to the Company or Pledgors; or (e) to take any other action that Collateral Agent deems necessary or desirable to protect or realize upon its security interest in the Pledged Collateral or any part thereof. The Collateral Agent may also, to the extent permitted by applicable Legal Requirements and the terms of the other Plant Financing Documents, arrange for and conduct a sale of the Pledged Collateral at a private or public sale. In addition, the Collateral Agent may, but is not obligated to, cure any event of default and incur reasonable fees, costs and expenses in doing so, in which event the Company shall reimburse Collateral Agent for such fees, costs and expenses, together with interest thereon at the maximum rate permitted by applicable Legal Requirements.
APPENDIX F

Summaries of the Pipeline Installment Sale and Assignment Agreement, the Pipeline Trust Indenture, the Pipeline Loan Agreement and the Omnibus Amendment
SUMMARY OF CERTAIN PROVISIONS OF THE PIPELINE INSTALLMENT SALE AND ASSIGNMENT AGREEMENT

The following summarizes certain provisions of the Pipeline Installment Sale and Assignment Agreement dated December 24, 2012, as amended (the “Installment Agreement”), by and between the San Diego County Water Authority, a county water authority duly organized and existing under and by virtue of the laws of the State of California (the “Water Authority”), and the California Pollution Control Financing Authority, a political subdivision and public instrumentality of the State of California (the “Issuer”).

Design, Engineering, Acquisition, Construction and Sale of the Pipeline

The Agency agrees to design, engineer, acquire and construct the Pipeline for, and to sell the Pipeline to, the Water Authority. In order to implement this provision, the Agency appoints the Water Authority as its agent for the purpose of such design, engineering, acquisition and construction, and the Water Authority agrees to enter into the Pipeline DBA, as agent for the Agency, to provide for the complete design, engineering, acquisition and construction of the Pipeline. The Water Authority agrees that, subject to the payment by Poseidon of any Poseidon Pipeline Costs that may become due, the Water Authority will cause the design, engineering, acquisition and construction of the Pipeline to be diligently completed after the deposit of funds in the Construction Account for such purpose pursuant to the Installment Agreement.

The Agency agrees to sell the Pipeline to the Water Authority. The Water Authority agrees to purchase the Pipeline from the Agency. Title to each component of the Pipeline shall vest in the Water Authority immediately, without further action, upon the acquisition or construction of such component by the Water Authority (as agent of the Agency). Notwithstanding the foregoing, it is expressly understood and agreed that the Agency will have no liability of any kind or character whatsoever for the payment of any costs or expenses incurred by the Water Authority (whether as agent for the Agency or otherwise) for the development, design, engineering, acquisition, financing or construction of the Pipeline and any incidental costs and expenses related thereto (“Pipeline Costs”) except as provided in the Installment Agreement and in the Pipeline Indenture, regardless of whether funds deposited in the Construction Account are sufficient to pay all Pipeline Costs.

Construction Account

The Agency represents that it has previously caused, pursuant to the Pipeline Loan Agreement, the Issuer to deposit a portion of the proceeds of the Series 2012 Pipeline Bonds, into the Construction Account established by the 2012 Pipeline Indenture, and has made amounts on deposit in the Construction Account available for application by the Water Authority for the payments of Poseidon Pipeline Costs and the incidental costs and expenses related thereto (including reimbursement to the Water Authority for any such costs paid by it, but excluding Costs of Issuance as defined in the 2012 Pipeline Indenture. The Agency further agrees, in consideration for and upon the effectiveness of the Omnibus Refunding Agreement, to cause the Issuer to deposit a portion of the proceeds of the Series 2019 Pipeline Bonds with the 2012 Pipeline Trustee and apply such amount as provided in the 2012 Pipeline Indenture, including the application of a portion thereof to redeem all outstanding Series 2012 Pipeline Bonds.

Pipeline Project Completion

Pipeline Project Completion occurred on August 17, 2017, as evidenced by certificates delivered by the Agency to the 2012 Pipeline Trustee pursuant to the Pipeline Loan Agreement and the 2012
Pipeline Indenture. As a result of the occurrence of the Pipeline Project Completion, the obligation of the Agency to design, engineer, acquire and construct the Pipeline for, and to sell the Pipeline to, the Water Authority, and the obligation of the Water Authority to cause the design, engineering, acquisition and construction of the Pipeline to be diligently completed, pursuant to the first paragraph under the section captioned “Design, Engineering, Acquisition, Construction and Sale of the Pipeline”, have been satisfied. Furthermore, on December 18, 2017, the Pipeline Trustee transferred funds remaining in the Pipeline Project Fund, including the Construction Account and the Contractor Security Account established within it pursuant to the 2012 Pipeline Indenture, in the aggregate amount of $2,668,968.08, to the Revenue Fund and subsequently closed the Pipeline Project Fund together with the Construction Account and the Contractor Security Account established within it.

**Installment Sale Payments**

(a) The Water Authority shall, subject to prepayment as provided in the section captioned “Prepayment” and subject to the sections captioned “Reduction of Water Authority’s Obligation” and “Limitation on Liability of Water Authority”, pay to the Agency the Refunded Purchase Price in installments in the principal amounts set forth in the Installment Agreement, together with interest thereon, by depositing with the Pipeline Trustee:

(i) on or before the Business Day immediately preceding each Principal Payment Date, an amount equal to the principal installments of the Installment Sale Payment due on such Principal Payment Date;

(ii) on or before the Business Day immediately preceding each Interest Payment Date, an amount equal to the interest installments of the Installment Sale Payment due on such Interest Payment Date;

(iii) on or before the Business Day preceding each Interest Payment Date, an amount as shall be necessary to increase the amount on deposit in the Debt Service Reserve Fund to the Required Reserve Amount;

(iv) no later than thirty days after the date on which the Pipeline Trustee Fees and Expenses become due and payable, an amount equal to the Pipeline Trustee Fees and Expenses, provided the Water Authority has received written notice of such Pipeline Trustee Fees and Expenses; and

(v) on or before the Business Day on which the Borrower is obligated to prepay in whole pursuant to the Pipeline Loan Agreement the Pipeline Loan Repayments due under, and as defined in the Pipeline Loan Agreement, the amount determined to be required for such prepayment pursuant to the Pipeline Loan Agreement.

Any amounts on deposit in the Bond Fund on any such Business Day will be credited against the Water Authority’s obligation to make the deposits specified in (a)(i) and (a)(ii) above on such Business Day.

(b) In accordance with the Pipeline Indenture, amounts so deposited pursuant to (a)(i), 3.2(a)(ii) or (a)(iii) above shall, until such Interest Payment Date or Principal Payment Date, as the case may be, be invested for the benefit of the Water Authority and all earnings on such investment shall be transferred to the Bond Fund.
(c) Amounts on deposit in the Debt Service Reserve Fund shall be applied to make the final payment on the Pipeline Bonds and such payment shall be credited against the Water Authority’s obligation to make Installment Sale Payments.

(d) Subject to the sections captioned “Reduction of Water Authority’s Obligation” and “Limitation on Liability of Water Authority”, the obligation of the Water Authority to pay the Refunded Purchase Price and interest thereon by paying the Installment Sale Payments is absolute and unconditional and, until such time as the Refunded Purchase Price and interest thereon have been paid in full (or provision for the payment thereof has been made pursuant to the section captioned “Discharge of Obligations”), the Water Authority will not discontinue or suspend any Installment Sale Payments, whether or not the Water System, the Pipeline or the Plant or any part thereof is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part, and such payments will not be subject to reduction whether by offset or otherwise and will not be conditional upon the performance or nonperformance by any party to any agreement for any cause whatsoever.

(e) [Reserved.]

(f) The Agency will irrevocably assign to the Issuer the right to receive all Installment Sale Payments under this section captioned “Installment Sale Payments”.

Fees and Expenses

In addition to the Refunded Purchase Price and subject to the sections captioned “Reduction of Water Authority’s Obligation” and “Limitation on Liability of Water Authority”, the Water Authority shall pay to the Issuer as follows:

All taxes and assessments of any type or character charged to the Issuer affecting the amount available to the Agency from payments in any way arising due to the transactions contemplated by the Installment Agreement (including taxes and assessments assessed or levied by any governmental authority of whatsoever character having power to levy taxes or assessments); provided, however, that the Water Authority shall have the right to protest any such taxes or assessments and to require the Issuer, at the Water Authority’s expense, to protest and contest any such taxes or assessments levied upon it and that the Water Authority shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Issuer;

The reasonable fees and expenses of the Issuer or any agent or attorney selected by the Issuer to act on its behalf in connection with the Installment Agreement, the Series 2019 Pipeline Bonds, the Pipeline Loan Agreement or the Pipeline Indenture, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of any such Series 2019 Pipeline Bonds or in connection with any litigation, investigation or other proceeding which may at any time be instituted involving the Installment Agreement, the Series 2019 Pipeline Bonds, the Pipeline Loan Agreement or the Pipeline Indenture or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of Poseidon or the Water Authority, or their respective properties, assets or operations or otherwise in connection with the administration of the Installment Agreement, the Series 2019 Pipeline Bonds, the Pipeline Loan Agreement or the Pipeline Indenture; and

All additional amounts, if any, due and payable by the Agency pursuant to the Pipeline Loan Agreement (including any interest required to be paid by the Borrower on such payments pursuant to the Pipeline Loan Agreement).
Reduction of Water Authority’s Obligation

If the Water Authority delivers a Contracted Shortfall Payment Notice with respect to any month then the Water Authority’s obligation to pay any Installment Sale Payment will be reduced by the Contracted Shortfall Payment for such month whether or not paid by Poseidon.

Limitation on Liability of Water Authority

Notwithstanding anything in the Installment Agreement, the Water Authority will not be required to advance any moneys derived from any source of income other than Available Revenues for the payment of the Installment Sale Payments or for the performance of any agreements or covenants required to be performed by it under the Installment Agreement. The Water Authority may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the Water Authority for such purpose. The obligation of the Water Authority to make the Installment Sale Payments is a special obligation of the Water Authority payable solely from Available Revenues as provided in the Installment Agreement, and does not constitute a debt of the Water Authority or of the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

Prepayment

The Water Authority shall have the option to prepay amounts payable under the section captioned “Installment Sale Payments” by paying to the Agency, for payment to the Pipeline Trustee pursuant to the Loan Agreement, at the times and in the amounts set forth in the Pipeline Indenture, the principal component of the unpaid Installment Sale Payments relating to all or any portion of Series 2019 Pipeline Bonds subject to optional redemption pursuant to the Pipeline Indenture, in such order of prepayment as the Water Authority may determine upon written direction to the Issuer and the Pipeline Trustee, at a prepayment price equal to the principal amount of Installment Sale Payments to be prepaid, plus the Prepayment Premium, if any, plus accrued interest to the date of prepayment.

Before making any prepayment pursuant to this section captioned “Prepayment”, the Water Authority shall give written notice to the Agency, the Issuer and the Pipeline Trustee, specifying the date on which the prepayment will be paid and the order thereof, which date may not be less than 40 days from the date such notice is given; provided that notwithstanding any such prepayment, the Water Authority will not be relieved of its obligations under the Installment Agreement, including specifically its obligations under the Installment Agreement, until the Refunded Purchase Price and interest thereon have been fully paid (or provision for payment thereof shall have been made pursuant to the section captioned “Discharge of Obligations”).

Additional Bonds

So long as the Water Authority is not in default under the Installment Agreement, the Pipeline DBA or the Water Purchase Agreement, it may request that the Issuer issue Additional Bonds to the extent permitted by and subject to the provisions of the Pipeline Indenture, though the Issuer will be under no obligation to issue such Additional Bonds pursuant to the Pipeline Indenture.

Assignment of Contracted Shortfall Payments

As further consideration for the design, engineering, acquisition, construction and sale of the Pipeline, the Water Authority irrevocably assigns to the Agency and the Agency will irrevocably assign to the Issuer the right to receive all of the Contracted Shortfall Payments, together with all of its rights under

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the Pipeline DBA and the Water Purchase Agreement necessary to enforce Poseidon’s obligations thereunder to make the Contracted Shortfall Payments. Such assignment shall remain in effect so long as any Pipeline Bonds are Outstanding and until no further amounts are due under the Pipeline Indenture or the Pipeline Loan Agreement.

Assignment of Net Insurance Proceeds

As further consideration for the design, engineering, acquisition, construction and sale of the Pipeline, the Water Authority irrevocably assigns to the Agency and the Agency will irrevocably assign to the Issuer the right to receive all of proceeds of any policy of insurance or surety bond, net of proceeds expended to replace or repair the Pipeline, together with all of its rights under any policy of insurance or surety bond agreement or right, claim, action or suit relating to such proceeds, necessary to enforce the Water Authority’s claims thereunder to receive the proceeds. The Water Authority further assigns to the Agency and the Agency will irrevocably assign to the Issuer the right to receive all of the proceeds from actual or threatened condemnation or eminent domain actions with respect to all or any portion of the Pipeline. Such assignments shall remain in effect so long as any Pipeline Bonds are Outstanding.

Covenants of the Water Authority

**Benefit of General Resolution.** The Installment Sale Payments are obligations payable from amounts constituting Net Water Revenues on deposit in the General Reserve Fund established under the General Resolution, subordinate to the pledge of Net Water Revenues for the payment of Bonds, Contracts, Reimbursement Obligations and Subordinate Obligations. The Agency and the Issuer shall be beneficiaries of all of the obligations assumed by the Water Authority and the covenants made by the Water Authority in the General Resolution. The Water Authority shall perform all the obligations assumed by the Water Authority under, and shall comply with all the covenants made by the Water Authority in, the General Resolution. The Water Authority shall not modify, amend or supplement the General Resolution in any manner that would materially adversely affect the interests of the holders of the Pipeline Bonds except with the written consent of the Pipeline Trustee as provided in the Pipeline Indenture. Italicized, underlined terms are used as defined in the General Resolution.

**Reimbursement for Costs.** The Water Authority shall reimburse the Issuer for any costs incurred by the Issuer in connection with the Series 2019 Pipeline Bonds, including costs incurred by the Issuer pursuant to the Pipeline Indenture.

**Compliance with the Installment Agreement, the Pipeline Loan Agreement and the Pipeline Indenture.** The Water Authority shall punctually pay the Installment Sale Payments in strict conformity with the terms of the Installment Agreement, and shall faithfully observe and perform all the agreements, conditions, covenants and terms contained in the Installment Agreement required to be observed and performed by it, and shall not terminate the Installment Agreement for any cause including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Pipeline, the Water System or the Plant, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of California or any political subdivision of either, or any failure of the Issuer to observe or perform any agreement, condition, covenant or term contained in the Installment Agreement required to be observed and performed by it, whether express or implied, or any duty, liability or obligation arising out of or connected with the Installment Agreement or the insolvency, or deemed insolvency, or bankruptcy or liquidation of the Issuer or any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lockouts, lack of transportation facilities, fire, explosion, or acts or regulations of governmental authorities.
The Water Authority shall faithfully observe and perform all the agreements, conditions, covenants and terms contained in the Pipeline Loan Agreement and the Pipeline Indenture required to be observed and performed by it, including as required of it by the Agency pursuant to the Borrower’s obligations thereunder, and it is expressly understood and agreed by and among the parties to the Installment Agreement, the Pipeline Loan Agreement and the Pipeline Indenture that each of the agreements, conditions, covenants and terms contained in each such agreement is an essential and material term of the obligation of the Water Authority to make the Installment Sale Payments pursuant to, and in accordance with, and as authorized under law and the Installment Agreement.

**Use of Proceeds of the Series 2019 Pipeline Bonds.** The Agency and the Water Authority agree that the net proceeds of the Series 2019 Pipeline Bonds will be used for the purposes and in the amounts set forth in the Pipeline Indenture, including to refund the outstanding Series 2012 Pipeline Bonds.

**Protection of Security and Rights of the Issuer and the Trustee.** The Water Authority shall preserve and protect the security of the Installment Agreement and the rights of the Issuer and the Trustee to the Installment Sale Payments and the Contracted Shortfall Payments and will warrant and defend such rights against all claims and demands of all Persons.

**Further Assurances.** The Water Authority shall adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of the Installment Agreement and for the better assuring and confirming unto the Issuer of the rights and benefits provided to it in the Installment Agreement.

**Continuing Disclosure.** The Water Authority shall comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of the Installment Agreement, failure of the Water Authority to comply with the Continuing Disclosure Agreement will not be considered an Event of Default; however, the Pipeline Trustee shall, at the written request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or of the Registered Owners of at least 25% in aggregate principal amount of Outstanding Pipeline Bonds (but only to the extent funds in an amount satisfactory to the Pipeline Trustee have been provided to it or the Pipeline Trustee has been otherwise indemnified to its satisfaction from any cost, liability, expense or additional charges and fees of the Pipeline Trustee whatsoever, including reasonable fees and expenses of its attorneys), or any Registered Owner or Beneficial Owner of any Pipeline Bond may, take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Water Authority or the Pipeline Trustee, as the case may be, to comply with its obligations under this section captioned “Continuing Disclosure”. For purposes of this section captioned “Continuing Disclosure”, “Beneficial Owner” means any Person that has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Pipeline Bond (including Persons holding Pipeline Bonds through nominees, depositories or other intermediaries).

**Tax Covenants.** The Water Authority covenants and agrees that it will at all times do and perform all acts and things permitted by applicable law and the Installment Agreement and necessary in order to assure that interest paid on any Pipeline Bonds will be excluded from gross income for federal income tax purposes, and will take no action that would result in such interest not being so excluded and will take any action necessary to preserve and defend such exclusion. Without limiting the generality of the foregoing, the Water Authority agrees to comply with the provisions of the Tax Certificate relating to the Pipeline Bonds. This covenant shall survive payment in full or defeasance of the Pipeline Bonds.

The Water Authority shall calculate, or cause to be calculated, its rebate liability at such times as are required by Section 148(f) of the Code and any temporary, proposed or final Regulations as may be applicable to the Pipeline Bonds from time to time. The Water Authority shall provide to the Pipeline...
Trustee a copy of each calculation of rebate liability prepared by or on behalf of the Water Authority, which documentation shall be made available to the Issuer upon request.

Changes to the Pipeline; Restrictions on Sales, Transfers, Leases and Disposition. The Water Authority shall not make any changes to the Pipeline or to the operation thereof which would affect the qualification of the Pipeline under the Act or impair the exemption from federal income taxation of the interest on the Pipeline Bonds.

The Water Authority covenants to comply with the obligations imposed on the Borrower pursuant to the Pipeline Loan Agreement as if such obligations were obligations of the Water Authority (provided that the Water Authority shall maintain its existence as a county water authority duly organized and existing under and by virtue of the laws of the State of California), and the Water Authority shall not sell, transfer, lease or otherwise dispose of (including operating arrangements), or permit the sale, transfer, lease or disposal (including operating arrangements) of the Pipeline or any portion of the Pipeline other than equipment that has reached the end of its useful life, except in the manner in which the Agency, as Borrower under the Pipeline Loan Agreement, is so authorized to do under the Pipeline Loan Agreement and in accordance with all the terms thereof.

Insurance. The Water Authority agrees to insure the Pipeline or cause the Pipeline to be insured during the term of the Pipeline Loan Agreement for such amounts and for such occurrences as are customary for similar facilities within the State of California, by means of policies issued by reputable insurance companies qualified to do business in the State of California or through self-insurance. The Water Authority agrees to deliver, upon request, to the Agency, the Issuer and the Pipeline Trustee memorandum copies of the insurance policies or certificates of insurance covering the Pipeline and certification by an insurance consultant that the insurance on the Pipeline meets the above requirements.

Events of Default

Each of the following events will be an Event of Default under the Installment Agreement:

(a) the Water Authority fails to make any Installment Sale Payment when and as the same becomes due and payable;

(b) the Water Authority defaults in the performance of any other agreement or covenant contained in the Installment Agreement or in the Pipeline Indenture required to be performed by it, and such default has continued for a period of 60 days after the Water Authority has been given notice in writing of such default by the Issuer or the Pipeline Trustee; and

(c) the Water Authority files a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction approves a petition filed with or without the consent of the Water Authority seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction assumes custody or control of the Water Authority or of the whole or any substantial part of its property.

For the avoidance of doubt, an event of default occurring under the Pipeline Indenture as a result of Poseidon’s failure to make a Contracted Shortfall Payment will not be an Event of Default under the Installment Agreement.
Remedies

Upon the occurrence of an Event of Default, the Issuer as assignee of the Agency, or the Pipeline Trustee, as assignee of the Issuer, will have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the Water Authority or any member of the Board of Directors, officer or employee thereof, and to compel the Water Authority or any such member of the Board of Directors, officer or employee to perform and carry out such Person’s duties under law and the agreements and covenants required to be performed by such Person contained in the Installment Agreement; and/or

(b) by suit in equity to enjoin any acts or things that are unlawful or violate the rights of the Issuer or the Pipeline Trustee.

Non-Waiver

Nothing in the Installment Agreement will affect or impair the obligation of the Water Authority, which is absolute and unconditional, to pay the Installment Sale Payments to the Pipeline Trustee at their respective due dates or upon prepayment, or will affect or impair the right of the Pipeline Trustee, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied in the Installment Agreement.

A waiver of any default or breach of duty or contract by the Pipeline Trustee will not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Pipeline Trustee to exercise any right or remedy accruing upon any default or breach of duty or contract will impair any such right or remedy or be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Pipeline Trustee by law or by the Installment Agreement may be enforced and exercised from time to time and as often as deemed expedient by the Pipeline Trustee.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Pipeline Trustee, the Issuer and the Water Authority and the Pipeline Trustee will be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Remedies Not Exclusive

No remedy in the Installment Agreement conferred upon or reserved to the Pipeline Trustee is intended to be exclusive of any other remedy, and each such remedy will be cumulative and in addition to every other remedy given under the Installment Agreement or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

Discharge of Obligations

(a) If the Water Authority pays or causes to be paid all Installment Sale Payments at the times and in the manner provided in the Installment Agreement, the right, title and interest of the Issuer in the Installment Agreement and the obligations of the Water Authority under the Installment Agreement will thereupon cease, terminate, become void and be completely discharged and satisfied, except as provided in subsection (c) below.
(b) Any unpaid principal installment of the Installment Sale Payments will, on its payment date or date of prepayment, be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) above if the Water Authority makes payment of such Installment Sale Payments and the Prepayment Premium, if applicable, in the manner provided in the Installment Agreement.

(c) (i) All or any portion of unpaid principal installments of the Installment Sale Payments will, prior to their payment dates or dates of prepayment, be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) above (except that the Water Authority will remain liable for such Installment Sale Payments, but only out of such money or securities deposited with the Pipeline Trustee for such payment), if (i) notice is provided by the Water Authority to the Pipeline Trustee as required by the Pipeline Indenture, and (ii) there has been deposited with the Pipeline Trustee either money in an amount that will be sufficient, or Defeasance Obligations, the interest on and principal of which, when paid, will provide money that, together with money, if any, deposited with the Pipeline Trustee, will be sufficient to pay when due the principal and interest components of such Installment Sale Payments or such portions thereof on and prior to their payment dates or their dates of prepayment, as the case may be, and the Prepayment Premium, if any, applicable thereto; and

(ii) All or any portion of unpaid Contracted Shortfall Payments Poseidon has become obligated to make will, prior to their payment dates or dates of prepayment, be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) above, except that notwithstanding anything to the contrary the assignment of the right to receive such Contracted Shortfall Payments to the Agency by the Water Authority, and the assignment of all rights necessary to the enforcement of such obligation, will remain in effect for such Contracted Shortfall Payments and will survive the termination or expiration of the Installment Agreement pursuant to the terms of the Installment Agreement.

(d) After the payment of all Installment Sale Payments and Prepayment Premiums, if any, as provided in the section captioned “Discharge of Obligations”, and payment of all fees and expenses of the Pipeline Trustee, the Pipeline Trustee, upon request of the Water Authority, shall cause an accounting for such period or periods as may be requested by the Water Authority to be prepared and filed with the Water Authority and the Issuer and shall execute and deliver to the Water Authority and the Issuer all such instruments as may be necessary or desirable to evidence such total discharge and satisfaction of the Installment Agreement, and the Pipeline Trustee shall pay over and deliver to the Water Authority, as an overpayment of Installment Sale Payments, all such money or investments held by it pursuant to the Installment Agreement other than such money and such investments as are required for the payment or prepayment of the Installment Sale Payments, which money and investments will continue to be held by the Pipeline Trustee in trust for the payment of the Installment Sale Payments and shall be applied by the Pipeline Trustee pursuant to the Pipeline Indenture.

(e) If, as a result of a failure by Poseidon to pay any Contracted Shortfall Payment when due, a default is declared under the Pipeline Indenture, and the Collateral Agent accelerates the principal and interest of the Pipeline Bonds then, if an Event of Default does not then exist, (i) the obligations of the Water Authority under the Installment Agreement to make Installment Sale Payments will thereupon cease, terminate and become void and be completely discharged and satisfied, (ii) notwithstanding anything to the contrary, the assignment of the right to receive Contracted Shortfall Payments to the Agency by the Water Authority, and the assignment of all rights necessary to the enforcement of such obligation, will remain in effect for such Contracted Shortfall Payments, and (iii) the Beneficial Owners and the Registered Owners will look solely to the Trust Estate (as defined in the Pipeline Indenture) and the Collateral held by the Collateral Agent.

Miscellaneous

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**Amendment.** The Installment Agreement may be amended only in accordance with the Pipeline Indenture.

**Governing Law; Venue.** The Installment Agreement shall be construed in accordance with and governed by the Constitution and laws of the State applicable to contracts made and performed in the State of California. The Installment Agreement shall be enforceable in the State and any action arising out of the Installment Agreement shall be filed and maintained in the Sacramento County Superior Court, Sacramento, California, unless the Issuer waives this requirement.

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SUMMARY OF CERTAIN PROVISIONS OF THE PIPELINE TRUST INDENTURE

The following summarizes certain provisions of the Trust Indenture dated as of __________, 2019 (the “Pipeline Indenture”), by and between the California Pollution Control Financing Authority, a political subdivision and public instrumentality of the State of California (the “Issuer”), and MUFG Union Bank, N.A., as trustee (the “Trustee”).

Revenue Fund

(a) Unless all the Pipeline Bonds have been accelerated and such acceleration has not been rescinded, the Pipeline Trustee shall deposit all Pipeline Loan Repayments and Contracted Shortfall Payments received by it into the Revenue Fund. On each Monthly Disbursement Date, all moneys in the Revenue Fund shall be paid or transferred from the Revenue Fund by the Pipeline Trustee in the following order of priority:

(i) to the Pipeline Trustee, an amount equal to all Fees and Expenses of the Pipeline Trustee due and payable before the next Monthly Disbursement Date;

(ii) to the Issuer, an amount equal to all Fees and Expenses of the Issuer due and payable before the next Monthly Disbursement Date;

(iii) to the Bond Fund, an amount equal to the unfunded portion of one-sixth of the interest payment due and owing on the next succeeding Interest Payment Date;

(iv) to the Bond Fund, an amount equal to one-twelfth of the principal payment due and owing on the next succeeding Interest Payment Date on which a principal payment is due; and

(v) to the Debt Service Reserve Fund, the amount necessary, if any, to increase the balance therein to an amount equal to the Debt Service Reserve Requirement.

(b) Any remaining funds in the Revenue Fund shall be transferred to the Bond Fund.

Bond Fund

There shall be deposited into the Bond Fund from time to time the following:

(i) moneys transferred pursuant to subsection (a)(iii) or (iv) or subsection (b) of the section captioned “Revenue Fund”;  

(ii) all accrued interest, if any, paid by the Beneficial Owners of the Pipeline Bonds; and

(iii) all other moneys received by the Pipeline Trustee pursuant to the provisions of the section captioned “Use of Certain Moneys in the Bond Fund Upon Refunding” or by any of the provisions of the Pipeline Loan Agreement or the Installment Agreement, when accompanied by directions from the Person depositing such moneys that such moneys are to be paid into the Bond Fund.

Except as provided in the sections captioned “Non-Presentment of Pipeline Bonds” and “Defeasance”, moneys in the Bond Fund shall be used solely for the payment of the principal of and
premium, if any, and interest on the Pipeline Bonds as the same shall become due and payable at maturity, upon redemption or otherwise when due.

Debt Service Reserve Fund

There shall be deposited into the Debt Service Reserve Fund (i) a portion of the proceeds of the Series 2019 Pipeline Bonds as set forth in the Pipeline Indenture, (ii) moneys transferred from the Revenue Fund pursuant to subsection (a)(v) of the section captioned “Revenue Fund” and (iii) moneys transferred by the Collateral Agent for deposit into the Debt Service Reserve Fund pursuant to the Collateral Trust Agreement. The Pipeline Trustee shall calculate the Debt Service Reserve Requirement on each Monthly Disbursement Date for the succeeding 12 month period.

If, on the last Monthly Disbursement Date before any Interest Payment Date, moneys in the Revenue Fund are insufficient to make the transfers required to be made on such date pursuant to subsection (a)(iv) of the section captioned “Revenue Fund”, the Pipeline Trustee shall transfer the amount of the deficiency from the Debt Service Reserve Fund to the Bond Fund.

On each Monthly Disbursement Date, the Pipeline Trustee shall transfer to the Revenue Fund any moneys in the Debt Service Reserve Fund in excess of the Debt Service Reserve Requirement.

Rebate Fund

(a) The Pipeline Trustee shall establish and maintain a fund separate from any other fund established and maintained under the Pipeline Indenture designated as the “Rebate Fund”, such fund to be established when needed. Within the Rebate Fund, the Pipeline Trustee shall maintain such other accounts as it is instructed by the Borrower as shall be necessary in order to comply with the terms and requirements of the Tax Certificate. Subject to the transfer provisions provided in paragraph (e) below, all money at any time deposited in the Rebate Fund shall be held by the Pipeline Trustee in trust, to the extent required to satisfy the Rebate Requirement (as defined in the Tax Certificate), for payment to the federal government of the United States of America, and no other Person shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this section captioned “Rebate Fund”, by the Pipeline Indenture and by the Tax Certificate. The Pipeline Trustee shall be deemed conclusively to have complied with such provisions if it follows the directions of the Borrower, including supplying all necessary information in the manner provided in the Tax Certificate, shall not be required to take any actions thereunder in the absence of written directions by the Borrower and shall have no liability or responsibility to enforce compliance by the Borrower or the Issuer with the terms of the Tax Certificate.

(b) Upon the Borrower’s written direction, an amount shall be deposited to the Rebate Fund by the Pipeline Trustee from deposits by the Borrower, or from available investment earnings on amounts (other than moneys held for the payment of particular Pipeline Bonds (including moneys held for non presented Pipeline Bonds or held under the section captioned “Defeasance”)) held in the Revenue Fund, if and to the extent required, so that the balance of the amount on deposit thereto shall be equal to the Rebate Requirement. Computations of the Rebate Requirement shall be furnished by or on behalf of the Borrower in accordance with the Tax Certificate. The Pipeline Trustee may rely conclusively upon the Borrower’s determinations, calculations and certifications required by this subsection (b). The Pipeline Trustee shall have no responsibility to make any independent calculations or determinations or to review the Borrower’s calculations under the Pipeline Indenture.

(c) The Pipeline Trustee shall have no obligation to rebate any amounts required to be rebated pursuant to this section captioned “Rebate Fund” other than from moneys held in the funds and
accounts created under the Pipeline Indenture (other than moneys held for the payment of particular Pipeline Bonds (including moneys held for non presented Pipeline Bonds or held under the section captioned “Defeasance”)) or from other moneys provided to it by or on behalf of the Borrower.

(d) The Pipeline Trustee shall invest all amounts held in the Rebate Fund in Eligible Investments as instructed in writing by the Borrower, and the Borrower shall be responsible for such Rebate Instructions complying with the Tax Certificate. Money shall not be transferred from the Rebate Fund except as provided in paragraph (e) below.

(e) Upon receipt of the Borrower’s written directions, the Pipeline Trustee shall remit part or all of the balances in the Rebate Fund to the United States, as so directed. In addition, if the Borrower so directs, the Pipeline Trustee will deposit moneys into or transfer moneys out of the Rebate Fund from or into such accounts or funds (other than moneys held for the payment of particular Pipeline Bonds (including moneys held for non presented Pipeline Bonds or held under the section captioned “Defeasance”)) as directed by the Borrower’s written directions. Any funds remaining in the Rebate Fund after redemption and payment of all of the Pipeline Bonds and payment and satisfaction of any Rebate Requirement or provision made therefor shall be withdrawn and remitted to the Borrower upon the Borrower’s written request.

(f) Notwithstanding any other provision of the Pipeline Indenture, including in particular the section captioned “Defeasance”, the obligation to remit the Rebate Requirements to the United States and to comply with all other requirements of this section captioned “Rebate Fund”, the Pipeline Indenture and the Tax Certificate shall apply only to any Tax Exempt Pipeline Bonds issued under the Pipeline Indenture and shall survive the defeasance or payment in full of such Pipeline Bonds.

Costs of Issuance Fund

The Pipeline Trustee shall establish the Costs of Issuance Fund. The moneys in the Costs of Issuance Fund shall be held by the Pipeline Trustee in trust and applied to the payment of Costs of Issuance for the Pipeline Bonds, upon a sequentially numbered Requisition of the Borrower filed with the Pipeline Trustee, together with invoices evidencing each item requested for payment and, in the case of reimbursements to the Water Authority for costs previously paid, original invoices and other documentation to describe the original expenditures which were made, in each case signed by an Authorized Representative of the Borrower. All payments from the Costs of Issuance Fund shall be reflected in the Pipeline Trustee’s regular accounting statements. Any amounts remaining in the Costs of Issuance Fund three months following the date of delivery of the Pipeline Bonds shall be transferred to the Bond Fund. Upon such transfer, the Pipeline Trustee shall close the Costs of Issuance Fund.

Non-Presentment of Pipeline Bonds

If any Pipeline Bonds, or portions thereof, shall not be presented for payment when the principal thereof becomes due, either at Stated Maturity or otherwise, or at the date fixed for redemption thereof, all liability of the Issuer to the Holders thereof for the payment of such Pipeline Bonds or portions thereof shall forthwith cease, terminate and be completely discharged whenever funds sufficient to pay such Pipeline Bonds or portions thereof shall be held by the Pipeline Trustee, and such funds shall be segregated by the Pipeline Trustee and held in trust for the benefit of the Holders of such Pipeline Bonds or portions thereof who shall thereafter be restricted exclusively to such funds for the satisfaction of any claim of whatever nature on their part relating to such Pipeline Bonds or portions thereof. Such segregated funds shall not be subject to investment and shall thereafter no longer be considered part of the Trust Estate and any such Pipeline Bond shall no longer be deemed Outstanding under the Pipeline Indenture. To the extent such provisions do not require the transfer of such amounts to the State, the
Pipeline Trustee shall return such amounts to the Water Authority upon the written request of its Authorized Representative. Thereafter the Holder of such Pipeline Bond shall look only to the Person to whom such amounts have been transferred for payment without any interest thereon, and the Pipeline Trustee shall have no further responsibility with respect to such moneys. In the absence of a written request from an Authorized Representative of the Water Authority to return unclaimed funds to the Water Authority, the Pipeline Trustee shall from time to time deliver all unclaimed funds to or as directed by applicable escheat authorities, as determined by the Pipeline Trustee in its sole discretion, in accordance with the customary practices and procedures of the Pipeline Trustee. Any unclaimed funds held by the Pipeline Trustee pursuant to this subsection shall be held uninvested and without any liability for interest.

Additional Pipeline Bonds

(a) Subject to the satisfaction of the provisions of this section captioned “Additional Pipeline Bonds”, the Issuer may, but shall not be required to, issue one or more series of Additional Pipeline Bonds from time to time.

(b) Subject to the additional limitations set forth in subsection (c) below, the Pipeline Trustee shall authenticate and deliver such Additional Pipeline Bonds at the request of the Issuer, but only upon delivery to the Pipeline Trustee of the following:

(i) A supplemental indenture executed by the Issuer and the Pipeline Trustee creating such Additional Pipeline Bonds and specifying the terms and the disposition of the proceeds thereof;

(ii) A supplement to the Pipeline Loan Agreement, executed by the Issuer and the Borrower, and a supplement to the Installment Agreement, executed by the Borrower and the Water Authority, whereby the Borrower and the Water Authority acknowledge the issuance of such Additional Pipeline Bonds and agree to make Pipeline Loan Repayments and Installment Sale Payments, respectively, that are sufficient to provide for the payment of the principal and premium, if any, and interest on, such Additional Pipeline Bonds and any related amendment to the Water Purchase Agreement to make adjustments to the Contracted Shortfall Payments;

(iii) An Opinion or Opinions of Counsel to the effect that:

(A) the Additional Pipeline Bonds have been duly issued for a permitted purpose under this section captioned “Additional Pipeline Bonds”;

(B) all consents or approvals required to be obtained from any governmental authority for the issuance of the Additional Pipeline Bonds have been obtained;

(C) the issuance of the Additional Pipeline Bonds and execution and delivery of related documents will not constitute a breach or default on the part of the Issuer, the Borrower or the Water Authority under their respective organizational documents or under any applicable law or any agreements to which the Issuer, the Borrower or the Water Authority is a party or to which their respective properties are subject, including the Pipeline Loan Agreement and the Installment Agreement;

(D) all documents delivered by the Issuer, the Borrower and the Water Authority in connection with the issuance of the Additional Pipeline Bonds have been duly and validly authorized, executed and delivered and such execution and delivery and all other actions taken by the Issuer, the Borrower and the Water Authority in connection
with the issuance of the Additional Pipeline Bonds have been duly authorized by all necessary corporate actions;

(E) the supplement to the Pipeline Loan Agreement and the Additional Pipeline Bonds are valid and binding obligations of the Issuer; and

(F) all conditions precedent to the issuance of the Additional Pipeline Bonds pursuant to the Pipeline Indenture have been satisfied.

(iv) To the extent that the issuance of Additional Pipeline Bonds would increase the amounts that could become payable in any year by Poseidon as Contracted Shortfall Payments, the consent of Poseidon.

(c) The Issuer may issue Additional Pipeline Bonds only if the following conditions are satisfied:

(i) the conditions to Poseidon’s incurrence of additional debt set forth in the Collateral Trust Agreement have been satisfied;

(ii) the terms of the supplemental indenture regarding such Additional Pipeline Bonds are reasonably satisfactory to the Senior Debt Majority and contain no right of acceleration in conflict with the Collateral Trust Agreement and impose no other covenants or events of default which would conflict with any other provision of the Pipeline Indenture; and

(iii) the Issuer has delivered to the Pipeline Trustee a certificate certifying that (i) and (ii) above have been satisfied.

Ownership, Transfer, Exchange and Registration of Pipeline Bonds

The Pipeline Trustee is constituted and appointed the Registrar and transfer agent for the Pipeline Bonds and the Pipeline Trustee shall keep books for the registration and for the transfer of the Pipeline Bonds as provided in the Pipeline Indenture. If the Pipeline Bonds are not in the book-entry registration system, the Issuer shall prepare and deliver to the Pipeline Trustee, and the Pipeline Trustee shall keep custody of, a supply of unauthenticated Pipeline Bonds duly executed by the Issuer, as provided in the Pipeline Indenture for use in the transfer and exchange of Pipeline Bonds. The Pipeline Trustee is authorized and directed to complete such forms of Pipeline Bonds as to principal amounts and Registered Owners, in accordance with the provisions hereof, in effecting transfers and exchanges of Pipeline Bonds as provided in the Pipeline Indenture.

Upon surrender for transfer of any Pipeline Bond at the Payment Office of the Pipeline Trustee duly endorsed for transfer or accompanied by a written instrument or instruments of transfer in form satisfactory to the Pipeline Trustee duly executed by the registered Holder or such Holder’s attorney duly authorized in writing, at the Issuer’s written request, the Pipeline Trustee shall date and execute the certificate of authentication on and deliver in the name of the transferee or transferees a new Pipeline Bond or Pipeline Bonds duly executed by the Issuer of Authorized Denominations and for a like aggregate principal amount.

Any Pipeline Bond or Pipeline Bonds may be exchanged at the Payment Office of the Pipeline Trustee for a new Pipeline Bond or Pipeline Bonds of like Series and aggregate principal amount of other Authorized Denominations. Upon surrender of any Pipeline Bond or Pipeline Bonds for exchange, at the Issuer’s written request, the Pipeline Trustee shall date and execute the certificate of authentication on and
deliver a new Pipeline Bond or Pipeline Bonds duly executed by the Issuer which the Bondholder making the exchange is entitled to receive.

The Pipeline Trustee shall not be required to transfer or exchange any Pipeline Bond after the mailing of notice calling such Pipeline Bond or portion thereof for redemption, nor during the period of ten days next preceding the mailing of such notice of redemption with respect to the Pipeline Bonds.

The Person in whose name any Pipeline Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of, premium, if any, or interest on any Pipeline Bond shall be made only to or upon the written order of the Registered Owner thereof or such owner’s legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effective to satisfy and discharge the liability upon such Pipeline Bond to the extent of the sum or sums so paid.

The Issuer and the Pipeline Trustee shall require the payment by the Bondholder requesting exchange or transfer (other than an exchange upon a partial redemption of a Pipeline Bond) of any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, but otherwise no charge shall be made to the Bondholder for such exchange or transfer.

Refunding Pipeline Bonds

The Issuer may issue, and expressly reserves the right to issue, to the extent permitted by law and the Pipeline Indenture, refunding bonds under another indenture to refund all or any principal amount of the Pipeline Bonds; provided, however, that the net proceeds of any such bonds used to refund all or any principal amount of the Pipeline Bonds shall be paid directly to the Pipeline Trustee for the Bondholders and shall not come into the possession or control of the Water Authority.

Use of Certain Moneys in the Bond Fund Upon Refunding

In the event that refunding bonds shall be issued by the Issuer to pay the principal of or premium, if any, on all or any portion of the Pipeline Bonds, the net proceeds of the refunding bonds remaining after payment of expenses incident to the refunding shall be deposited by the Issuer into the Bond Fund as provided in the section captioned “Bond Fund”. All moneys remaining in the Bond Fund on the date of the refunding to be used to pay interest on the Pipeline Bonds to be refunded shall be held, as collateral for the payment of the Pipeline Bonds to be refunded, by the Pipeline Trustee, in trust for and on behalf of the Holders of the Pipeline Bonds to be refunded, together with the portion of the proceeds of the sale of the refunding bonds so deposited and any investments or reinvestments of such proceeds, in one or more separate subaccounts in the Bond Fund irrevocably in trust for the respective Holders of Pipeline Bonds to be refunded, and upon defeasance of the Pipeline Bonds to be refunded as provided in the Pipeline Indenture shall be held, invested and used as provided in the Pipeline Indenture. Investment income or profit on any such investments or reinvestments shall remain in the Bond Fund.

Investment of Moneys in Accounts

The Pipeline Trustee shall invest and reinvest any moneys held in an Account only in Eligible Investments and at the written direction of an Authorized Representative of the Water Authority filed with the Pipeline Trustee at least two Business Days in advance of the making of such investments. In the absence of any such directions from the Water Authority, the Pipeline Trustee shall hold any such moneys uninvested in cash, without liability for interest. In making any such investments, the Pipeline Trustee may rely on directions delivered to it pursuant to this section captioned “Investment of Moneys in Accounts”, and the Pipeline Trustee shall be relieved of all liability with respect to making such
investments in accordance with such directions. Any such investments shall be held by or under the control of the Pipeline Trustee and shall be deemed at all times a part of the Account for which they were made. The interest accruing thereon, any profit realized from such investments and any loss resulting from such investments shall be credited or charged to the Account in which the investment is held until transferred therefrom in accordance with the Pipeline Indenture.

Defeasance

If the Issuer shall pay or cause to be paid, or there shall be otherwise paid or provision for payment made to or for the Holders of the Pipeline Bonds of the principal, premium, if any, and interest due or to become due thereon at the times and in the manner stipulated therein, and if the Issuer shall keep, perform and observe all of the covenants and promises in the Pipeline Bonds and in the Pipeline Indenture expressed as to be kept, performed and observed by it or on its part, and shall pay or cause to be paid to the Pipeline Trustee all sums of money due or to become due according to the provisions hereof, then the Pipeline Indenture and the lien, rights and interests created by the Pipeline Indenture shall cease, terminate and become null and void (except as to any surviving rights of payment, registration, transfer or exchange of Pipeline Bonds provided in the Pipeline Indenture), whereupon the Pipeline Trustee upon Written Request of the Issuer shall cancel and discharge the Pipeline Indenture, and, at the Water Authority’s expense, execute and deliver to the Issuer such instruments in writing as shall be requested by the Issuer and requisite to discharge the Pipeline Indenture, and release, assign and deliver unto the Issuer any and all of the estate, right, title and interest in and to any and all rights assigned or pledged to the Pipeline Trustee or otherwise subject to the Pipeline Indenture, except amounts in the Bond Fund required to be paid to the Water Authority under the section captioned “Non-Presentment of Pipeline Bonds” and except moneys or securities held by the Pipeline Trustee for the payment of the principal of and premium, if any, and interest on, and purchase prices of, the Pipeline Bonds.

Any Pipeline Bond or Authorized Denomination thereof shall be deemed to be paid within the meaning of the Pipeline Indenture when (a) payment of the principal of and premium, if any, on such Pipeline Bond or Authorized Denomination thereof, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided in the Pipeline Indenture) either (i) shall have been made or caused to be made in accordance with the terms thereof or (ii) shall have been provided for by depositing sufficient moneys for such payment with the Pipeline Trustee and the due date of such principal, interest and premium, if any, has occurred, (1) moneys sufficient to make such payment and/or (2) non-callable Defeasance Obligations maturing as to principal and interest in such amount and at such time as will ensure the availability of sufficient moneys to make such payment, and (b) all necessary and proper fees, compensation and expenses of the Pipeline Trustee due under the Pipeline Indenture or under the Pipeline Loan Agreement or the Installment Agreement shall have been paid or the payment thereof provided for to the satisfaction of the Pipeline Trustee. At such times as a Pipeline Bond or Authorized Denomination thereof shall be deemed to be paid under the Pipeline Indenture, as aforesaid, such Pipeline Bond or Authorized Denomination thereof shall no longer be secured by or entitled to the benefits of the Pipeline Indenture (other than the section captioned “Ownership, Transfer, Exchange and Registration of Pipeline Bonds”), except for the purposes of any such payment from such moneys or Defeasance Obligations. In determining the sufficiency of the moneys and Defeasance Obligations deposited pursuant to this paragraph, the Pipeline Trustee shall receive a verification report, at the Water Authority’s expense, prepared by a firm of nationally recognized independent certified public accountants or other qualified financial advisory firm reasonably acceptable to the Issuer, the Water Authority and the Pipeline Trustee.

Notwithstanding any provision of the Pipeline Indenture which may be contrary to the provisions of this section captioned “Defeasance”, all moneys or Defeasance Obligations set aside and held in trust pursuant to the provisions of the Pipeline Indenture for the payment of Pipeline Bonds or Authorized

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Denominations thereof (including interest and premium thereon, if any) shall be applied to and used solely for the payment of the particular Pipeline Bonds or Authorized Denominations thereof (including interest and premium thereon, if any) with respect to which such moneys and Defeasance Obligations have been so set aside in trust.

Anything in Pipeline Indenture to the contrary notwithstanding, if moneys or Defeasance Obligations have been deposited or set aside with the Pipeline Trustee pursuant to the Pipeline Indenture for the payment of Pipeline Bonds or Authorized Denominations thereof and the interest and premium, if any, thereon and such Pipeline Bonds or Authorized Denominations thereof and the interest and premium, if any, thereon shall not have in fact been actually paid in full, no amendment to the provisions of this section “Defeasance” shall be made without the consent of the Holder of each of the Pipeline Bonds affected thereby.

Defaults; Events of Default

The occurrence of any of the following events is an Event of Default under the Pipeline Indenture:

(a) Failure to make payment of any installment of interest upon any Pipeline Bond after such payment has become due and payable which failure is not solely the result of a Contracted Shortfall Payment Default;

(b) Failure to make payment of the principal of or premium, if any, on any Pipeline Bond at the Stated Maturity thereof or upon the unconditional redemption thereof which failure is not solely the result of a Contracted Shortfall Payment Default;

(c) The occurrence of an Event of Default under the Installment Agreement;

(d) The occurrence of a Loan Default Event (together with the Events of Default described in subsections (a), (b) and (c) above, a “Water Authority Event of Default”); and

(e) (i) Failure to make payment of (A) any installment of interest upon any Pipeline Bond after such payment has become due and payable or (B) the principal of or premium, if any, on any Pipeline Bond at the Stated Maturity thereof or upon redemption thereof that, in the case of either (A) or (B), is solely the result of a Contracted Shortfall Payment Default or (ii) the occurrence and continuance of an Event of Default as defined in the Collateral Trust Agreement that leads to the acceleration of the Senior Debt as defined in the Collateral Trust Agreement (a “Contracted Shortfall Payment Event of Default”).

For the avoidance of doubt, payment in full of any installment of interest upon any Pipeline Bond after such payment has become due and payable or the principal of or premium, if any, on any Pipeline Bond at the Stated Maturity thereof or upon redemption thereof from any source of funds available therefor, including without limitation from amounts on deposit in the Debt Service Reserve Fund, shall not constitute an event of default under subsections (a), (b) or (e) above.

Acceleration

Upon the occurrence and continuance of a Contracted Shortfall Payment Event of Default, the Pipeline Trustee may, by notice in writing delivered to the Water Authority, with a copy to the Issuer, declare the principal of all Pipeline Bonds then Outstanding and the interest accrued thereon to the date of such declaration immediately due and payable, and such principal and interest shall thereupon become
and be immediately due and payable. The above provisions are subject to waiver, rescission and annulment as provided in the sections captioned “Waivers of Events of Default” and “Collateral Agent; Senior Debt Majority”. In no event shall a Water Authority Event of Default give rise to an acceleration of amounts due and owing with respect to the Pipeline Bonds.

**Remedies; Rights of Bondholders**

Upon the occurrence and continuation of an Event of Default, but subject to the sections captioned “Acceleration” and “Collateral Agent; Senior Debt Majority”, the Pipeline Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding, including the appointment of a receiver, to enforce the payment of the principal of and premium, if any, and interest on the Pipeline Bonds then Outstanding and to enforce and compel the performance of the duties and obligations of the Issuer as set forth in the Pipeline Indenture.

If a Water Authority Event of Default shall have occurred and be continuing and if requested so to do by the Holders of not less than a majority in aggregate principal amount of Pipeline Bonds then Outstanding and indemnified as provided in the Pipeline Indenture, the Pipeline Trustee shall be obliged to exercise such one or more of the rights and powers conferred by this section captioned “Remedies; Rights of Bondholders” as the Pipeline Trustee being advised by Counsel shall deem most expedient in the interests of the Bondholders.

No remedy by the terms of the Pipeline Indenture conferred upon or reserved to the Pipeline Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Pipeline Trustee or to the Bondholders under the Pipeline Indenture or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient.

No waiver of any Event of Default under the Pipeline Indenture, whether by the Pipeline Trustee or by the Bondholders, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

**Right of Bondholders to Direct Proceedings**

Anything in the Pipeline Indenture to the contrary notwithstanding, but subject to the section captioned “Collateral Agent; Senior Debt Majority”, the Holders of not less than a majority in aggregate principal amount of Pipeline Bonds then Outstanding shall have the right, with respect to a Water Authority Event of Default only, at any time, by an instrument or instruments in writing executed by the Holders of not less than a majority in aggregate principal amount of Pipeline Bonds then Outstanding and delivered to the Pipeline Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Pipeline Indenture, or for the appointment of a receiver or any other proceedings under the Pipeline Indenture; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of the Pipeline Indenture and could not involve the Pipeline Trustee in personal liability.

**Application of Moneys**
All moneys and funds held by the Pipeline Trustee under the Pipeline Indenture (except moneys held in the Rebate Fund or the Costs of Issuance Fund or that were previously set aside for the redemption of particular Pipeline Bonds) and all moneys received by the Pipeline Trustee pursuant to the Collateral Trust Agreement shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Pipeline Trustee and its Counsel, be deposited in the Bond Fund and all such moneys in the Bond Fund shall be applied in the following order of priority:

(i) To the payment of all fees, expenses then owing to the Pipeline Trustee, including fees, costs, expenses and liabilities reasonably incurred by the Pipeline Trustee (including reasonable compensation to the Pipeline Trustee, its agents, attorneys and counsel) and to the repayment of all advances made by the Pipeline Trustee;

(ii) To the payment of the reasonable costs of the Issuer, including counsel fees and expenses, any disbursements of the Issuer with interest thereon and its reasonable compensation;

(iii) Unless the principal of all the Pipeline Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

(A) To the payment of any overdue installments of interest on the Outstanding Pipeline Bonds in the order of the expressed maturity of the installments of such interest, with interest on overdue installments of interest (to the extent that the payment of such interest is enforceable under applicable law) at the respective rates provided in the Pipeline Bonds and, if the amount to be applied to the payment of any installment of interest shall not be sufficient to pay such installment in full, then to the payment thereof ratably, according to the amounts due on such installment, to the Persons entitled thereto without any discrimination or preference;

(B) After the payment of all such overdue installments of interest with the interest thereon, to the payment of the principal of each Pipeline Bonds which shall have become due by their express terms, not including Pipeline Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of the Pipeline Indenture, with interest on such Pipeline Bonds at the rate or rates provided for in such Pipeline Bonds from the respective dates upon which they became due in the order of maturity dates expressed in the Pipeline Bonds and, if the amount to be distributed at any particular time shall not be sufficient to pay in full all of the Pipeline Bonds due on any particular date, to the payment thereof ratably according to the amounts due thereon;

(C) After all payments required by clauses (A) and (B) shall have been made, then to the payment of the principal of and the interest on the Pipeline Bonds in accordance with the provisions of the Pipeline Indenture.

(iv) If the principal of all the Pipeline Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Pipeline Bonds (other than Pipeline Bonds matured or called for redemption or interest due on Pipeline Bonds for the payment of which moneys are held pursuant to the provisions of the Pipeline Indenture), without preference or priority of principal, over interest or of interest over principal or of any installment of interest over any other installment of interest, or of any Pipeline Bond over any other Pipeline Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or privilege.
Whenever moneys are to be applied pursuant to the provisions of this section captioned “Application of Moneys”, such moneys shall be applied at such times, and from time to time, as the Pipeline Trustee shall determine. Whenever the Pipeline Trustee shall apply such moneys, it shall fix the date upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Pipeline Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

In the event the Pipeline Trustee incurs expenses or renders services in any proceedings which result from the occurrence or continuance of an Event of Default, or from the occurrence of any event which, by virtue of the passage of time, would become such Event of Default, the expenses so incurred and compensation for services so rendered are intended to constitute expenses of administration under the United States Bankruptcy Code or equivalent law.

Whenever all principal of and premium, if any, and interest on all Pipeline Bonds have been paid under the provisions of this section captioned “Application of Moneys” and all expenses and charges of the Pipeline Trustee have been paid, any balance remaining in the Bond Fund shall be paid to the Water Authority.

Remedies Vested in Pipeline Trustee

All rights of action (including the right to file proofs of claims) under the Pipeline Indenture or under any of the Pipeline Bonds may be enforced by the Pipeline Trustee without the possession of any of the Pipeline Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Pipeline Trustee shall be brought in its name as Pipeline Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Pipeline Bonds, and any recovery of judgment shall be for the equal and ratable benefit of the Holders of the Outstanding Pipeline Bonds. No provision of the Pipeline Indenture empowers the Pipeline Trustee to authorize or consent to or accept or adopt on behalf of any Holders of the Pipeline Bonds any plan of reorganization, arrangement, adjustment or composition affecting any of the Pipeline Bonds or the rights of any Holder thereof, or to authorize the Pipeline Trustee to vote in respect of the claim of any Holder in any bankruptcy, insolvency or reorganization proceeding described in the Pipeline Loan Agreement.

Rights and Remedies of Bondholders

No Holder or Beneficial Owner of any Pipeline Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Pipeline Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy under the Pipeline Indenture, unless (i) a default has occurred of which the Pipeline Trustee is deemed to have notice or has been notified as provided in the Pipeline Indenture, (ii) such default shall have become an Event of Default and be continuing, the Holders of not less than a majority in aggregate principal amount of Pipeline Bonds then Outstanding shall have made written request to the Pipeline Trustee, either to proceed to exercise the powers granted in the Pipeline Indenture or to institute such action, suit or proceeding in its own name, and shall have offered to the Pipeline Trustee indemnity as provided in the Pipeline Indenture, and (iii) the Pipeline Trustee shall for 60 days after such notice, request and offer of indemnity, fail or refuse to exercise the powers granted in the Pipeline Indenture, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are declared in every case at the sole option of the Pipeline Trustee to be conditions precedent to the execution of the powers and trusts of the Pipeline Indenture, and to any action or cause of action for the enforcement of the Pipeline Indenture, or for the appointment of a receiver or for any other remedy under the Pipeline Indenture. No one or more Holders of the Pipeline Bonds shall have any right in any manner whatsoever to enforce any right under the Pipeline Indenture except in the manner provided in the Pipeline Indenture, and all proceedings at law
or in equity shall be instituted, had and maintained in the manner provided in the Pipeline Indenture and for the equal and ratable benefit of the Holders of all Pipeline Bonds then Outstanding. Nothing in the Pipeline Indenture shall, however, affect or impair the right of any Bondholder to enforce the payment of the principal of and premium, if any, and interest on any Pipeline Bond at and after the maturity thereof.

Waivers of Events of Default

Subject to the next paragraph and the section captioned “Collateral Agent; Senior Debt Majority”, the Pipeline Trustee may waive any Event of Default under the Pipeline Indenture and rescind its consequences and shall do so upon the written request of the Holders of not less than a majority in aggregate principal amount of Pipeline Bonds then Outstanding; provided, however, that there shall not be waived any Event of Default in the payment of the principal of, or premium, if any, on any outstanding Pipeline Bonds when due (whether at Stated Maturity or by redemption), or any Event of Default in the payment when due of the interest on any such Pipeline Bonds, unless prior to such waiver and rescission, all arrears of principal of and interest upon such Pipeline Bonds, and interest on overdue principal at the rate borne by the Pipeline Bonds on the date on which such principal became due and payable, and all arrears of premium, if any, when due, together with the reasonable expenses of the Pipeline Trustee and of the Holders of such Pipeline Bonds, including reasonable attorneys’ fees paid or incurred, shall have been paid or provided for. In the case of any such waiver and rescission, or in case any proceeding taken by the Pipeline Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Water Authority, the Borrower, the Issuer, the Pipeline Trustee, the Collateral Agent, Poseidon and the Bondholders shall be restored to their respective former positions and rights under the Pipeline Indenture, respectively, but no such waiver and rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

The provisions of the sections captioned “Defaults; Events of Default” and “Acceleration” are subject to the condition that if, after the principal of all Pipeline Bonds then Outstanding shall have been accelerated, all arrears of principal of and interest upon such Pipeline Bonds, and the premium, if any, on all Pipeline Bonds then Outstanding which shall have become due and payable otherwise than by acceleration, and all other sums payable under the Pipeline Indenture, except the principal of, and interest on, the Pipeline Bonds which by such declaration shall have become due and payable, shall have been paid by or on behalf of the Issuer, together with the reasonable expenses of the Pipeline Trustee and of the Holders of such Pipeline Bonds, including reasonable attorneys’ fees paid or incurred, and if all other Events of Default, other than any arising as a result of such acceleration, have been cured or waived, then and in every such case, the Pipeline Trustee shall annul such declaration of acceleration of Stated Maturity and its consequences, which waiver and annulment shall be binding upon all Bondholders. No such waiver, rescission and annulment shall extend to or affect any subsequent default or impair any right or remedy consequent thereon. In the case of any such annulment, the Water Authority, the Borrower, the Issuer, the Pipeline Trustee, the Bondholders and, as applicable, the Company and the Collateral Agent, shall be restored to their respective former positions and rights under the Pipeline Indenture.

All waivers and annulments under the Pipeline Indenture shall be confirmed by the Pipeline Trustee in writing and a copy thereof shall be delivered to the Issuer and the Water Authority.

Collateral Agent; Senior Debt Majority

The Pipeline Trustee has granted to the Collateral Agent all of the Pipeline Trustee’s rights under the Pipeline Indenture with respect to a Contracted Shortfall Payment Event of Default pursuant to the Collateral Trust Agreement. Accordingly and notwithstanding the foregoing provisions of the Pipeline Indenture to the contrary, (a) the Pipeline Trustee will not have any right to take any action under the Pipeline Indenture with respect to a Contracted Shortfall Payment Event Default and (b) the Bondholders
will not have any right to take any action, or direct the Pipeline Trustee to take any action, under the Pipeline Indenture with respect to a Contracted Shortfall Payment Default for so long as the Collateral Trust Agreement is in effect. In addition, during the continuance of a Contracted Shortfall Payment Event of Default the Senior Debt Majority shall exercise the rights of Bondholders under the Pipeline Indenture.

Supplemental Indentures Not Requiring Consent of Bondholders (But Requiring Consent of the Water Authority, the Collateral Agent or Poseidon)

The Issuer and the Pipeline Trustee may, without the consent of, or notice to, any of the Bondholders or the Beneficial Owners, but with the consent of the Water Authority, Poseidon and the Collateral Agent pursuant to the section captioned “Consent of Water Authority, Poseidon and the Collateral Agent”, enter into an indenture or indentures supplemental to the Pipeline Indenture for any one or more of the following purposes:

(a) to add to the covenants and agreements of, and limitations and restrictions upon, the Issuer in the Pipeline Indenture, other covenants, agreements, limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with the Pipeline Indenture as heretofore in effect;

(b) to grant to or confer or impose upon the Pipeline Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with the Pipeline Indenture as heretofore in effect;

(c) to cure any ambiguity or omission or to cure, correct or supplement any defective provision of the Pipeline Indenture in each case in such manner as shall not adversely affect the Bondholders;

(d) to evidence the appointment of a separate trustee or a co-trustee or to evidence the succession of a new trustee or a new co-trustee under the Pipeline Indenture;

(e) to comply with the applicable requirements of the Trust Indenture Act of 1939, as from time to time amended;

(f) to subject to the Pipeline Indenture additional revenues, properties or collateral;

(g) to discontinue or provide for the use of a securities depository or for a change from a book-entry system without Pipeline Bond certificates to a system with bond certificates or vice versa;

(h) to authorize different Authorized Denominations of the Pipeline Bonds and to make correlative amendments and modifications to the Pipeline Indenture regarding exchangeability of Pipeline Bonds of different Authorized Denominations, redemptions of portions of Pipeline Bonds of particular Authorized Denominations and similar amendments and modifications of a technical nature;

(i) to modify, alter, amend or supplement the Pipeline Indenture in any other respect which, is not materially adverse to the Bondholders;

(j) in connection with any mandatory purchase of all of the Pipeline Bonds, to modify the Pipeline Indenture in any respect (even such modification is adverse to the interests of the Bondholders) provided that such amendment shall not be effective until after such mandatory purchase or purchase in lieu of redemption and the payment of the purchase price in connection therewith; or
(k) to provide for issuance of a Series of Additional Pipeline Bonds.

The Pipeline Trustee is authorized to join the execution of any such Pipeline Indenture supplement, to make any further appropriate agreements and stipulations that may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder. If at any time the Issuer shall request the Pipeline Trustee to enter into any such supplemental indenture for any of the purposes allowed by this section captioned “Supplemental Indentures Not Requiring Consent of Bondholders (But Requiring Consent of the Water Authority, the Collateral Agent or Poseidon)”, the Pipeline Trustee shall, at the request of the Issuer and upon receiving satisfactory payment with respect to related expenses and upon receiving from the Water Authority forms of notices and any other related solicitation materials, cause notice of the proposed execution of such supplemental indenture to be mailed to the Holders of the Pipeline Bonds. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the Principal Office of the Pipeline Trustee for inspection by all Bondholders.

Supplemental Indentures Requiring Consent of Bondholders and Water Authority

Except for supplemental indentures covered by the section captioned “Supplemental Indentures Not Requiring Consent of Bondholders (But Requiring Consent of the Water Authority, the Collateral Agent or Poseidon)” and subject to the terms and provisions contained in this section captioned “Supplemental Indentures Requiring Consent of Bondholders and Water Authority”, and not otherwise, the Holders of not less than a majority in aggregate principal amount of Pipeline Bonds then Outstanding shall have the right, from time to time, anything contained in the Pipeline Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Pipeline Trustee of such other indenture or indentures supplemental to the Pipeline Indenture for the purpose of modifying, amending, adding to or rescinding any of the terms or provisions contained in the Pipeline Indenture; provided, however, that nothing in this section captioned “Supplemental Indentures Requiring Consent of Bondholders and Water Authority” contained shall permit or be construed as permitting, without the consent of the Holders of 100% of the Pipeline Bonds then Outstanding, (a) an extension of the Stated Maturity of the principal of or the interest on any Pipeline Bond issued under the Pipeline Indenture, or (b) a reduction in the principal amount of, premium, if any, on any Pipeline Bond or the rate of interest thereon, or (c) a privilege or priority of any Pipeline Bond or Pipeline Bonds over any other Pipeline Bond or Pipeline Bonds, or (d) a reduction in the aggregate principal amount of the Pipeline Bonds required for consent to such supplemental indenture, except in each case in connection with a refunding of any Pipeline Bonds.

If at any time the Issuer shall request the Pipeline Trustee to enter into any such supplemental indenture for any of the purposes allowed by this section captioned “Supplemental Indentures Requiring Consent of Bondholders and Water Authority”, the Pipeline Trustee shall, at the request of the Issuer and upon receiving satisfactory payment with respect to related expenses and upon receiving from the Water Authority forms of notices and any other related solicitation materials, cause notice of the proposed execution of such supplemental indenture to be mailed to the Holders of the Pipeline Bonds. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the Principal Office of the Pipeline Trustee for inspection by all Bondholders. If, within 60 days or such longer period of time as shall be prescribed by the Issuer following the mailing of such notice, the Holders of not less than a majority in aggregate principal amount of Pipeline Bonds then Outstanding, as the case may be, in aggregate principal amount of the Pipeline Bonds Outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as provided in the Pipeline Indenture, no Holder of any Pipeline Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Pipeline Trustee or
the Issuer from executing the same or from taking any action pursuant to the provisions thereof. The Issuer shall have the right to (and upon request of the Water Authority shall) extend from time to time the period within which such consent and approval may be obtained from Bondholders. Upon the execution of any such supplemental indenture as in this section captioned “Supplemental Indentures Requiring Consent of Bondholders and Water Authority” permitted and provided, the Pipeline Indenture shall be and be deemed to be modified and amended in accordance therewith.

Consent of Water Authority, Poseidon and the Collateral Agent

Anything in the Pipeline Indenture directly to the contrary notwithstanding, a supplemental indenture under the Pipeline Indenture that adversely affects any rights of the Water Authority shall not become effective unless and until the Water Authority shall have consented to the execution and delivery of such supplemental indenture.

Anything in the Pipeline Indenture directly to the contrary notwithstanding, a supplemental indenture under the Pipeline Indenture that adversely affects any rights of the Borrower shall not become effective unless and until the Borrower shall have consented to the execution and delivery of such supplemental indenture.

Anything in the Pipeline Indenture directly to the contrary notwithstanding, a supplemental indenture under the Pipeline Indenture that adversely affects any rights of Poseidon or the Collateral Agent shall not become effective unless and until the Collateral Agent or Poseidon, as applicable, shall have consented to the execution and delivery of such supplemental indenture.

Amendments to Pipeline Loan Agreement and Installment Agreement Not Requiring Consent of Bondholders

The Issuer or the Pipeline Trustee, as appropriate, and the Water Authority may without the consent of or notice to any of the Bondholders or the Beneficial Owners, enter into any amendment, change or modification of the Installment Agreement or the Pipeline Loan Agreement (a) as may be required by the provisions of the Installment Agreement, the Pipeline Loan Agreement or the Pipeline Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission, (c) so as to add additional rights acquired in accordance with the provisions of the Installment Agreement or the Pipeline Loan Agreement, (d) to obtain or preserve the Tax Exempt status of interest on the Pipeline Bonds, or any portion of the Pipeline Bonds, (e) which, if the conditions for the issuance of Additional Pipeline Bonds are otherwise satisfied, makes such changes as may be necessary in connection with the issuance of Additional Pipeline Bonds, or (f) which is not materially adverse to the Bondholders and which does not involve a change described in clause (a) or (b) of the section captioned “Amendments to Pipeline Loan Agreement and Installment Agreement Requiring Consent of Bondholders”.

Amendments to Pipeline Loan Agreement and Installment Agreement Requiring Consent of Bondholders

Except for the amendments, changes or modifications as provided in the section captioned “Amendments to Pipeline Loan Agreement and Installment Agreement Not Requiring Consent of Bondholders” of the Pipeline Indenture, none of the Issuer, the Borrower, the Water Authority or the Pipeline Trustee shall enter into any other amendment, change or modification of the Pipeline Loan Agreement or the Installment Agreement without mailing of notice and the written approval or consent of the Holders of not less than a majority in aggregate principal amount of Pipeline Bonds then Outstanding given and procured as provided in this section captioned “Amendments to Pipeline Loan Agreement and Installment Agreement Requiring Consent of Bondholders”; provided, however, that nothing in this
sections captioned “Amendments to Pipeline Loan Agreement and Installment Agreement Requiring Consent of Bondholders” or the section captioned “Amendments to Pipeline Loan Agreement and Installment Agreement Not Requiring Consent of Bondholders” shall permit or be construed as permitting, without the consent of the Holders of 100% in aggregate principal amount of the Pipeline Bonds then Outstanding, (a) an extension of the time of the payment of any amounts payable by the Borrower under the Pipeline Loan Agreement with respect to the principal of or the interest on any Pipeline Bond issued under the Pipeline Indenture or the Water Authority under the Installment Agreement with respect to any Pipeline Loan Repayment, or (b) a reduction in the amount of any payment or in the total amount due from the Borrower under the Pipeline Loan Agreement with respect to the principal amount of, premium, if any, on any Pipeline Bond or the rate of interest thereon or from the Water Authority under the Installment Agreement with respect to any Pipeline Loan Repayment, except in each case in connection with a refunding of any Pipeline Bonds.

If at any time the Issuer and the Water Authority shall request the consent of the Pipeline Trustee to any such proposed amendment, change or modification of the Pipeline Loan Agreement or Installment Agreement in accordance with this section captioned “Amendments to Pipeline Loan Agreement and Installment Agreement Requiring Consent of Bondholders”, the Pipeline Trustee shall, at the request of the Issuer and upon being satisfactorily indemnified with respect to expenses and upon receiving from the Water Authority forms of notices and any other related solicitation materials, cause notice of such proposed amendment, change or modification to be mailed to the Holders of Pipeline Bonds in the same manner as provided by the Pipeline Indenture with respect to redemption of Pipeline Bonds. Such notice shall briefly set forth the nature of such proposed amendment change or modification and shall state that copies of the instrument embodying the same are on file with the Pipeline Trustee for inspection by all Bondholders. If, within 60 days, or such longer period as shall be prescribed by the Issuer, following the mailing of such notice, the Holders of not less than a majority in aggregate principal amount of Pipeline Bonds then Outstanding in aggregate principal amount of the Pipeline Bonds Outstanding at the time of the execution of any such amendment, change or modification, as the case may be, shall have consented to and approved the execution thereof as provided in the Pipeline Indenture, no Holder of any Pipeline Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Water Authority or the Issuer from executing the same or from taking any action pursuant to the provisions thereof, or the Pipeline Trustee from consenting thereto. The Issuer shall have the right to extend from time to time the period within which such consent and approval may be obtained from Bondholders. Upon the execution of any such amendment, change or modification as in this section captioned “Amendments to Pipeline Loan Agreement and Installment Agreement Requiring Consent of Bondholders” permitted and provided, the Pipeline Loan Agreement and the Installment Agreement shall be and be deemed to be modified, changed and amended in accordance therewith.

Amendments to Collateral Trust Agreement

The Pipeline Trustee may, without the consent of or notice to any of the Bondholders or the Beneficial Owners, enter into any amendment, change or modification of the Collateral Trust Agreement that is permitted to be made thereunder without the consent of the Senior Debt Majority.

With respect to any amendment, change or modification of the Collateral Trust Agreement that requires the consent of the Senior Debt Majority, the Pipeline Trustee may participate in the appointment of the Senior Debt Majority.

Notwithstanding the foregoing, the Pipeline Trustee may not enter into any amendment, change or modification of the Collateral Trust Agreement that would cause any Senior Debt (as defined in the
Collateral Trust Agreement) to have any privilege or priority over the Contracted Shortfall Payments without the consent of the Holders of 100% of the Pipeline Bonds then Outstanding.

**Liability of Issuer Limited to the Trust Estate**

Notwithstanding anything in the Pipeline Indenture or in the Pipeline Bonds contained, the Issuer shall not be required to advance any moneys derived from any source other than the Trust Estate, whether for the payment of the principal of or interest on the Pipeline Bonds or for any other purpose of the Pipeline Indenture. **NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF OR ANY LOCAL AGENCY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE PIPELINE BONDS. THE ISSUER HAS NO TAXING POWERS.** The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with the Pipeline Loan Agreement, the Pipeline Bonds or the Pipeline Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under the Pipeline Loan Agreement.

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SUMMARY OF CERTAIN PROVISIONS OF THE PIPELINE LOAN AGREEMENT

The following summarizes certain provisions of the Pipeline Loan Agreement dated December 24, 2012, as amended (the “Pipeline Loan Agreement”), by and between the California Pollution Control Financing Authority, a political subdivision and public instrumentality of the State of California (the “Issuer”), and San Diego County Water Authority Financing Agency, as borrower (the “Borrower”).

Agreement to Construct the Pipeline; Modifications of the Pipeline; Disbursements From the Pipeline Fund; Disbursements From the Costs of Issuance Fund

(a) To provide funds to finance the Pipeline, the Issuer agrees that it will issue under the Pipeline Indenture, sell and cause to be delivered to the purchasers thereof, the Pipeline Bonds. The Issuer will thereupon apply the proceeds received from the sale of the Pipeline Bonds as provided in the Pipeline Indenture. The Borrower agrees that it or the Water Authority and its successors or their agents has or will develop, design, engineer, acquire and construct, or complete the development, design, engineering, acquisition and construction of, the Pipeline, and will acquire, construct, improve, renovate, rehabilitate, install and equip all other facilities and real and personal property deemed necessary for the operation of the Pipeline, in accordance with the description of the Pipeline provided by the Water Authority and approved by the Issuer, including any and all supplements, amendments and additions or deletions thereto or therefrom. The Borrower further agrees to proceed with due diligence to complete the Pipeline or cause the Pipeline to be completed, and reasonably expects to do so within three years. Except as otherwise permitted pursuant to this section captioned “Agreement to Construct the Pipeline; Modifications of the Pipeline; Disbursements From the Pipeline Fund; Disbursements From the Costs of Issuance Fund” or (a)(iv), (d) or (e) under the section captioned “The Borrower’s Maintenance of Its Existence; Assignments; Permitted Transfers of the Pipeline”, the Borrower also agrees that it or the Water Authority and its successors will own the Pipeline during the term of the Pipeline Loan Agreement or, if shorter, the useful life of any component of the Pipeline. The Borrower also agrees that it or the Water Authority and its successors will operate the Pipeline (except such portion that is transferred to a Person other than the Water Authority and its successors in accordance with the section captioned “The Borrower’s Maintenance of Its Existence; Assignments; Permitted Transfers of the Pipeline”) during the term of the Pipeline Loan Agreement or, if shorter, the useful life of any component of the Pipeline.

In the event that the Borrower desires to alter or change the Pipeline described in the Pipeline Loan Agreement, the Borrower must first obtain the consent of the Issuer (which consent shall not be unreasonably withheld) to such changes. If the Issuer consents to the proposed amendment or supplement, it will instruct the Pipeline Trustee in writing to consent to such amendment or supplement to the description of the Pipeline in the Pipeline Loan Agreement as shall be required to reflect such alteration or change to the Pipeline upon receipt of:

(i) a Certificate of the Borrower describing in detail the proposed changes and stating that they will not have the effect of disqualifying the Pipeline as facilities that may be financed pursuant to the Act;

(ii) a copy of the form of amended or supplemented description of the Pipeline in the Pipeline Loan Agreement approved by the Issuer; and

(iii) an Approving Opinion with respect to such proposed changes.

(b) The Borrower will authorize and direct the Pipeline Trustee, upon compliance with the Pipeline Indenture, to disburse the moneys in the Construction Account within the Pipeline Project Fund
to or on behalf of the Borrower only for the following purposes (and not for Costs of Issuance), subject to the provisions of the section captioned “Investment of Moneys in Fund”:

(i) Payment to the Borrower or the Water Authority of such amounts, if any, as shall be necessary to reimburse the Borrower or the Water Authority in full for all advances and payments made by it, at any time prior to or after the delivery of the Pipeline Bonds, in connection with (A) the preparation of plans and specifications for the Pipeline (including any preliminary study or planning of the Pipeline or any aspect thereof) and (B) subject to any limitation imposed by subsection (vi) below, the development, design, engineering, acquisition and construction of the Pipeline.

(ii) If the Pipeline includes the construction or rehabilitation of a building, payment for labor, services, materials and supplies used by or furnished to the Borrower or the Water Authority and its successors to improve the site and to develop, design, engineer, acquire and construct the Pipeline, as provided in the plans, specifications and work orders therefor; payment of the costs of developing, designing, engineering, acquiring and constructing utility services or other related facilities; payment of the costs of acquiring all real and personal property deemed necessary to construct the Pipeline; insurance during the construction period; and payment of the miscellaneous expenses incidental to any of the foregoing items.

(iii) Payment of the fees, if any, of architects, engineers, legal counsel and supervisors expended in connection with the development, design, engineering, acquisition and construction of the Pipeline.

(iv) If the Pipeline includes the construction or rehabilitation of a building, payment of taxes including property taxes, assessments and other charges, if any, that may become payable during the construction period with respect to the Pipeline, or reimbursement thereof, if paid by the Borrower or the Water Authority.

(v) Payment of expenses incurred in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the development, design, engineering, acquisition and construction of the Pipeline.

(vi) Payment of any other Pipeline Costs permitted by the Tax Certificate and the Act (including, without limitation, interest accruing on the Pipeline Bonds during the construction period of the Pipeline and reimbursement to the Borrower or the Water Authority of costs of financing the Pipeline Costs, but not including any Costs of Issuance).

All moneys remaining in the Pipeline Project Fund after Pipeline Project Completion and after payment or provision for payment of all other items provided for in the preceding subsections (i) to (vi), inclusive, of this section captioned “Agreement to Construct the Pipeline; Modifications of the Pipeline; Disbursements From the Pipeline Fund; Disbursements From the Costs of Issuance Fund”, shall be used in accordance with the Pipeline Indenture.

Each of the payments referred to in this subsection (b) shall be made upon receipt by the Pipeline Trustee of a written requisition in the form prescribed by the Pipeline Indenture, signed by an Authorized Representative of the Borrower or the Water Authority and its successors.

(c) The Borrower acknowledges that it shall not submit any requisitions to the Pipeline Trustee for the payment of Pipeline Costs from the Construction Account within the Pipeline Project Fund or any subaccount therein, unless it attaches to such requisition invoices evidencing each item
requested for payment therein. In any instance where the requisition is for payment to the Borrower or the Water Authority for reimbursement of costs previously paid, the Borrower shall attach the original invoices and other documentation to describe the original expenditures which were paid.

(d) The Borrower will authorize and direct the Pipeline Trustee, upon compliance with the Pipeline Indenture, to disburse the moneys in the Costs of Issuance Fund to or on behalf of the Borrower. Each of the payments referred to in this subsection (d) shall be made upon receipt by the Pipeline Trustee of a written requisition pursuant to and in the form prescribed by the Pipeline Indenture, signed by an Authorized Representative of the Borrower.

(e) Prior to Pipeline Project Completion, the Borrower may deliver a Request to the Issuer to consent to the removal of a component of the Pipeline that is no longer necessary for inclusion within the Pipeline and the reasons therefore. If the Issuer does not act within 30 days after such Request is received, such consent shall be deemed to have been given, after which the Borrower shall instruct the Pipeline Trustee to apply a proportionate amount of moneys in the Construction Account within the Pipeline Project Fund as provided in the Pipeline Indenture.

Establishment of Pipeline Project Completion; Obligation of Borrower to Complete

Upon the final disbursement from the Pipeline Project Fund, an Authorized Representative of the Borrower, on behalf of the Borrower, shall evidence Pipeline Project Completion by providing a Final Project Fund Disbursement Certificate to the Pipeline Trustee and the Issuer.

At the time such certificate is delivered to the Pipeline Trustee, moneys remaining in the Pipeline Project Fund, including any earnings resulting from the investment of such moneys, shall be used as provided in the Pipeline Indenture.

The Issuer makes no express or implied warranty that the moneys deposited in the Pipeline Project Fund and available for payment of the Pipeline Costs, under the provisions of the Pipeline Loan Agreement, will be sufficient to pay all the amounts which may be incurred for such Pipeline Costs. The Borrower agrees that if, after exhaustion of the moneys in the Construction Account within the Pipeline Project Fund, the Borrower or any other party should pay, or deposit moneys in the Construction Account within the Pipeline Project Fund for the payment of, any portion of the Pipeline Costs pursuant to the provisions of this section captioned “Establishment of Pipeline Project Completion; Obligation of Borrower to Complete”, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, the Pipeline Trustee, or the Holders of any of the Pipeline Bonds, nor shall it be entitled to any diminution of the amounts payable under the section captioned “Repayment and Payment of Other Amounts Payable”, except to the extent that such amounts represent Contracted Shortfall Payments as provided in the section captioned “Repayment and Payment of Other Amounts Payable”.

Investment of Moneys in Fund

Any moneys in any fund or account held by the Pipeline Trustee shall, at the written request of an Authorized Representative of the Borrower, be invested or reinvested by the Pipeline Trustee as provided in the Pipeline Indenture. Such investments shall be held by the Pipeline Trustee and shall be deemed at all times a part of the fund or account from which such investments were made, and the interest accruing thereon, and any profit or loss realized therefrom, shall be credited or charged to such fund or account.

Pipeline Project Completion
Pipeline Project Completion occurred on August 17, 2017, as evidenced by (i) the Borrower’s filing with the Pipeline Trustee and Issuer of that certain Final Project Fund Disbursement Certificate, pursuant to the section captioned “Establishment of Pipeline Project Completion; Obligation of Borrower to Complete”, and (ii) the Borrower’s filing with the 2012 Pipeline Trustee of that certain certificate of an Authorized Representative of the Water Authority, confirmed by the Independent Engineer, certifying that Pipeline Project Completion has occurred, pursuant to the 2012 Pipeline Indenture. Such certificates evidence the satisfaction of the Borrower’s obligation to complete the development, design, engineering, acquisition and construction of, the Pipeline, and to acquire, construct, improve, renovate, rehabilitate, install and equip all other facilities and real and personal property deemed necessary for the operation of the Pipeline, in accordance with the description of the Pipeline provided by the Water Authority and approved by the Issuer, including any and all supplements, amendments and additions or deletions thereto or therefrom, pursuant to the section captioned “Agreement to Construct the Pipeline; Modifications of the Pipeline; Disbursements From the Pipeline Fund; Disbursements From the Costs of Issuance Fund”. Furthermore, on December 18, 2017, the Pipeline Trustee transferred funds remaining in the Pipeline Project Fund, including the Construction Account and the Contractor Security Account established within it, in the aggregate amount of $2,668,968.08, to the Revenue Fund and subsequently closed the Pipeline Project Fund together with the Construction Account and the Contractor Security Account established within it.

Loan of Pipeline Bond Proceeds; Issuance of Pipeline Bonds

The Issuer covenants and agrees, upon the terms and conditions in the Pipeline Loan Agreement, to make a loan to the Borrower of the proceeds of the Pipeline Bonds conditioned on the receipt thereof by the Issuer for the purpose of financing the Pipeline Costs and Costs of Issuance. The Issuer further covenants and agrees that it shall take all actions within its authority to keep the Pipeline Loan Agreement in effect in accordance with its terms. Pursuant to said covenants and agreements, the Issuer will issue the Pipeline Bonds upon the terms and conditions contained in the Pipeline Loan Agreement and the Pipeline Indenture and will cause the Pipeline Bond proceeds to be applied as provided in the Pipeline Indenture.

Repayment and Payment of Other Amounts Payable

(a) On or before each Pipeline Bond Payment Date, until the principal of, premium, if any, and interest on, the Pipeline Bonds shall have been fully paid or provision for such payment shall have been made as provided in the Pipeline Indenture, the Borrower covenants and agrees to pay to the Pipeline Trustee as a repayment on the loan made to the Borrower from Pipeline Bond proceeds pursuant to the section captioned “Loan of Pipeline Bond Proceeds; Issuance of Pipeline Bonds”, a sum equal to the amount payable on the next Pipeline Bond Payment Date as principal of and premium, if any, and interest on, the Pipeline Bonds as provided in the Pipeline Indenture, together with any such amount as shall be necessary to increase the amount on deposit in the Debt Service Reserve Fund to the Required Reserve Amount and Pipeline Trustee Fees and Expenses (collectively, the “Pipeline Loan Repayments”); provided that the amount of any Pipeline Loan Repayment coming due and payable shall be reduced by the amount of any Contracted Shortfall Payment Poseidon becomes obligated to pay on such date (whether or not payment of such Contracted Shortfall Payment is made on such date). Such Pipeline Loan Repayments shall be made in federal funds or other funds immediately available at the Corporate Trust Office of the Pipeline Trustee. The term “Pipeline Bond Payment Date” as used in this section captioned “Repayment and Payment of Other Amounts Payable” shall mean any date upon which any amounts payable with respect to the Pipeline Bonds shall become due, whether upon redemption (including without limitation sinking fund redemption), acceleration, maturity, or otherwise; and, with respect to the payment of Pipeline Trustee Fees and Expenses only, any date that is no later than thirty (30) days following the date on which Pipeline Trustee Fees and Expenses become due and payable. The
Pipeline Trustee’s compensation shall not be limited by any provision of law regarding the compensation of a Pipeline Trustee of an express trust.

Each Pipeline Loan Repayment shall at all times be sufficient to pay the total amount of interest and principal (whether at maturity or upon redemption or acceleration) and premium, if any, becoming due and payable on the Pipeline Bonds on each Pipeline Bond Payment Date, subject to reduction in connection with Contracted Shortfall Payments as set forth in the prior paragraph; provided that once per year, on the third Business Day following the Pipeline Bond Payment Date of each July, any amount held by the Pipeline Trustee in the Revenue Fund on the due date for a Pipeline Loan Repayment under the Pipeline Loan Agreement shall be credited against the installment due on the next Pipeline Bond Payment Date to the extent available for such purpose under the terms of the Pipeline Indenture; and provided further that if at any time the amounts held by the Pipeline Trustee in the Revenue Fund are sufficient to pay all of the principal of and interest and premium, if any, on the Pipeline Bonds as such payments become due, the Borrower shall be relieved of any obligation to make any further payments under the provisions of this section captioned “Repayment and Payment of Other Amounts Payable”. Notwithstanding the foregoing, if on any date the amount held by the Pipeline Trustee in the Revenue Fund is insufficient to make any required payments of principal of (whether at maturity or upon redemption (including without limitation sinking fund redemption) or acceleration) and interest and premium, if any, on the Pipeline Bonds as such payments become due, the Borrower shall forthwith pay such deficiency as a Pipeline Loan Repayment under the Pipeline Loan Agreement.

(b) The Borrower also agrees to pay (i) the Issuer’s Administrative Fee either at the Closing Date or from time to time thereafter, as set forth in the Tax Certificate, (ii) the cost of printing any Pipeline Bonds required to be furnished by the Issuer at the expense of the Issuer, and (iii) any amounts required to be deposited in the Rebate Fund to comply with the provisions of the Pipeline Indenture and the payment of any rebate analyst.

(c) The Borrower also agrees to pay, (i) as soon as practicable after receipt of request for payment thereof, all expenses required to be paid by the Borrower under the terms of the Pipeline Bond Purchase Contract relating to the sale of the Pipeline Bonds, executed by the Treasurer of the State, the Issuer, J.P. Morgan Securities LLC, as underwriter of the Pipeline Bonds, and the Borrower (the “Pipeline Bond Purchase Contract”), which shall include all Costs of Issuance of the Pipeline Bonds; and (ii) all reasonable expenses of the Issuer related to the Pipeline which are not otherwise required to be paid by the Borrower under the terms of the Pipeline Loan Agreement; including, but not limited to, all Costs of Issuance, provided that the Issuer shall have obtained the prior written approval of an Authorized Representative of the Borrower for any expenditures other than those provided for in the Pipeline Loan Agreement or in the Pipeline Bond Purchase Contract.

(d) The Borrower also agrees to pay fees and expenses of independent certified public accountants necessary for the preparation of annual or other audits, reports or summaries thereof required by the Pipeline Indenture or by the Issuer, including a report of an independent certified public accountant with respect to any fund established under the Pipeline Indenture; and reasonable expenses of the Issuer pursuant to Sections 44525 and 44548 of the California Health and Safety Code, and any agency of the State of California or any other counsel selected by the Issuer to act on its behalf in connection with the Pipeline Bonds.

(e) In the event the Borrower should fail to make any of the payments required by (a) through (d), such payments shall continue as obligations of the Borrower (except as and to the extent such payments are payable from Contracted Shortfall Payments) until such amounts shall have been fully paid. The Borrower agrees to pay such amounts, together with interest thereon, following a delinquency of 30 days until such amount and all interest thereon have been paid in full. Interest thereon shall be at the rate
of four percent (4%) per annum or, if four percent (4%) is greater than the rate then permitted by law, at the maximum rate so permitted. Interest on overdue payments required under subsection (a) above shall be applied as provided in the Pipeline Indenture.

Unconditional Obligation

Subject to the section captioned “Limitation on Liability of Borrower”, the obligations of the Borrower to make the payments required by the section captioned “Repayment and Payment of Other Amounts Payable” and to perform and observe the other agreements on its part contained in the Pipeline Loan Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the Issuer, and during the term of the Pipeline Loan Agreement, the Borrower shall pay all payments required to be made on account of the loan (which payments shall be net of any other obligations of the Borrower) as prescribed in the section captioned “Repayment and Payment of Other Amounts Payable” and all other payments required under the Pipeline Loan Agreement, free of any deductions and without abatement, diminution or set-off. Until such time as the principal of, premium, if any, sinking fund installments, if any, and interest on the Pipeline Bonds shall have been fully paid, or provision for the payment thereof shall have been made as required by the Pipeline Indenture, the Borrower (i) will not suspend or discontinue any payments provided for in the section captioned “Repayment and Payment of Other Amounts Payable”; (ii) will perform and observe all of its other covenants contained in the Pipeline Loan Agreement; and (iii) except as provided in the Pipeline Loan Agreement, will not terminate the Pipeline Loan Agreement for any cause, including, without limitation, the occurrence of any act or circumstances that may constitute failure of consideration, destruction of or damage to all or a portion of those facilities or equipment comprising the Pipeline, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of California or any political subdivision of either of these, or any failure of the Issuer or the Pipeline Trustee to perform and observe any covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with the Pipeline Loan Agreement or the Pipeline Indenture, except to the extent permitted by the Pipeline Loan Agreement.

Assignment of Issuer’s Rights

As security for the payment of the Pipeline Bonds, the Issuer will assign to the Pipeline Trustee the Issuer’s rights under the Pipeline Loan Agreement, including the right to receive payments under the Pipeline Loan Agreement (except the Retained Rights), and the Issuer directs the Borrower to make the payments required under the Pipeline Loan Agreement (except such payments for expenses and indemnification) directly to the Pipeline Trustee. The Borrower assents to such assignment and agrees to make payments directly to the Pipeline Trustee without defense or set-off by reason of any dispute between the Borrower and the Issuer or the Pipeline Trustee. Without limiting the foregoing, to the extent there are benefits afforded to the Pipeline Trustee under the Installment Agreement, the Issuer will assign such rights to the Pipeline Trustee. The Borrower expressly acknowledges and consents to such assignment.

Certain Special Covenants and Agreements

Right of Access to the Pipeline. The Borrower and the Water Authority and its successors agree that during the term of the Pipeline Loan Agreement, the Issuer, the Pipeline Trustee and the duly authorized agents of any of them shall have the right at all reasonable times during normal business hours to enter upon the site of the Pipeline to examine and inspect the Pipeline in conformance with industry practice; provided, however, that reasonable notice shall be given to the Borrower prior to such examination or inspection and, except in cases of emergency, risk of personal injury or death, catastrophic property loss, or imminent risk of other property damage, any examination or inspection which would
materially impair the performance of the Pipeline shall be limited to scheduled maintenance periods as determined by the Water Authority in order to minimize impacts on water deliveries. The rights of access reserved to the Issuer and the Pipeline Trustee may be exercised only after such agent shall have executed release of liability and secrecy agreements if requested by the Borrower or the Water Authority and its successors in the form then currently used by the Borrower or the Water Authority and its successors, and nothing contained in this section captioned “Right of Access to the Pipeline” or in any other provision of the Pipeline Loan Agreement shall be construed to entitle the Issuer or the Pipeline Trustee to any information or inspection involving the confidential trade or proprietary knowledge, expertise or know-how of the Borrower or the Water Authority and its successors.

The Borrower’s Maintenance of Its Existence; Assignments; Permitted Transfers of the Pipeline.

(a) To the extent permitted by law, the Borrower covenants and agrees that during the term of the Pipeline Loan Agreement it shall:

(i) maintain its existence as a public entity and agency, duly organized and existing pursuant to the JPA Act and the JPA Agreement,

(ii) maintain and update filings in accordance with California Government Code section 53051,

(iii) not dissolve, sell or otherwise dispose of all or substantially all of its assets, combine or consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it so that the Borrower is not the resulting or surviving entity, except if:

(A) (1) such resulting or surviving entity or transferee, as the case may be, is the Water Authority and its successors or (2) five years shall have elapsed since the issuance of the Pipeline Bonds;

(B) such resulting or surviving entity or transferee, as the case may be, has executed and delivered to the Issuer and the Pipeline Trustee an assignment and assumption agreement which provides: (1) certifications and evidence that such resulting or surviving entity or transferee qualifies to do business in the State of California and is in good legal standing, (2) an agreement by the surviving or resulting entity to pay and perform all of the obligations of the Borrower under the Pipeline Loan Agreement and under the Installment Agreement and the Tax Certificate, and (3) representations by the surviving or resulting entity identical to the representations set forth in the section regarding representations and warranties of the Borrower in the Pipeline Loan Agreement;

(C) (1) the credit rating on the Pipeline Bonds, as determined by any Rating Agency then rating the Pipeline Bonds, shall be no lower than the rating level of the Pipeline Bonds immediately prior to the effective date of such dissolution, sale, disposition, combination, merger or consolidation or (2) if the foregoing clause (1) is not satisfied, any reduction in rating occurs simultaneously with a mandatory tender for purchase of all the Pipeline Bonds; and
(D) the Issuer shall have received an Approving Opinion with respect to such dissolution, sale, disposition, combination, merger or consolidation and an Opinion of Counsel to the effect that the surviving, resulting, or transferee Person is a “participating party” as defined in the Act.

(iv) not sell, transfer, lease or otherwise dispose of (including operating arrangements), or permit the sale, transfer, lease or disposal (including operating arrangements), of the Pipeline or portion of the Pipeline other than equipment that has reached the end of its useful life, except in accordance with any of the following subsections:

(A) The Borrower may sell, transfer, lease or otherwise dispose of (including operating arrangements) any portion of the Pipeline to the Water Authority and its successors if the purchaser, transferee, lessee, operator or other recipient, as the case may be, has covenanted in a written instrument for the benefit of the Issuer and the Borrower to comply with the instructions of the Borrower issued for the purpose of assuring that the Pipeline be operated in conformance with the Pipeline Loan Agreement, the Act, the Tax Certificate and federal tax law; provided that nothing in the foregoing shall diminish the Borrower’s obligation to cause the Pipeline to be operated in conformance with the Pipeline Loan Agreement, the Act, the Tax Certificate and federal tax law, including without limitation, the operation of the sold, transferred, disposed or leased portion of the Pipeline. Any lease pursuant to the foregoing shall not permit sublease or assignment by the lessee unless such sublease or assignment would otherwise satisfy the requirements of this subsection.

(B) The Borrower may sell, transfer or otherwise dispose of any portion of the Pipeline that constitutes equipment if (1) such equipment has reached the end of its useful life or (2) such equipment is replaced by the Borrower or the Water Authority and its successors with equipment of equal or greater value and utility that is used in the same manner and for the same purposes as the equipment so sold, transferred or otherwise disposed of, has a useful life at least equal to the remaining useful life of the equipment so sold, transferred or otherwise disposed of and is in the same location as the equipment so sold, transferred or disposed of, to the extent identified in the Pipeline Loan Agreement and the Issuer shall have received an Approving Opinion with respect to such replacement.

(C) The Borrower may sell, transfer, lease or otherwise dispose of (including operating arrangements) any portion of the Pipeline to a Person other than the Water Authority and its successors, if,

(1) the purchaser, transferee, lessee, operator or other recipient, as the case may be, has covenanted in a written instrument for the benefit of the Issuer and the Borrower to comply with the instructions of the Borrower issued for the purpose of assuring that the Pipeline be completed and operated in conformance with the Pipeline Loan Agreement, the Act, the Tax Certificate and federal tax law; provided that nothing in the foregoing shall diminish the Borrower’s obligation to cause the Pipeline to be completed and operated in conformance with the
Pipeline Loan Agreement, the Act, the Tax Certificate and federal tax law;

(2) (I) the credit rating on the Pipeline Bonds, as determined by any Rating Agency then rating the Pipeline Bonds, shall be no lower than the rating level of the Pipeline Bonds immediately prior to the effective date of such sale, transfer, lease, disposition or (operating arrangement) or (II) if the foregoing clause (I) is not satisfied, any reduction in rating occurs concurrently with a mandatory tender for purchase of all the Pipeline Bonds; and

(3) the Issuer shall have received a certificate of good standing of the purchaser, transferee, lessee or operator, as the case may be, from the California Secretary of State and Franchise Tax Board, a copy of the document evidencing such sale, transfer, lease, disposition or (operating arrangement), an Approving Opinion with respect to such sale, transfer, lease, disposition or (operating arrangement) and an Opinion of Counsel to the effect that the surviving, resulting, or transferee Person is a “participating party” as defined in the Act.

(b) Within 10 days after the consummation of the merger or other transaction described in subsection (a)(iii) or (a)(iv) above, the Borrower shall provide the Issuer and the Pipeline Trustee with (i) counterpart copies of the documents constituting the transaction, (ii) if required to be delivered under the Pipeline Loan Agreement, the items set forth in subsection (a)(iii) or (a)(iv) above, as the case may be, and (iii) a certificate of the Borrower stating that the such transaction complies with the provisions of subsection (a)(iii) or (a)(iv) above, as the case may be. The Borrower shall give the Issuer at least 30 days written notice prior to the effective date of any merger or other transaction described above, together with drafts of the documents of assumption and such other instruments (other than good standing certificates) as would be required to be delivered in connection therewith. The Borrower agrees to provide such other information as the Issuer may reasonably request in order to assure compliance with this subsection (b).

(c) Notwithstanding any other provisions of subsection (a) above, the Borrower need not comply with any of the provisions of subsection (a) above if, at the time of such merger, combination, sale or transfer of assets, dissolution or reorganization, the Pipeline Bonds will be defeased as provided in the Pipeline Indenture or in the case of a sale of less than all of the assets acquired or constructed with proceeds of the Pipeline Bonds, the Pipeline Bonds will be defeased or retired in an amount proportional to the percentage of the original cost of such assets to the original net proceeds of the Pipeline Bonds. The Borrower shall provide to the Issuer a certificate of the Borrower setting forth the calculations evidencing that the amount of Pipeline Bonds defeased or retired is proportional to the percentage of the original cost of such assets to the original net proceeds of the Pipeline Bonds.

(d) The rights and obligations of the Borrower under the Pipeline Loan Agreement may be assigned by the Borrower to any Person in whole or in part, subject, however, to each of the following conditions:

(i) No assignment other than pursuant to subsection (a) above shall relieve the Borrower from primary liability for any of its obligations under the Pipeline Loan Agreement and, in the event of any assignment not pursuant to subsection (a) above, the
Borrower shall continue to remain primarily liable for the payments specified in the section captioned “Repayment and Payment of Other Amounts Payable” and for performance and observance of the other agreements provided in the Pipeline Loan Agreement to be performed and observed by it.

(ii) Any assignment from the Borrower under this subsection (d) shall retain for the Borrower such rights and interests as will permit it to perform its obligations under the Pipeline Loan Agreement, if applicable, and any assignee from the Borrower shall assume in writing the obligations of the Borrower under the Pipeline Loan Agreement to the extent of the interest assigned.

(iii) The Borrower shall give the Issuer 30 days prior written notice of any assignment under this subsection (d), and shall, within 30 days after delivery thereof, furnish or cause to be furnished to the Issuer and the Pipeline Trustee a true and complete copy of each such assignment together with an instrument of assumption and an Opinion of Counsel satisfactory to the Issuer that the provisions of this subsection (d) have been complied with.

Notwithstanding the foregoing, the Borrower may assign (without the consent of the Issuer) its entire interest in the Pipeline Loan Agreement without recourse and have no further liability for any obligations under the Pipeline Loan Agreement if the consent of the Pipeline Bondholders has been obtained directly or constructively pursuant to the terms of the Pipeline Loan Agreement or the Pipeline Indenture and the conditions of the foregoing subsection (d)(iii) are satisfied.

(e) The Borrower may undertake any transaction not expressly permitted by subsections (a) or (d) above if the Issuer consents to such transaction in writing. The Borrower must request any such written consent prior to undertaking any such transaction and provide to the Issuer such information, reports and documents relating to the transaction as the Issuer may reasonably request. The Issuer may respond to such request of the Borrower at any time within 45 days of such request. If the Issuer has not responded to such request within the 45-day period, the Issuer will be deemed to have consented to such transaction.

(f) If a merger, consolidation, sale or other transfer is effected as provided in this section captioned “The Borrower’s Maintenance of Its Existence; Assignments; Permitted Transfers of the Pipeline”, all provisions of this section shall continue in full force and effect and no further merger, consolidation, sale or transfer shall be effected except in accordance with the provisions of this section.

Notwithstanding anything to the contrary contained in the Pipeline Loan Agreement, the Borrower may sell the Pipeline to the Water Authority pursuant to the terms of the Installment Agreement; provided that the Borrower covenants to cause the Water Authority to comply with all of the obligations imposed on the Borrower in this section captioned “The Borrower’s Maintenance of Its Existence; Assignments; Permitted Transfers of the Pipeline” as if such the obligations were obligations of the Water Authority (provided that the Water Authority shall maintain its existence as a county water authority duly organized and existing under and by virtue of the laws of the State of California), and to enforce the covenants and obligations of the Water Authority under the Installment Agreement, including without limitation the covenants of the Water Authority in the Installment Agreement.
Insurance; Assignment of Net Insurance Proceeds. The Borrower agrees to insure the Pipeline or to cause the Water Authority to insure the Pipeline during the term of the Pipeline Loan Agreement for such amounts and for such occurrences as are customary for similar facilities within the State of California, by means of policies issued by reputable insurance companies qualified to do business in the State of California or through self-insurance. The Borrower agrees to deliver, upon request, to the Issuer and the Pipeline Trustee memorandum copies of the insurance policies or certificates of insurance covering the Pipeline and certification by an insurance consultant that the insurance on the Pipeline meets the above requirements. The Borrower assigns to the Issuer and the Issuer will irrevocably assign to the Pipeline Trustee the right to receive all of the proceeds of any policy of insurance or surety bond, net of proceeds expended to replace or repair the Pipeline, together with all of its rights under any policy of insurance or surety bond agreement or right, claim, action or suit relating to such proceeds, necessary to enforce the Borrower’s or the Water Authority’s claims, as applicable, thereunder to receive the proceeds, including all such rights as have been assigned to the Borrower pursuant to the Installment Agreement. The Borrower further assigns to the Issuer and the Issuer will irrevocably assign to the Pipeline Trustee the right to receive all of the proceeds from actual or threatened condemnation or eminent domain actions with respect to all or any portion of the Pipeline, including such rights as have been assigned to the Borrower pursuant to the Installment Agreement. Such assignments shall remain in effect so long as any Pipeline Bonds are Outstanding.

Maintenance and Repair; Taxes; Utility and Other Charges. The Borrower agrees to maintain the Pipeline, or cause the Water Authority to maintain, or cause the Pipeline to be maintained, during the term of the Pipeline Loan Agreement (i) in as reasonably safe condition as its operations shall permit, (ii) in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof and (iii) in a manner consistent with State law, including, without limitation, the Act and all environmental laws.

The Borrower agrees to pay, or cause the Water Authority to pay, or cause to be paid during the term of the Pipeline Loan Agreement all taxes, governmental charges of any kind lawfully assessed or levied upon the Pipeline or any part thereof, including any taxes levied against any portion of the Pipeline which, if not paid, will become a charge on the receipts from the Pipeline prior to or on a parity with the charge thereon and the pledge or assignment thereof to be created therefrom or under the Pipeline Loan Agreement, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of any portion of the Pipeline and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Pipeline; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as are required to be paid during the term of the Pipeline Loan Agreement. The Borrower may, at the Borrower’s expense and in the Borrower’s name, in good faith, contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during that period of such contest and any appeal therefrom unless by such nonpayment the Pipeline or any part thereof will be subject to loss or forfeiture.

The Borrower agrees to maintain all certificates, approvals, permits and authorizations described in the section regarding representations and warranties of the Borrower in the Pipeline Loan Agreement necessary for the construction, as applicable, use or operation of the Pipeline.

General Tax Covenants. It is the intention of the parties to the Pipeline Loan Agreement that interest on the Pipeline Bonds shall be and remain Tax Exempt and, to that end, the Borrower and the Issuer covenant to comply with all of their respective requirements in the Tax Certificate in this section captioned “General Tax Covenants” and in the section captioned “Special Arbitrage Certifications; Rebate” which are for the benefit of the Pipeline Trustee and each and every Holder of the Pipeline.
Bonds. The Borrower further covenants to cause the Water Authority to comply with the covenants of the Water Authority in the Installment Agreement and the requirements of the Water Authority in the Tax Certificate.

**Special Arbitrage Certifications; Rebate.** The Borrower acknowledges that it has read the sections regarding arbitrage covenants and the Rebate Fund in the Pipeline Indenture and that it will comply with the requirements of those sections as if they were set forth in full in the Pipeline Loan Agreement. The Borrower shall calculate, or cause to be calculated, its rebate liability at such times as are required by Section 148(f) of the Code and any temporary, proposed or final Regulations as may be applicable to the Pipeline Bonds from time to time. The Borrower shall provide to the Pipeline Trustee a copy of each calculation of rebate liability prepared by or on behalf of the Borrower, which documentation shall be made available to the Issuer upon request.

**Changes to the Pipeline.** The Borrower shall not make or permit to be made any changes to the Pipeline or to the operation thereof which would affect the qualification of the Pipeline under the Act or impair the exemption from federal income taxation of the interest on the Pipeline Bonds.

**Continuing Disclosure.** The Borrower covenants and agrees to comply or cause the Water Authority to comply with the continuing disclosure requirements promulgated under S.E.C. Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, including without limitation complying with all of its obligations under the Continuing Disclosure Certificate. Notwithstanding any other provision of the Pipeline Loan Agreement, failure of the Borrower to comply with the requirements of S.E.C. Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, shall not be considered a Loan Default Event; provided, however, that the Pipeline Trustee, at the written request of the Holders of at least 25% aggregate principal amount of Outstanding Pipeline Bonds, shall, but only to the extent indemnified to its satisfaction from and against any cost, liability or expense of any kind whatsoever related thereto, including, without limitation, fees and expenses of its attorneys and advisors and additional fees and expenses of the Pipeline Trustee, or any Pipeline Bondholder or beneficial owner of the Pipeline Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Borrower to comply with its obligations pursuant to this section captioned “Continuing Disclosure”. The Borrower acknowledges and agrees that the Issuer shall have no liability with respect to these obligations.

**Loan Default Events**

Any one of the following which occurs and continues shall constitute a Loan Default Event:

(a) failure of the Borrower to make any payment required by the first paragraph of the section captioned “Repayment and Payment of Other Amounts Payable” when due; or

(b) failure of the Borrower to observe and perform any covenant, condition or agreement on its part required to be observed or performed by the Pipeline Loan Agreement, other than as provided in subsection (a) above, which continues for a period of 30 days after written notice delivered to the Borrower by the Issuer or the Pipeline Trustee and which notice shall specify such failure and request that it be remedied, unless the Issuer and the Pipeline Trustee shall agree in writing to an extension of such time; provided, however, that if the failure stated in the notice cannot be corrected within such period, the Issuer and the Pipeline Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted within such period and diligently pursued until the default is corrected; or

(c) existence of a Water Authority Event of Default under and as defined in the Pipeline Indenture; or
(d) any representation or warranty of the Borrower set forth in section regarding representations and warranties of the Borrower in the Pipeline Loan Agreement at the time made or deemed made is false in any material respect.

The provisions of subsection (b) are subject to the limitation that the Borrower shall not be deemed in default if, and so long as, the Borrower is unable to carry out its agreements under the Pipeline Loan Agreement by reason of strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States or of the State of California or any of their departments, agencies, or officials, or any civil or military authority; insurrections, riots, epidemics, landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; wars; acts of terrorism; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Borrower; it being agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Borrower and the Borrower shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Borrower, unfavorable to the Borrower. This limitation shall not apply to any default under subsections (a), (c) or (d) of this section captioned “Loan Default Events”.

Remedies on Default

Subject to the section captioned “Loan Default Events”, whenever any Loan Default Event shall have occurred and shall be continuing,

(a) The Pipeline Trustee, by written notice to the Issuer and the Borrower, shall declare the unpaid balance of the Pipeline Loan Repayments payable under subsection (a) of the section captioned “Repayment and Payment of Other Amounts Payable” to be due and payable immediately, provided that concurrently with or prior to such notice the unpaid principal amount of the Pipeline Bonds shall have been declared to be due and payable under the Pipeline Indenture. Upon any such declaration, such amount shall become and shall be immediately due and payable as determined in accordance with the Pipeline Indenture.

(b) The Pipeline Trustee may have access to and may inspect, examine and make copies of the books and records and any and all accounts, data and federal income tax and other tax returns of the Borrower; provided that the Pipeline Trustee shall be obligated to protect the confidentiality of such information to the extent provided by State and federal law and prevent its disclosure to the public, except the Issuer.

(c) The Issuer or the Pipeline Trustee may take whatever other action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under the Pipeline Loan Agreement or any right assigned by the Borrower to the Issuer under the Pipeline Loan Agreement; provided, however, that acceleration of the unpaid balance of the loan payments is not a remedy available to the Issuer.

In case the Pipeline Trustee or the Issuer shall have proceeded to enforce its rights under the Pipeline Loan Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Pipeline Trustee or the Issuer, then, and in every such case, the Borrower, the Pipeline Trustee and the Issuer shall be restored respectively to their several positions and rights under the Pipeline Loan Agreement, and all rights, remedies and powers of the Borrower, the Pipeline Trustee and the Issuer shall continue as though no such action had been taken.
The Borrower covenants that, in case a Loan Default Event shall occur with respect to the payment of any Pipeline Loan Repayment payable under subsection (a) of the section captioned “Repayment and Payment of Other Amounts Payable”, then, upon demand of the Pipeline Trustee, the Borrower will pay to the Pipeline Trustee the whole amount that then shall have become due and payable under said Section, with interest on the amount then overdue at the rate of four percent (4%) per annum, or if four percent (4%) is greater than the rate then permitted by law, at the greatest rate then permitted; provided that the Borrower shall be obligated to make such payments solely from the proceeds of Installment Sale Payments the Borrower receives from the Water Authority. Such overdue rate shall be in effect following a delinquency of 30 days and shall remain in effect until such overdue amount has been paid.

In case the Borrower shall fail forthwith to pay such amounts upon such demand, the Pipeline Trustee shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Borrower and collect in the manner provided by law the moneys adjudged or decreed to be payable.

In case proceedings shall be pending for the bankruptcy or for the reorganization of the Borrower or the Water Authority under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Borrower or the Water Authority or in the case of any other similar judicial proceedings relative to the Borrower or the Water Authority, the creditors or property of the Borrower or the Water Authority, then the Pipeline Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to the Pipeline Loan Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Pipeline Trustee allowed in such judicial proceedings relative to the Borrower or the Water Authority, its creditors or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Pipeline Indenture after the deduction of its reasonable charges and expenses to the extent permitted by the Pipeline Indenture. Any receiver, assignee or trustee in bankruptcy or reorganization is authorized to make such payments to the Pipeline Trustee and to pay to the Pipeline Trustee any amount due for reasonable compensation and expenses, including reasonable expenses and fees of counsel incurred by the Pipeline Trustee up to the date of such distribution.

Options to Prepay Installments

The Borrower shall have the option to prepay the amounts payable under the section captioned “Repayment and Payment of Other Amounts Payable” by paying to the Pipeline Trustee, for deposit in the Revenue Fund, the amount set forth in the section captioned “Amount of Prepayment”, as follows: the Borrower may prepay all or any part of the Pipeline Loan Repayments and cause all or any part of the Outstanding Pipeline Bonds to be redeemed at the times and at the prices set forth in the Pipeline Indenture.

Mandatory Prepayment

The Borrower shall have and accepts the obligation to prepay in whole the Pipeline Loan Repayments required by the section captioned “Repayment and Payment of Other Amounts Payable”, together with interest accrued, but unpaid, thereon, to be used to redeem all or a part of the Outstanding Pipeline Bonds under any of the following circumstances (provided that such payments shall be required to be made solely from the proceeds of Installment Sale Payments the Borrower receives from the Water Authority):
(g) As a result of any changes in the Constitution of the State or in the Constitution of the United States of America or of legislative or administrative action (whether state or federal), or by final, nonappealable decree, judgment or order of any court or administrative body (whether state or federal) entered after the contest thereof by the Water Authority in good faith, the Pipeline Loan Agreement or the Installment Agreement shall have become impossible to perform in accordance with the intent and purposes of the parties as expressed in the Pipeline Loan Agreement or the Installment Agreement, as applicable; or

(h) if mandatory redemption is required by the Pipeline Indenture.

The amount payable by the Borrower in the event of a prepayment required by this section captioned “Mandatory Prepayment” shall be determined as set forth in the section captioned “Amount of Prepayment” and shall be deposited in the Revenue Fund.

Amount of Prepayment

In the case of a prepayment of the entire amount due under the Pipeline Loan Agreement pursuant to the sections captioned “Options to Prepay Installments” or “Mandatory Prepayment”, the amount to be paid shall be a sum sufficient, together with other funds and the yield on any securities deposited with the Pipeline Trustee and available for such purpose, to pay (1) the principal of all Pipeline Bonds Outstanding on the redemption date specified in the notice of redemption, plus interest accrued and to accrue to the payment or redemption date of the Pipeline Bonds, plus premium, if any, pursuant to the Pipeline Indenture, (2) all reasonable and necessary fees and expenses of the Issuer, the Pipeline Trustee and any paying agent accrued and to accrue through final payment of the Pipeline Bonds and (3) all other liabilities of the Borrower accrued and to accrue under the Pipeline Loan Agreement.

In the case of partial prepayment of the Pipeline Loan Repayments, the amount payable shall be a sum sufficient, together with other funds deposited with the Pipeline Trustee and available for such purpose, to pay the principal amount of and premium, if any, and accrued interest on the Pipeline Bonds to be redeemed, as provided in the Pipeline Indenture, and to pay expenses of redemption of such Pipeline Bonds. All partial prepayments of the Pipeline Loan Repayments shall be applied in inverse order of the due dates thereof.

Non-Liability of Issuer

The Issuer shall not be obligated to pay the principal of, or premium, if any, or interest on the Pipeline Bonds, except from Borrower Payments. The Borrower acknowledges that the Issuer’s sole source of moneys to repay the Pipeline Bonds will be provided by the payments made by the Borrower pursuant to the Pipeline Loan Agreement, together with other Borrower Payments, including investment income on certain funds and accounts held by the Pipeline Trustee under the Pipeline Indenture, and Contracted Shortfall Payments, and agrees that if the payments to be made under the Pipeline Loan Agreement shall ever prove insufficient to pay all principal of, and premium, if any, and interest on the Pipeline Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Pipeline Trustee, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, premium or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Pipeline Trustee, the Borrower, the Issuer or any third party; provided that the Borrower shall be obligated to make such payments solely from the proceeds of Installment Sale Payments the Borrower receives from the Water Authority.
Amendments, Changes and Modifications

Except as otherwise provided in the Pipeline Loan Agreement or the Pipeline Indenture, subsequent to the initial issuance of Pipeline Bonds and prior to their payment in full, or provision for such payment having been made as provided in the Pipeline Indenture, the Pipeline Loan Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the Pipeline Indenture.

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APPENDIX G

Summary of the Water Purchase Agreement
SUMMARY OF CERTAIN PROVISIONS OF THE WATER PURCHASE AGREEMENT

The following summarizes certain provisions of the Water Purchase Agreement, dated as of December 20, 2012 (the “Effective Date”), by and between the San Diego County Water Authority (the “Water Authority”) and Poseidon Resources (Channelside) LP (the “Company”).

Definitions

Any capitalized term used in this summary and not defined below is defined in Appendix A, Summary of Certain Definitions.

The following are definitions of certain terms contained in the Water Purchase Agreement and used therein:

**Adjusted Annual Supply Commitment** means, for a Contract Year, the sum of the Adjusted Monthly Supply Commitments for each Billing Period of the Contract Year.

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

**Annual Excused Supply Shortfall Units** means, for any Contract Year, the sum of any Monthly Excused Supply Shortfall Units occurring in such Contract Year.

**Annual Operating Period Shortfall Payment Target Amount** is defined under “Annual Operating Period Shortfall Payment True-Up”.

**Annual Operating Period Shortfall Payment True-Up Payment** means (a) the Annual Operating Period Shortfall Payment Target Amount, minus (b) the total amount of Monthly Operating Period Shortfall Payments paid by the Company during a Contract Year net of the total amount of Monthly Operating Period Shortfall Restoration Payments received by the Company during a Contract Year.

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

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

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

**Approved Permitted Debt** is defined under “PROJECT OPERATION – Water Purchase Agreement” in the body of this Limited Offering Memorandum.

**Base Product Water Deliveries** is defined under “Base, Additional and Excess Product Water Deliveries”.

**Billing Period** means each month of a Contract Year.
**Cabrillo Raw Seawater Intake System** means (i) the existing structure currently used for the intake of seawater for the Power Station (the “Cabrillo Raw Seawater Intake Structure”), and (ii) the system of pipes, pumps, equipment, improvements and other assets at the Power Station required for the conveyance of raw seawater from the Cabrillo Raw Seawater Intake Structure to the raw seawater delivery point to the Plant.

**CAM** means Contract Administration Memorandum.

**Change in Control** means with respect to a person any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, shares of the Company or equity in the person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner, a managing member or other managers), including changes arising from assignment or transfer of existing shares, shares of the Company or equity, issuance of new shares, shares of the Company or equity or amalgamation, merger consolidation, amendment of a limited partnership certificate or other reorganization, or any other direct or indirect change which results in a person or group of persons, other than the equity holders of the entity immediately prior to the change, directly or indirectly: (1) Controlling the composition of the majority of the board of directors of the entity or of a general partner or manager of the entity; (2) Controlling the decisions made by or on behalf of the person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of any of the entity, a general partner of the entity or a manager of the entity or otherwise; (3) Holding equity (either beneficially or otherwise) of that entity with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of that entity with more than one half of the voting rights; or (4) Having the ability to direct or cause the direction of the management, actions or policies of the entity; provided, however, that any of the foregoing with respect to Poseidon Water, LLC or Stonepeak Partners Infrastructure Fund LP or its affiliates shall not be considered to be a Change in Control for the purposes of the Water Purchase Agreement.

**Change in Law Event** means the following:

**Inclusions.** The coming into effect of:

- Any applicable law enacted after the Contract Date; or
- Any modification (including repeal) of any applicable law existing on the Contract Date that comes into effect after the Contract Date;

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

- Any (i) applicable law enacted after the Contract Date or any modification (including repeal) of any applicable law existing on the Contract Date that comes into effect after the contract date requiring the closure of the once-through cooling facilities at the Power Station, or (ii) demand or delay by any governmental body in issuing a required governmental approval for raw seawater intake improvements, in either case as and to the extent provided under the Cabrillo Risk section below; or
• A CDPH permitting delay, as and to the extent provided under governmental approvals; or

• A delay in the issuance of, or the imposition of terms or conditions in, any governmental approval that results directly from any Change in Law Event described in the first two bullets above with respect to federal, California, or local law, statute, code or regulation, or any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any governmental body having appropriate jurisdiction.

**Relief Limitations.** The relief to which the Company is entitled upon a Change in Law Event described in the third and fourth bullets above in the Inclusions portion of this definition is limited as provided respectively under Cabrillo Risk and Governmental Approvals. Except as provided under the Cabrillo Risk section, the Company shall not be entitled to an adjustment of the Unit Price or any other compensation relief upon the occurrence of any of the events referred to in this paragraph.

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

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

• The denial, delay in issuance of, or imposition of any term or condition in connection with, any governmental approval required for the contract obligations, except as provided in the third, fourth or fifth bullets above in the Inclusions portion of this definition;

• A change in the nature or severity of the actions typically taken by a governmental body to enforce compliance with applicable law which was in effect as of the Contract Date;

• Changes in or denials of governmental approvals in consequence of the enforcement, lapse or invalidation of an existing governmental approval, unless due to an act, event or circumstance described in the first or second bullets above in the Inclusions portion of this definition;

• Any increase in any fines or penalties provided for under applicable law in effect as of the Contract Date;

• Any act, event or circumstance that would otherwise constitute a Change in Law Event but that does not change the requirements imposed on the Company by the contract standards in effect as of the Contract Date;

• Any change in tax law (except that the Company shall be entitled to relief on account of a Discriminatory Change in Tax Law or a Specified Change in Tax Law); or

• Any applicable law enacted after the Contract Date or any modification (including repeal) of any applicable law existing on the Contract Date that comes into effect after the Contract Date affecting the Power Station other than a Change in Law event described in the third bullet above in Inclusions.
**Commercial Operation Date** means the date by which both of the following have occurred:
(i) the notice of Provisional Acceptance is delivered to the Water Authority, if the Water Authority certifies in response to such notice that the Provisional Acceptance Conditions have been satisfied; and
(ii) the Company has completed construction of the Product Water Pipeline Improvements and satisfied the acceptance conditions for the Product Water Pipeline Improvements set forth in the Pipeline DBA.

**Company Event of Default** means any of the following events or circumstances: (1) The occurrence of a Company Remediable Breach that is not remedied in accordance with the Water Purchase Agreement, unless such occurrence is the result of an Uncontrollable Circumstance; (2) The failure of the Company to timely satisfy the requirements set forth under the Provisional Acceptance section below, unless such failure is the result of an Uncontrollable Circumstance; (3) The occurrence of a Company bankruptcy-related event; (4) The Company abandons the Plant, other than pursuant to its right to suspend performance due to a Force Majeure Event; (5) The Company breaches the limitations described under “Limitation on Assignment by Company” or a Change in Control occurs which is prohibited by the Water Purchase Agreement; (6) The occurrence of either of the following with respect to Product Water quality, unless the occurrence is the result of an Uncontrollable Circumstance: (a) an exceedance of the same primary drinking water standard MCL in three consecutive months, or four times in any consecutive 12 month period; or (b) the issuance by the CDPH of a second ‘boil water’ notice with respect to Product Water; (7) In any rolling period of 36 consecutive Billing Periods, the sum in 24 or more of such 36 Billing Periods of (1) all Monthly Delivered Water Units, (2) Monthly Unexcused Demand Shortfall Units, (3) Monthly Excused Supply or Demand Shortfall Units occurring in each of such 24 or more Billing Periods, and (4) Monthly Unscheduled Outage Units is less than an amount equal to 75% of the sum of the Monthly Product Water Orders for the corresponding Billing Periods; or (8) The termination of the Ground Lease following an event of default thereunder.

**Company New Domestic Water Supply Permit** means the domestic water supply permit required to be issued by CDPH to the Project Company following mechanical completion, and authorizing the Company to use Product Water as a source of potable water for public consumption through the Water Authority distribution system.

**Company Remediable Breach** means: (1) A failure by the Company to pay any amount due and owing to the Water Authority under the Water Purchase Agreement on the due date (which amount is not being disputed in good faith) and the Company has not remedied such failure to pay within 10 business days following notice from the Water Authority; (2) A failure by the Company to maintain the insurance required by the Water Purchase Agreement and to comply with its obligation pursuant to the Water Purchase Agreement to name the Water Authority as an insured party; (3) A failure by the Company to comply with its obligation to repair, replace or restore the Plant following the occurrence of an Insurable Force Majeure Event; (4) The Company fails to immediately take all appropriate action in the event that the Water Authority notifies the Company that a public health or safety emergency exists or is threatened due to the Company’s failure to comply with the contract standards; (5) A persistent breach by the Company; (6) Except as provided for in items (1) through (4) above, a breach, or series of breaches, by the Company of any agreement, covenant or undertaking made to the Water Authority (other than a breach for which the Water Authority may impose deductions) or any representation or warranty made by the Company to the Water Authority in the Water Purchase Agreement (or any ancillary certificate, statement or notice issued thereto) being incorrect when made or at any time, the consequence of which is: (a) a material risk to the health or safety of the public; (b) a risk of material liability of the Water Authority to third persons; (c) an adverse effect on the performance of the contact obligations to the extent that the Water Authority is reasonably likely to be materially deprived of the benefit of the Water Purchase Agreement; or (d) any material provision of the Water Purchase Agreement being unenforceable against the Company; or (7) Any other fact or circumstance designated as a “Company Remediable Breach” under the Water Purchase Agreement.
Compensation Adjustment Event means the occurrence of an Uncontrollable Circumstance described in the ‘Inclusions-Performance, Schedule and Compensation Relief’ portion of the definition thereof.

Contract Administration Memorandum means the principal formal tool for the administration of routine matters between the parties which arise under the Water Purchase Agreement and do not require an amendment. A Contract Administration Memorandum is used for matters of interpretation and application arising during the course of performance of the parties’ obligations thereunder.

Contract Date means the date the Water Purchase Agreement is executed and delivered by the parties.

Contract Year means each of: (1) The period from the Contract Date to the next June 30th; (2) Each subsequent period of 12 calendar months commencing on July 1st; and (3) The period from July 1st in the year in which the Water Purchase Agreement expires or is terminated to and including the termination date.

Debt Service Charge for each Contract Year shall be the per acre-foot amount set forth under “Debt Service Charge”. The Debt Service Charge is fixed for each Contract Year as of the Contract Date (except as described in “Minimum Annual Demand Commitment” and as specifically set forth in the Water Purchase Agreement), and shall not be index-linked.

Design Requirements Change means a design that is in conflict with the Design Requirements, but does not include refinements, corrections to mistakes, detailing, or the substitution of equal alternatives to the extent permitted by the Water Purchase Agreement.

Differing Site Conditions means concealed or latent subsurface conditions at the Plant site that materially differ from those described in the geotechnical baseline conditions set forth in the Water Purchase Agreement.

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

- the Project or the Company with respect to the Project and not other projects or persons;
- other similar projects delivered through public-private partnership or performance-based infrastructure delivery methods, or another delivery method similar to them and not other projects;
- Persons (including the Company) that have contracted with the Water Authority or other governmental bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons; or
- Persons (including the Company) holding shares or other evidences of ownership in persons whose principal business is contracting with governmental bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons.
**Equity Return Charge** for each Contract Year shall be the per acre-foot amount set forth under the Equity Return Charge section. The Equity Return Charge is fixed for each Contract Year as of the Contract Date (except as described under “Minimum Annual Demand Commitment” and as specifically set forth in the Water Purchase Agreement), and shall not be index-linked.

**Excess Product Water Deliveries Incentive Unit Price** is $195 as of the Contract Date (index-linked).

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

**Force Majeure Event** means an Insurable Force Majeure Event or Uninsurable Force Majeure Event.

**Insurable Force Majeure Event** means any peril other than an Uninsurable Force Majeure Event the response to which, in accordance with the contract standards, materially expands the scope or materially interferes with, delays, or increases the cost of performing the contract obligations, except to the extent such event arises from or is contributed to, directly or indirectly, by any Company fault.

**Monthly Delivered Water Units** means, for any Billing Period, the number of Units of Product Water actually delivered by the Company and received by the Water Authority.

**Monthly Demand Shortfall Units** for any Billing Period means the amount by which the Monthly Product Water Order is less than the Minimum Monthly Demand Commitment. Monthly Demand Shortfall Units shall, without double counting, be characterized and recorded as Monthly Excused Demand Shortfall Units or Monthly Unexcused Demand Shortfall Units, as applicable.

**Monthly Excused and Unexcused Supply Shortfall Units** means, for any Billing Period, the sum of Monthly Excused Supply Shortfall Units and Monthly Unexcused Supply Shortfall Units for such Billing Period.

**Monthly Excused Demand Shortfall Units** means, for any Billing Period, Monthly Shortfall Units (if any) that result from the failure of the Water Authority to receive Product Water in volumes up to the Minimum Monthly Demand Commitment for such Billing Period, to the extent such failure is caused by an event described under item (2) in “Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term”.

**Monthly Excused Supply or Demand Shortfall Units** means, for any billing period, the sum of Monthly Excused Supply Shortfall Units and Monthly Excused Demand Shortfall Units.

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

**Monthly Operating Period Shortfall Restoration Payments** means, in any Billing Period, a payment by the Water Authority an amount equal to the product of (a) the number of Monthly Operating Period Shortfall Restoration Payment Units for such Billing Period (if there are such units), and (b) the Operating Period Shortfall Payment Unit Price for such Contract Year.
**Monthly Operating Period Shortfall Restoration Payment Units** is defined under “Operating Period Shortfall Payments”.

**Monthly Product Water Order** means the sum of the firm daily demand orders in each Billing Period.

**Monthly Shortfall Units** means the sum of Monthly Demand Shortfall Units and Monthly Supply Shortfall Units.

**Monthly Supply Shortfall Units** means for any Billing Period the amount by which Monthly Delivered Water Units are less than the Adjusted Monthly Supply Commitment. Monthly Supply Shortfall Units shall, without double counting, be characterized and recorded as Monthly Excused Supply Shortfall Units, Monthly Unexcused Supply Shortfall Units, or Monthly Unscheduled Outage Units, as applicable, provided that the cumulative amount of Monthly Unscheduled Outage Units for any Contract Year shall not exceed the Annual Unscheduled Outage Units Allowance.

**Monthly Unexcused Demand Shortfall Units** means, for any Billing Period, Monthly Shortfall Units that result from the Water Authority’s failure to receive Product Water that is available for delivery in volumes up to the Minimum Monthly Demand Commitment for such Billing Period, to the extent such failure is not caused by an event described under item (2) of “Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term”.

**Monthly Unexcused Supply Shortfall Units** means, for any Billing Period, Monthly Shortfall Units (if any), other than Monthly Unscheduled Outage Units, that result from (1) the Company’s failure to deliver Product Water in volumes up to the Adjusted Monthly Supply Commitment for such Billing Period, to the extent such failure is not caused by Uncontrollable Circumstances, and (2) during the Product Water Pipeline Improvements warranty period, any Product Water that (a) is delivered to the Product Water delivery point, but is thereafter not received at the Twin Oaks water treatment plant clearwell due to water losses in the Product Water Pipeline Improvements to the extent that such losses are caused by the failure of the Product Water Pipeline Improvements to comply with the warranty applicable thereto under the Pipeline DBA, or (b) is not delivered to the Product Water delivery point on account of the inability of the Water Authority to receive Product Water due to the failure of the Product Water Pipeline Improvements to comply with such warranty.

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

**Monthly Water Purchase Payment** means the monthly amount to be paid by the Water Authority for the purchase of Product Water.

**Off-Specification Product Water** means Product Water conveyed to the Water Authority that does not strictly conform to the Product Water Quality Guarantee in every respect and to any extent whatsoever, irrespective of whether any such non-conformity as to any Product Water quality parameter may be considered material or immaterial. Off-Specification Product Water does not include Unacceptable Water.
**Operating Period Shortfall Payment Unit Price** means the price per unit related to the debt service on the Pipeline Bonds set forth in Table 1.3 of Appendix 10 (Schedules Relating to the Monthly Water Purchase Payments).

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

**Performance Guarantee** means: (1) the Product Water Quality Guarantee (as defined below); (2) the Company’s guarantees of performance under “Maximum Monthly Supply Commitment and Adjusted Monthly Supply Commitment”; (3) the Company’s use of all reasonable efforts to produce and deliver Product Water to the Water Authority at the specific flow rates established by the Water Authority in its firm daily demand order, (4) without the Water Authority’s express approval, given in advance and in its discretion, (a) the Company shall not deliver Product Water to the Water Authority at a flow rate that is less than 95% nor greater than 105% of the specific flow rate demanded by the Water Authority in effect at any given time; and (b) the Company shall not deliver Product Water to the Water Authority in any Billing Period in volumes in excess of the Monthly Product Water Order for such Billing Period; (5) the Company’s guarantees of performance under “Operating Period Shortfall Payments”; (6) the Company’s guarantees of performance under “Drought Shortfall Payments”; (7) the Company shall dispose of all residuals in accordance with the Water Purchase Agreement; (8) the Company shall dispose of all concentrate discharge produced at the Plant and the Plant site in accordance with applicable law.

**Performance Test** means the performance test which establishes if the actual Plant performance over a 30 day period meets all Plant Minimum Performance Criteria, applicable contract standards, and is in compliance with all applicable laws.

**Permitted Debt** means: (1) debt for Project Costs; (2) debt for Project Completion; (3) debt issued for refinancing purposes; (4) debt necessary to finance the capital costs of Uncontrollable Circumstances, including Compensation Adjustment Event capital costs; (5) debt to finance short-term Project cash flow requirements; (6) debt to finance capital modifications; (7) debt to finance letters of credit to secure the Company’s obligations under agreements and governmental approvals with respect to the Project; (8) debt to finance the costs of compliance with governmental approvals; (9) debt in connection with interest rate or other hedging arrangements related to the financing of the Project; and (10) subordinated debt issued for Project purposes.

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

- Encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Company and against which the Company has established appropriate reserves in accordance with GAAP;

- Any encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Company, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Company to construct the Plant or operate the Plant;

- Any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges
which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Company and against which the Company has established appropriate reserves;

- Servitudes, licenses, easements, encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges which shall not in the aggregate materially and adversely impair the construction of the Plant or operation of the Plant by the Company;

- Applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants;

- Encumbrances which are created on or before the Contract Date;

- Encumbrances which are created by a Change in Law Event;

- Any encumbrance created by an act or omission by any governmental body or with respect to which the Water Authority has given its consent;

- Undetermined encumbrances and charges incident to construction or maintenance, and encumbrances and charges incident to construction or maintenance now or hereafter filed of record which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired), provided that the Company shall have set aside reserves with respect thereto which, in the opinion of its governing board, are adequate;

- Notices of lis pendens or other notices of or encumbrances with respect to pending actions which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired) and against which the Company has established appropriate reserves in accordance with GAAP;

- Encumbrances for taxes, assessments, or other governmental charges which are not delinquent, or if delinquent are payable without penalty or are being contested in good faith; provided that the Company shall have set aside reserves with respect to any taxes, assessments or other governmental charges which are being contested which are appropriate in accordance with GAAP;

- Minor defects and irregularities in the title to the Project which in the aggregate do not materially adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used or any exceptions to title existing listed in the title insurance policy;

- Encumbrances granted under the Plant financing agreements, including the rights of the Collateral Agent;

- Encumbrances securing indebtedness for the payment, redemption or satisfaction of which money (or evidences of indebtedness) in the necessary amount shall have been deposited in trust with a trustee or other holder of such indebtedness;
• Purchase money security interests and security interests existing on any personal property prior to the time of its acquisition by the Company through purchase, merger, consolidation or otherwise, whether or not assumed by the Company, or placed upon property being acquired by the Company to secure a portion of the purchase price thereof, or lessor’s interests in leases required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP;

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

• Ordinary course encumbrances, or those arising during the construction of the Project, in connection with worker’s compensation and unemployment insurance or other social security or pension obligations;

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

• Rights granted to Cabrillo under the Ground Lease.

**Pipeline Bonds** means the #203,215,000 Bonds, Series 2012 (San Diego County Water Authority Desalination Pipeline Project), issued by the CPCFA and any other Pipeline bonds.

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

**Plant Minimum Performance Criteria** means the minimum performance criteria which must be met in order for the Company to achieve Provisional Acceptance and includes requirements relating to maximum chemical consumption, Product Water deliveries, permit compliance, and maximum power consumption.

**Product Water Pipeline** means the pipeline and related assets for the delivery of Product Water to be designed and built by the Company pursuant to the Pipeline DBA and owned and maintained by the Water Authority.

**Product Water Pipeline Improvements** means the Product Water Pipeline and the pipeline interconnection.

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

**Regulated Site Condition** means, and is limited to,

- Surface or subsurface structures, materials, properties or conditions having historical,
cultural, archaeological, religious or similar significance;

- Any habitat of an endangered or protected species as provided in applicable law;

- The presence anywhere in, on or under the Plant site on the Contract Date of wells or
underground storage tanks for the storage of chemicals or petroleum products;

- The presence of hazardous substances in, on or under the Plant site (including
presence in surface water, groundwater, soils or subsurface strata; and

- Any fact, circumstance or condition constituting a violation of, or reasonably likely
to result in any loss, liability, forfeiture, obligation, damage, fine, penalty, judgment,
deposit, charge, assessment, tax, cost or expense under or in connection with any
applicable law pertaining to the environment,

in each case to the extent not disclosed in or reasonably inferable from disclosed by the Company.

**Specified Change in Tax Law** means a Change in Law Event which results in:

- A change in the sales tax imposed by the State or by the City and paid by the
Company, the project contractor or any subcontractors with respect to sales of goods
purchased for the performance of the contract obligations; or

- A new tax imposed by the United States, the State of California or the City of
Carlsbad and paid by the Company, the project contractor or any subcontractors with
respect to the performance of the contract obligations, including any value added
taxes or any taxes measured by gross receipts. New taxes shall not include any taxes
based on or measured by net income; any unincorporated business, payroll, franchise
or employment tax; or any taxes imposed by a foreign government or any of their
agencies.

**Specified Raw Seawater Quality Parameters** means those raw seawater quality parameters set
forth in the Water Purchase Agreement.
**Unacceptable Water** means water produced by the Plant and conveyed to the Water Authority that does not comply with the Product Water Quality Guarantee (as defined below) to such an extent that it (1) is non-potable under applicable law; (2) presents a risk to public health or safety; or (3) has the potential to damage or destroy Water Authority or private property or create a need to clean, repair, replace or restore any such property.

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

**Inclusions - Performance, Schedule and Compensation Relief**

- Subject to the first paragraph of this definition, Uncontrollable Circumstances shall include the following, upon the occurrence of which the Company shall be entitled to performance, schedule and compensation relief in accordance with terms and conditions thereof:
  - a Change in Law Event, except as provided above in the “Exclusions” section of this definition, as further described under “Change in Law Events”;
  - an Uninsurable Force Majeure Event, as further described in the definition of “Uninsurable Force Majeure Events” and under “Uninsurable Force Majeure Events”, occurring within the United States;
  - the failure of any project contractor or any subcontractor to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Company directly (and entitled the Company to performance, schedule and compensation relief), and the Company is not able after exercising all reasonable efforts to timely obtain substitutes;
  - an extraordinary flow rate change demanded by the Water Authority pursuant to the Water Purchase Agreement, or a Water Authority curtailment pursuant to the Water Purchase Agreement;
  - the occurrence of a raw seawater quality contamination event, as and to the extent provided in the Water Purchase Agreement; and
  - a material change to the Water Authority Improvements which (x) causes materially differing conditions from those modeled in the approved final hydraulic transient analysis, and (y) materially and adversely affects the ability of the Company to meet the Product Water storage and pumping system requirements of the Performance Test, or materially increases the costs of meeting those requirements.

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

- an Insurable Force Majeure Event, wherever occurring;
- an Uninsurable Force Majeure Event occurring outside the United States during the construction period;
- any injunction or similar order issued by a governmental body;
- the failure of any appropriate governmental body or utility having operational jurisdiction in the area in which the Plant is located to provide and maintain utilities to the Plant which are required for the performance of the Water Purchase Agreement;
- the failure of any project contractor or subcontractor to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Company directly (and entitled the Company to performance and schedule relief but not compensation relief), and the Company is not able after exercising all reasonable efforts to timely obtain substitutes;
- the intake of raw seawater with characteristics outside the Specified Raw Seawater Quality Parameters, as and to the extent provided below in Raw Seawater Quality and Uncontrollable Circumstances;
- the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a governmental body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Project;
- abnormally severe weather conditions wherever occurring that directly affect the performance of the contract obligations at the Plant site;
- a violation of applicable law by a person other than the Company, the project contractors or any subcontractors;
- any Water Authority fault (without, however, limiting the Company’s right to bring an action for breach);
- the existence of a Regulated Site Condition;
- the existence of a Differing Site Condition;
- contamination of the Plant site from groundwater, soil or airborne regulated substances migrating from sources outside of the Plant site;
- the occurrence of certain events with respect to the Cabrillo entities or the Power Station site as described under “Cabrillo Risk”;

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o strikes, work stoppages and other labor disputes (except those involving employees of the Company, the project contractors or subcontractors); and

o the occurrence of any event or circumstance providing the Company with schedule or performance relief in the definition of “Uncontrollable Circumstances” under the Pipeline DBA.

**Exclusions**

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

o any Uninsurable Force Majeure Event occurring outside the United States during the operating period;

o any act, event or circumstance that would not have occurred but for the Company’s failure to comply with its obligations hereunder;

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

o any changes in the financial condition of the Company, its affiliates or subcontractors affecting the ability to perform their respective obligations;

o the consequences of error, neglect or omissions by the Company, any project contractor, any subcontractor, any of their affiliates or any other person in the performance of the contract services;

o union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Plant or otherwise increasing the cost to the Company of performing the contract services;

o any weather conditions other than those described in ‘Inclusions - Performance and Schedule Relief; No Compensation Relief’ of this definition;

o acts, events or circumstances affecting a Cabrillo entity or occurring at the Power Station site, except (1) as described under “Cabrillo Risk” and (2) any act, event or circumstance listed in the eleventh, twelfth, and thirteenth bullet points of the Inclusions - Performance and Schedule Relief; No Compensation Relief subsection above, if such act, event or circumstance pertains to the Power Station site and does not affect the Plant site, and with the associated relief limitations set forth in such section of this definition;

o mechanical failure of equipment to the extent not resulting from a condition that is listed in the Inclusions - Performance and Schedule Relief; No Compensation Relief subsection above;

o failure of the Company to secure any patent or other intellectual property right which is or may be necessary for the performance of the contract services;
- any failure of title to the Project or any placement or enforcement of any Encumbrance on the Project not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby, other than Permitted Encumbrances; and

- except for the occurrence of Discriminatory or Specified Changes in Tax Law, a Change in Law Event pertaining to Taxes.

**Uninsurable Force Majeure Event** means the occurrence of any of the following events or circumstances: (1) earthquakes or earth movement; (2) war, civil war or armed conflict and related causes; (3) terrorism arising from nuclear, biological or chemical materials; (4) certified acts of terrorism (as defined by the Terrorism Reinsurance Act (TRIA)) occurring during any period in which TRIA or a substantially identical federal law is not in effect; or (5) nuclear explosion or nuclear, radioactive, chemical or biological contamination, the response to which, in accordance with the contract standards, materially expands the scope or materially interferes with, delays, or increases the cost of performing the contract obligations, except to the extent that such event or circumstance arises from or is contributed to, directly or indirectly, by any Company fault.

**Unit** means an acre foot of Product Water.

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

**Water Authority Event of Default** means any of the following events or circumstances: (1) A failure by the Water Authority to pay any amount due and owing to the Company under the Water Purchase Agreement within 45 days of the due date for such amount; (2) Except as provided in item (1) above, a breach, or series of breaches, by the Water Authority of any term, covenant or undertaking to the Company or any representation or warranty made by the Water Authority to the Company in the Water Purchase Agreement being incorrect when made, the consequence of which is: (a) a material and adverse effect on the performance of the contract obligations; or (b) any material provision of the Water Purchase Agreement being unenforceable against the Water Authority to the extent that the Company is reasonably likely to be materially deprived of the benefit of the Water Purchase Agreement; (3) The authorized filing by the Water Authority of a petition seeking relief under the bankruptcy code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature; provided that the appointment of a financial control or oversight board by the State for the Water Authority shall not in and of itself constitute a Water Authority Event of Default; or (4) The Water Authority breaches the limitations described under “Limitation on Assignment by the Water Authority”.

**Water Authority Improvements** means (1) the improvements to the pipeline 3 dedicated segment to be constructed by the Water Authority for the conveyance of Product Water from the Product Water Pipeline through the pipeline 3 dedicated segment to the Twin Oaks water treatment plant; and (2) improvements made at the Twin Oaks water treatment plant. The Water Authority Improvements do not include the Water Authority interface cabinet.

**General Company Obligations**

The Company shall, subject to the terms and conditions of the Water Purchase Agreement, (1) permit, design, construct, finance, operate, maintain and manage the Plant, and (2) produce, deliver and sell Product Water to the Water Authority. The Company is not obligated to design and construct the Product Water Pipeline Improvements pursuant to the Water Purchase Agreement, but has agreed to do so under the Pipeline DBA.
The only compensation to the Company for the supply of Product Water and for performing the operating work shall be the Monthly Water Purchase Payments and other amounts payable by the Water Authority.

**General Water Authority Obligations**

The Water Authority shall, subject to the terms and conditions of the Water Purchase Agreement, (1) construct the Water Authority Improvements, (2) take delivery of and purchase the Minimum Monthly Demand Commitment of Product Water; and (3) maintain and repair in good working order Product Water Pipeline Improvements and the Water Authority Improvements that are material to the Company’s performance of the operating work.

**Term**

The Water Purchase Agreement shall become effective on the date the Water Purchase Agreement is executed and delivered by the parties and continue until (1) 30 years following the Commercial Operation Date; (2) such later date not to exceed 33 years following the Commercial Operation Date as may be established as described under “Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term”; or (3) earlier terminated by either party in accordance with their respective termination rights (the “Term”).

**WPA Letter of Credit**

The Company shall provide a letter of credit for the performance of its obligations under the Water Purchase Agreement and under the Pipeline DBA. This letter of credit shall be an irrevocable direct pay letter of credit for a term of at least one year in a stated amount equal to $5,000,000 (index linked). The letter of credit shall be continuously renewed, extended or replaced so that it remains in effect until the later of (1) 180 days after the termination or expiration of the Water Purchase Agreement; or (2) the end of the warranty period under the Pipeline DBA.

**Construction of the Plant**

**General**

On the Series 2012 Closing Date, the Company shall promptly proceed to undertake, perform and complete the construction work in accordance with the requirements of the design requirements set forth in the Water Purchase Agreement (the “Design Requirements”) and the contract standards. Except as otherwise specifically provided in the Water Purchase Agreement, the Company shall pay directly, and the Water Authority shall have no responsibility for, all costs and expenses of the construction work of any kind or nature whatsoever. The Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Plant.

**Construction Work Review**

The Water Authority shall have the right, but not the obligation, to: (1) attend design progress meetings; (2) attend the preconstruction conference; (3) attend construction progress meetings; and (4) review the construction work for compliance with the Design Requirements. The Company shall consider and address in good faith any comments or concerns raised by the Water Authority in connection with such matters.

**Water Authority Review and Comment on Design Documents**
The Water Authority will have the right to provide comments on design documents which identify any issues: (a) of material non-compliance with the Design Requirements; (b) that may reasonably and adversely affect the ability of the Company to achieve Provisional Acceptance or meet the Performance Guarantees; or (c) which may have a material impact on the Water Authority Distribution System (“Material Issue Comments”). The Company shall provide written responses to any Material Issue Comments delivered by the Water Authority indicating the proposed measures that shall be taken to correct any such material issues. Neither compliance by the Company with the Design Requirements, nor review and comment by the Water Authority of the design documents, nor any failure or delay by the Water Authority in commenting on any design submittals shall in any way relieve the Company of full responsibility for the design, construction, performance, operation, maintenance and management of the Project in accordance with the contract standards.

Design Requirements Change

The Company shall give the Water Authority written notice of, and reasonable opportunity to review and comment upon, any Design Requirements Changes proposed to be made at the Company’s request. The notice shall contain sufficient information for the Water Authority to determine that the Design Requirements Change:

- does not diminish the capacity of the Project to be operated and maintained so as to meet the contract standards;
- does not materially impair the quality, integrity, durability and reliability of the Project;
- is reasonably necessary or is advantageous for the Company to fulfill its obligations under this Water Purchase Agreement; and
- is feasible.

The Water Authority shall have the right, in its sole discretion, to reject or modify certain Design Requirements Change proposed by the Company. For other Design Requirements Changes proposed by the Company, the Water Authority shall have the right, acting reasonably, to accept, reject or modify any Design Requirements Change proposed by the Company that does not meet the conditions set forth above.

Construction Drawings Phase

The construction drawings phase shall include construction documents consisting of drawings and specifications describing in detail the requirements for the construction of the Project delivered to the Water Authority when the design of the Project is:

- approximately 50% complete or better; and
- Final Documents (as defined below).

These construction documents shall be delivered in a timely way in advance of construction and with sufficient detail as to permit the Water Authority to monitor compliance and to assess the design of that portion of the Project. At such time as all or a portion of the construction documents are finally complete (the “Final Documents”), the Company shall deliver the Final Documents to the Water Authority and the Water Authority engineer. The Water Authority and the Water Authority engineer shall
review and comment on the Final Documents in accordance with the document submittal protocol; provided however, that the Company may proceed with the design, procurement and physical construction during such review process as long as all Material Issue Comments are responded to within 30 days.

**Governmental Approvals**

The Company shall make all applications and take all other action necessary to obtain and maintain all construction governmental approvals and governmental approvals required to operate the Plant, and shall pay all fees, costs and charges due in connection therewith.

**Cabrillo Risk**

Except as and to the extent provided below, the Company shall bear all risks with respect to Cabrillo, and all risks with respect to the Power Station and Power Station site, and the occurrence of any such risk shall not constitute an Uncontrollable Circumstance.

It shall constitute an Uncontrollable Circumstance (1) if a force majeure event (of the type that would constitute a Force Majeure Event if it affected the Plant) occurs that damages or destroys Cabrillo’s raw seawater intake system or any other property at the Power Station site that is necessary for the intake of raw seawater for the Plant or the discharge of concentrate discharge from the Plant; and (2) The failure of a Cabrillo entity to perform its obligations under the Ground Lease to operate the water circulating pumps of the Cabrillo Raw Seawater Intake System for any reason, including a bankruptcy or insolvency of a Cabrillo entity, but excluding a default by the Company under the Ground Lease.

The once-through cooling system at the Power Station, or the entire Power Station, is expected to be closed and decommissioned in approximately 2017. Such closure shall constitute a Change in Law Event. The Compensation Adjustment Event capital costs of the Cabrillo raw seawater intake system improvements shall first be negotiated and established on a lump sum basis. Such negotiated lump sum amount shall not exceed $21,331,214 (index-linked to the Contract Year in which the financing for such improvements closes), even if the actual Compensation Adjustment Event capital costs exceed such threshold. The Debt Service Charge component of the Unit Price shall be adjusted by adding an amount equal to (a) the annual payments that would be required to amortize an amount equal to 80% of such Permitted Debt over the remaining term at the interest rate of such Permitted Debt, divided by (b) the then-applicable Minimum Annual Demand Commitment. In addition, in connection with any Unit Price adjustment in such circumstances, the Equity Return Charge shall be adjusted by adding an amount equal to (a) the annual payments that would be required to amortize 20% of such Permitted Debt at an assumed interest rate of 15%, divided by (b) the then-applicable Minimum Annual Demand Commitment, whether or not any additional equity is actually issued by the Company in connection with the Compensation Adjustment Event financing.

The operating charge and the intake pump station conversion rate element of the electricity charge components of the Unit Price shall be adjusted as follows. The costs of operating, maintaining, repairing and replacing the Cabrillo raw seawater intake system improvements (including electricity costs for the raw seawater pumping requirements) shall first be reasonably estimated and negotiated for each Contract Year. The parties shall then negotiate an annual amount for such costs which, if established in the first Contract Year in which such improvements are placed in service and escalated based on reasonable assumptions as to the Inflation Index and electricity price adjustment factors, as applicable, would compensate the Company for such future costs. Such negotiated annual amount shall not exceed $2,663,900 per Contract Year, index-linked.
It shall be deemed to be a Change in Law Event, as to which the Company shall be entitled to schedule and performance relief but not compensation relief, if the Company has submitted a complete application for any governmental approval required in connection with the Cabrillo raw seawater intake system improvements and such governmental approval has not been issued within 180 days of such submittal.

**Company Financing**

The Company is solely responsible for obtaining and repaying all financing necessary for the design, permitting and construction of the Plant at its own cost and risk and without recourse to the Water Authority, both initially, as may be required to complete the Plant and for any Plant purpose. The Company exclusively bears the risk of any changes in the interest rate, payment provisions or the other terms and conditions of any of its financings (other than fluctuations in any variable interest rate on any Plant Bonds on the basis of which the Debt Service Charge is measured, if the issuance of such Plant Bonds on a variable interest rate basis was approved in advance by the Water Authority).

The Company shall not issue any additional Plant bonds or other debt secured by the Plant or its revenues other than Permitted Debt.

The Water Authority shall have no obligation under the Water Purchase Agreement for making any payment measured or calculated by or with reference to Permitted Debt (other than Plant Bonds), except (1) Permitted Debt issued to finance Compensation Adjustment Event capital costs, and (2) (a) Permitted Debt issued to finance Project Costs, Project Completion, the capital costs of Uncontrollable Circumstances, the capital costs of Water Authority directed capital projects, and compliance with governmental approvals, and (b) Permitted Debt with respect to which the Water Authority has agreed, in its discretion, to assume such an obligation (“Approved Permitted Debt”).

**Compensation Adjustment Event Capital Costs and Capital Projects**

**Financing Compensation Adjustment Event Capital Costs**

The Company shall use all reasonable efforts to finance Compensation Adjustment Event capital costs. (1) The primary security for any Compensation Adjustment Event financing shall be Monthly Water Purchase Payments that reflect the Unit Price adjustments made on account of such circumstances, (2) the resulting increase in the Debt Service Charge will be based on the actual debt service payable by the Company on the Permitted Debt issued for such purposes (subject to any insurance proceeds received or funds available pursuant to the Collateral Trust Agreement, (3) the Equity Return Charge will be equitably adjusted to reflect the terms of any Compensation Adjustment Event financing, (4) such Permitted Debt shall have a final maturity concurrent with the expiration date then in effect, except as negotiated by the parties, and (5) the raising of new equity supported by an increase in the Equity Return Charge will be minimized in preference of financing through issuance of Permitted Debt. The Company may finance Compensation Adjustment Event capital costs with equity prior to obtaining Compensation Adjustment Event financing, but the Equity Return Charge or the Debt Service Charge shall not be adjusted to reflect such equity financing. Additional costs (including operation, maintenance, repair and replacement costs) resulting from a Compensation Adjustment Event will generally be paid by the Water Authority as an adjustment to the Unit Price.

**Compensation Adjustment Event Capital Costs - Financing Availability Only on Dissimilar Terms and Conditions from the Original Financing**
The Company shall use all reasonable efforts to secure financing for Compensation Adjustment Event Capital Costs on terms and conditions and under a plan of financing that are substantially similar to those under which the Project was originally financed (a “Similar Financing”). A financing shall be deemed to be a Similar Financing if: (a) the debt-to-equity ratio of such financing is similar to the debt-to-equity ratio of the initial Plant Bond financing, (b) the debt portion of the financing has an investment grade credit rating or, if the debt is unrated, would have an investment grade credit rating if it had been sought, and (c) interest on the principal amount of the debt portion of such financing is exempt from federal income taxation. The criteria set forth in clause (c) immediately above for a Similar Financing (1) shall not be applicable if, at the time of the additional financing, the Internal Revenue Code has been amended such that tax-exempt financing for privately-owned water projects is no longer possible, whether with or without private activity bond volume cap, and (2) shall be applicable if, at the time of the additional financing, the Internal Revenue Code continues to permit tax-exempt financing for privately-owned water projects contingent upon the receipt of a private-activity bond volume cap allocation, but the Company is unable to secure such an allocation. The Water Authority acknowledges that materially higher debt interest rates payable on any such additional financing shall not disqualify it as a Similar Financing if the financing otherwise qualifies as a Similar Financing. In the event the Company, in performing such financing obligations, is able to secure financing for Compensation Adjustment Event capital costs, but only on terms and conditions and under a plan of financing that do not constitute a Similar Financing for any reason (including the insufficiency of the adjusted Monthly Water Purchase Payments to support a financing similar to the original Project financing, or adverse conditions in the financial market), the adjustments to the Equity Return Charge and the Debt Service Charge shall be limited to reflect the costs which would have been incurred with respect to a Similar Financing and the Company shall bear any additional costs with respect to the financing actually obtained.

Compensation Adjustment Event Capital Costs - Complete Financing Unavailability

If the Company is completely unable to obtain required financing for Compensation Adjustment Event capital costs for any reason (including the insufficiency of the adjusted Monthly Water Purchase Payments to support such a financing or adverse conditions in the financial markets), and as a consequence thereof (1) the Company is unable to pay such Compensation Adjustment Event capital costs and make the modifications, improvements or reinstatements that are required to be made due to the Compensation Adjustment Event, and (2) the Water Authority is likely to be denied the benefits of the Water Purchase Agreement for a period of at least 365 days following the occurrence of the Compensation Adjustment Event, then (a) the Water Authority shall have no obligation to make any payment or provide any financing with respect to such Compensation Adjustment Event capital costs; (b) the Water Authority, by notice to the Company, may terminate the Water Purchase Agreement, without the obligation to make any termination payment; (c) the Water Authority shall have the option, exercisable in its discretion, to purchase the Plant; and (d) the Company shall not be deemed in breach of its obligations under the Water Purchase Agreement and shall not be subject to any damages or liability arising out of any failure to make required modifications, improvements or rectifications related to the Compensation Adjustment Event.

Financing Capital Costs of Directed Capital Projects

If the Water Authority directs the Company to make capital projects, the Company shall use all reasonable efforts to finance the design and construction costs of such directed capital projects to the extent permitted under the Collateral Trust Agreement. (1) The primary security for any directed capital project financing shall be Monthly Water Purchase Payments that reflect the Unit Price adjustments made on account of such circumstances, (2) the resulting increase in the Debt Service Charge will be based on the actual debt service payable by the Company on the Permitted Debt issued for such purposes, (3) the
Equity Return Charge will be equitably adjusted to reflect the terms of any directed capital project financing, and (4) such Permitted Debt shall have a final maturity concurrent with the expiration date.

If the Company is unable to obtain financing for directed capital projects, or if the Water Authority does not approve the proposed financing therefor, the Water Authority (1) shall withdraw its direction to make the directed capital project, or (2) shall pay the Company directly on a milestone basis an amount equal to the negotiated lump sum price for the design and construction of such directed capital projects.

The Water Authority acknowledges that the bondholders have no obligation to provide the financing for directed capital projects.

**Extension of Expiration Date as a Result of Compensation Adjustment Event Financing or Directed Capital Project Financing**

The Water Authority may, in lieu of exercising its right to finance and pay such costs directly to the Company, request an extension of the expiration date to lessen the required amount of increase in the Unit Price. Upon any such request, the parties shall enter into negotiations to reach a mutually acceptable extension of the expiration date and agreement upon amendments to any related terms and conditions of the Water Purchase Agreement.

**Water Authority Right to Finance Compensation Adjustment Event Financing or Directed Capital Project Financing Itself**

The Water Authority shall have the right, in its discretion, to finance any Compensation Adjustment Event capital costs or directed capital project financing itself. In such event, there shall be no adjustment to the Unit Price on account of such capital costs.

**Company-Requested Capital Projects**

The Company shall finance the cost of capital projects requested by the Company. There shall be no adjustment to the Unit Price or any other compensation payable to the Company on account of any such capital projects.

The Water Authority shall have the right, in its discretion, to approve any capital project requested by the Company.

**Refinancing Gains**

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

If the Water Authority, acting reasonably, considers the funding terms generally available in the market to be more favorable than those reflected in the Plant financing agreements, the Water Authority may, by notice in writing to the Company, require the Company to request potential funders to provide terms for a potential refinancing.
The Water Authority shall be entitled to receive a 50 percent share of any refinancing gain arising from a refinancing by a reduction in the Unit Price.

**Mechanical Completion**

The Company shall prepare and submit to the Water Authority for its approval the commissioning plan which shall provide for the coordination of any necessary testing of: (1) the Plant with the Water Authority’s SCADA system in order to confirm the operability of the communications system prior to the Performance Test; (2) the surge protection system of the Pipeline; (3) any tuning and calibration of the chemical feed systems of the Water Authority Improvements; and (4) calibration and tuning of the instrumentation and control signals from the flow control facility which constitutes a portion of the Pipeline Improvements to the Water Authority.

To meet the requirements of mechanical completion, the Company is required to demonstrate, in a manner consistent with the approach established in the commissioning plan, that all key Plant equipment, treatment processes, systems, subsystems and the Plant as a whole function in accordance with the contract standards and equipment warranty provisions, while meeting all applicable laws and governmental approvals (“Mechanical Completion”). The procedures used for determining when the Company has achieved Mechanical Completion include pre-commissioning, verification of start-up readiness, governmental approval compliance, functionality of individual Plant subsystems, and Plant commissioning.

**Interim Operations Approval and Domestic Water Supply Permit**

The Company explicitly assumes the risk of obtaining and maintaining the Company New Domestic Water Supply Permit and any interim operations approval from CDPH, including the risk of delay, non-issuance, withdrawal, expiration, revocation or imposition of any term or condition in connection therewith; provided, however, that the Company shall be afforded relief from the assumption of such risk as and to the extent provided in the second bullet of the ‘Exclusions’ portion of the definition of “Change in Law Event” (regarding governmental approvals). The exercise by CDPH of any of its rights with respect to the Company New Domestic Water Supply Permit or an interim operations approval shall not constitute a Change in Law Event.

**Performance Test**

The Performance Test is intended to verify the performance of the Plant in terms of operability, Product Water quality, Product Water quantity, total power consumption, total chemical consumption, cartridge filter performance, and reverse osmosis membrane performance, and to establish if the actual Plant performance meets all Plant Minimum Performance Criteria specified in the Water Purchase Agreement, applicable contract standards, and is in compliance with all applicable laws.

The Company shall submit a Performance Test protocol, which includes a detailed plan to the Water Authority setting forth the Performance Test activities, monitoring, calculation methodologies, specific test instruments or equipment, and applicable calibration procedures proposed for demonstration of achievement of the Plant Minimum Performance Criteria. The Performance Test protocol shall also include a delivered Product Water schedule, which projects the proposed daily volume of Product Water the Company intends to deliver during the Performance Test.

The Company shall not commence the Performance Test until the following events have occurred: (1) the Company has provided the Water Authority with 10 days notice; (2) If required by applicable law, CDPH has approved the Performance Test plan proposed by the Company and approved
by the Water Authority; (3) Mechanical Completion has occurred; (4) The required portion of the Full System Test has been conducted and successfully passed; (5) The Company New Domestic Water Supply Permit or an interim operations approval has been issued by CDPH, and contains sufficient authorization to permit the Performance Test and post-Performance Test operations to be conducted in accordance herewith; (6) The amendment to the Water Authority’s domestic water supply permit or an interim operations approval has been approved by CDPH, and contains sufficient authorization to permit the Performance Test and post-Performance Test operations to be conducted in accordance herewith; (7) All utilities specified or required under the Water Purchase Agreement to be arranged for by the Company are connected and functioning properly; (8) The Company has met with the Water Authority at least 60 days prior to the scheduled Performance Test to provide a forecast of expected Product Water production and delivery, described the intended management of Product Water and Off-Specification Product Water, and reviewed such forecast and intended management with the Water Authority staff responsible for the introduction of water into the Water Authority Distribution System; (9) The Company shall have obtained the Water Authority’s approval of the Performance Test Protocol; and (10) The Company shall have received written notice from the Water Authority that the Water Authority Improvements and the Product Water Pipeline Improvements have been completed and are ready to receive Product Water.

On the last day of the Performance Test, the Company shall perform a full flow Product Water pump failure test of the surge protection system which comprises a portion of the Plant’s Product Water pump facilities (the “Surge Protection System Test”). The Surge Protection System Test shall demonstrate whether the surge protection system is able to limit the resulting transient pressures in a manner consistent with the design conditions that will be established in the final hydraulic transient analysis prepared by the Company.

Provisional Acceptance

The following conditions shall constitute the “Provisional Acceptance Conditions”, each of which shall be and remain satisfied in all material respects by the Company in order to achieve provisional acceptance (“Provisional Acceptance”) and establish the Commercial Operation Date: (1) Mechanical Completion has been achieved (and all conditions of Mechanical Completion continue to be satisfied) and all equipment and facilities necessary for the operation of the Plant have been properly constructed, installed, erected, insulated and protected where required, and correctly adjusted; (2) A Performance Test shall have been conducted demonstrating that the Plant has achieved the Plant Minimum Performance Criteria and complied with the contract standards, and a Performance Test report shall have been delivered to the Water Authority and the Water Authority engineer validating such achievement, certified as correct and complete by the Company; (3) Unless furnished earlier in connection with Mechanical Completion, the Company has (a) protected the reverse osmosis membranes in accordance with the manufacturer’s storage requirements; (b) tested and disinfected the pressure vessels; (c) loaded the reverse osmosis membranes; (d) protected the membranes from damage due to disinfectants in feedwater; (e) obtained membrane data required for normalization by the RO membrane manufacturer’s methodology; and (f) maintained the data to map reverse osmosis element placement; (4) The EPC Contractor shall have delivered a letter to the Water Authority and the Water Authority engineer confirming the matters stated in item (2); (5) All governmental approvals required under applicable law, including the Company New Domestic Water Supply Permit, which are required to be obtained by the Company as of the Commercial Operation Date for the performance of the operating work shall have been duly obtained by the Company and shall be in full force and effect; (6) There are no encumbrances registered or recorded on the Plant site or any part of the Plant other than Permitted Encumbrances; (7) To the extent required under applicable law, all other governmental bodies having jurisdiction have confirmed (and issued all pertinent governmental approvals or other documents in respect thereof) that all buildings and structures comprising the Plant on the Plant site are ready for use and occupancy; (8) The Company has obtained and submitted to the Water Authority endorsements and certificates of insurance
for all required insurance; (9) The Company has delivered to the Water Authority the final electronic operation and maintenance manual; and (10) If the Plant failed the Surge Protection System Test, then pursuant to and to the extent required by the Water Purchase Agreement, the Company shall have completed all repairs or modifications identified as required before Provisional Acceptance and the Plant shall have subsequently passed the Surge Protection System Test.

**Scheduled Commercial Operation Date**

The Company shall achieve the Commercial Operation Date by the date that is 1,430 days following the Series 2012 Closing Date (the “Scheduled Commercial Operation Date”), as such Scheduled Commercial Operation Date may be extended: (1) for an Uncontrollable Circumstance which occurs between the Series 2012 Closing Date and the Scheduled Commercial Operation Date, which may extend the Scheduled Commercial Operation Date for such time as is reasonable in the circumstances to take account of the effect of the delay on any matter in the Project Schedule caused by the Uncontrollable Circumstance; and (2) as provided for in the Pipeline DBA for the unexcused failure of the Water Authority to comply with the Pipeline DBA with respect to the acquisition of necessary property required to construct the Pipeline Improvements.

The Commercial Operation Date shall not be established, unless and until the Company has completed construction of the Pipeline Improvements and satisfied the acceptance conditions for the Pipeline Improvements set forth in the Pipeline DBA.

**Project Completion**

The Company shall achieve Project Completion within 180 days after the Commercial Operation Date. Project completion shall occur when all of the following conditions have been satisfied (“Project Completion”): (1) The Company has achieved Provisional Acceptance; (2) All construction work (including all items on the punch list and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with the Water Purchase Agreement; (3) The individual reverse osmosis trains that make up the first stage shall have complied with the testing requirements set forth in the Water Purchase Agreement; (4) If the Plant failed the Surge Protection System Test, in addition to completion of the repairs or modifications required before Provisional Acceptance (if any), the Company shall have completed all other repairs or modifications identified pursuant to the Water Purchase Agreement; (5) The Company shall have delivered to the Water Authority, copies of the warranties of equipment and fixtures constituting a part of the Plant received from the equipment suppliers, together with copies of all related operating manuals supplied by the equipment suppliers; (6) The Company has delivered to the Water Authority a final and complete set of as-built construction record drawings, prepared in accordance with the Water Purchase Agreement, and signed and sealed by a California registered engineer; and (7) The Company has delivered to the Water Authority a claims statement setting forth in detail all claims known to it of every kind whatsoever of the Company connected with, or arising out of, the construction work plan, and arising out of or based on events prior to the date when the Company gives such statement to the Water Authority.

**Product Water Quality Guarantee and Remedies for Breach of the Guarantee**

The Company shall operate the Plant so as to produce Product Water from raw seawater in compliance with the requirements of applicable law, including all mandatory primary and secondary drinking water standards established by the CDPH as identified in Title 22 of the California Code of Regulations and all mandatory federal drinking water regulations (e.g., primary maximum contaminant levels promulgated by United States Environmental Protection Agency) and additional Product Water quality standards set forth in the Water Purchase Agreement, which are more stringent than the
requirements of applicable law (the “Product Water Quality Guarantee”). In no event shall the Company deliver Product Water that is not in compliance with the requirements of applicable law.

In the event the Company delivers any Off-Specification Product Water to the Water Authority, (1) each Unit of Off-Specification Product Water received by the Water Authority shall be deemed to constitute a Monthly Delivered Water Unit; (2) the Water Authority shall have the right in its discretion to impose a deduction in an amount equal to the melded treatment rate per Unit of water that is surcharged by the Water Authority to its member agencies as in effect at the time the deduction is imposed; (3) the Water Authority in its discretion may cease taking delivery of Product Water until the Company demonstrates to the Water Authority that appropriate measures have been taken so that Product Water received upon the resumption of deliveries will not constitute Off-Specification Product Water; and (4) the Water Authority shall further have the additional remedies set forth in the Water Purchase Agreement. Any Unit of Product Water available for delivery but not taken by the Water Authority pursuant to the exercise of its rights shall constitute neither a Monthly Delivered Water Unit, a Monthly Unexcused Demand Shortfall Unit, nor a Monthly Excused Supply or Demand Shortfall Unit.

In the event the Company delivers Unacceptable Water to the Water Authority: (1) each Unit of Unacceptable Water shall be deemed not to constitute a Monthly Delivered Water Unit; (2) the Water Authority shall have no obligation to compensate the Company for such Unit of Unacceptable Water; (3) the Water Authority shall have the right to bring an action for damages; and (4) the Water Authority shall further have the additional remedies set forth in the Water Purchase Agreement.

Boil Water Notice

In the event the CDPH requires the issuance of a ‘boil water’ notice on the basis of the quality of Product Water delivered to the Water Authority: (1) the Company shall, if required by the Water Authority, terminate the Plant O&M Agreement and enter into a replacement Plant O&M Agreement, (2) the Water Authority may exercise its step-in rights as described under “Water Authority’s Temporary Step-In Rights”, (3) such notice shall constitute a Company Remediable Breach, and (4) the Water Authority shall have the further remedies specified in the Water Purchase Agreement. If, at any time following the issuance of a first such boil water notice, the CDPH subsequently requires the issuance of a second boil water notice on the basis of the quality of Product Water delivered to the Water Authority, a Company Event of Default shall be deemed to have occurred and the Water Authority may exercise its step-in rights described under “Water Authority’s Temporary Step-In Rights”, pursue its rights which arise because of a Company Event of Default, and terminate the Water Purchase Agreement.

Change in Law Event Affecting Product Water

If a Change in Law Event occurs, the Company shall not be entitled to performance relief or additional compensation unless: (1) such Change in Law Event imposes a regulatory standard or operating requirement with respect to any particular Product Water characteristic or parameter which is more stringent than the contract standards in effect as of the Contract Date, or requires equipment or processes not then in place or practiced at the Plant; and (2) the Company is unable, after taking all mitigation measures required with respect to such a Change in Law Event, to avoid the necessity for such performance relief or additional compensation.

Maximum Annual Supply Commitment and Adjusted Annual Supply Commitment

The “Maximum Annual Supply Commitment” is 56,000 acre feet, modified by the Supply Commitment Reduction Percentage (as defined below) to permit the Company to reduce its Product Water supply commitment to the Water Authority on an annual basis in the event of a ‘buy-down’ of the
Plant’s capacity by the EPC Contractor under the Plant EPC Contract. The purpose of establishing the Maximum Annual Supply Commitment is to provide the basis for determining the Maximum Monthly Supply Commitments (as defined below).

If the amount of Product Water produced by the Company during the Performance Test (on the basis of which Provisional Acceptance is established) is less than 4,800 acre feet, the Maximum Annual Supply Commitment shall be reduced to an amount equal to 56,000 acre feet, multiplied by a fraction, the numerator of which is the number of acre feet of Product Water produced during such Performance Test and the denominator of which is 4,800 acre feet (such fraction constituting the “Supply Commitment Reduction Percentage”). In no event shall the Maximum Annual Supply Commitment be less than 50,128 acre feet.

The Company may designate, in the Maximum Annual Supply Commitment schedule, up to 240 specific hours during the Contract Year during which the Plant may be shut down for scheduled maintenance (“Scheduled Shutdown Hours”). The Water Authority shall not demand, and the Company shall not be obligated to supply, Product Water during any Scheduled Shutdown Hour. The designation of Scheduled Shutdown Hours shall not, however, serve to lessen the Maximum Annual Supply Commitment or any Maximum Monthly Supply Commitment (as defined below), which shall be met during operating hours.

The Company, upon 20 days advance notice, may cease Product Water production and delivery during any hour (up to a maximum of 110 hours in a Contract Year) in which such production and delivery is precluded by a shutdown of the Power Station (“Cabrillo Shutdown Hours”). The designation of Cabrillo Shutdown Hours will not, however, lessen the Maximum Annual Supply Commitment or any Maximum Monthly Supply Commitment, which shall be met during operating hours other than Cabrillo Shutdown Hours.

Minimum Annual Demand Commitment

The “Minimum Annual Demand Commitment” is 48,000 acre-feet (pro-rated for any Contract Year of less than 365 days), except as otherwise provided below.

In the event the Maximum Annual Supply Commitment is decreased as set forth above, the Water Authority shall have the right, in its discretion, to elect to reduce the Minimum Annual Demand Commitment by any number of acre-feet not in excess of an amount equal to the product of (1) the unadjusted Minimum Annual Demand Commitment, and (2) the Supply Commitment Reduction Percentage; provided, however, that in any event the Minimum Annual Demand Commitment shall be reduced at least to the extent necessary to account for any reduction in the daily maximum supply commitment made below.

Following the Water Authority’s election to reduce the Minimum Annual Demand Commitment as set forth above, the Equity Return Charge for each Contract Year, the Operating Period Shortfall Payment for each Contract Year, the Fixed Operating Charge, and the Fixed Electricity Charge shall each be reduced, if necessary, by the same percentage amount such that the Fixed Annual Costs, when calculated at the revised Minimum Annual Demand Commitment shall be reduced by the same percentage as the Maximum Annual Supply Commitment has been reduced.

Maximum Monthly Supply Commitment and Adjusted Monthly Supply Commitment

The Company shall establish for each Contract Year in cooperation with the Water Authority the Maximum Monthly Supply Commitment for each Billing Period in the Contract Year. The “Maximum
Monthly Supply Commitment” shall be established such that the sum of the Maximum Monthly Supply Commitments for the Contract Year equals the Maximum Annual Supply Commitment.

The “Adjusted Monthly Supply Commitment” for a Billing Period shall be an amount equal to the lesser of (1) the Maximum Monthly Supply Commitment for such Billing Period, or (2) the Monthly Product Water Order for such Billing Period.

**Minimum Monthly Demand Commitment**

The Water Authority shall establish for each Contract Year in cooperation with the Company, the “Minimum Monthly Demand Commitment” for each Billing Period in the Contract Year. The Minimum Monthly Demand Commitment shall be established such that (1) the Minimum Monthly Demand Commitment for a particular Billing Period does not exceed the Maximum Monthly Supply Commitment for the same Billing Period, and (2) the sum of the Minimum Monthly Demand Commitments for the Contract Year equals the Minimum Annual Demand Commitment.

**Projected Annual Delivery Schedules**

The Company and the Water Authority shall negotiate and establish a proposed Product Water production plan for each Contract Year setting forth the daily and monthly volumes of Product Water that the Company proposes to produce and deliver and the Water Authority proposes to take and purchase during each Billing Period of such Contract Year (“Projected Annual Delivery Schedule”).

The Projected Annual Delivery Schedule (a) shall reflect the limitations on the Company’s Product Water supply obligations, (b) for any Billing Period, shall not (with respect to the definitive Projected Annual Delivery Schedule) project Product Water deliveries in volumes less than the applicable Minimum Monthly Demand Commitment or greater than the Maximum Monthly Supply Commitment, and (c) for any Contract Year, shall not project Product Water deliveries in volumes less than the Minimum Annual Demand Commitment or greater than the Maximum Annual Supply Commitment.

The Projected Annual Delivery Schedule shall take into account the following: (1) Planned Plant maintenance, repair and replacement, which shall be scheduled for and limited to the months of December, January, February and March (to the extent reasonably practicable), with complete Plant shutdowns limited to a maximum total of 240 hours during such four month period; (2) Planned shutdowns or partial outages of any part of the Water Authority Distribution System for scheduled maintenance, repair and replacement, which may limit the Water Authority’s ability to receive Product Water during the period of Water Authority shutdown; (3) Planned shutdowns of the Power Station; (4) The timing of any capital project work to be performed during the Contract Year; and (5) Other considerations material to Plant and Water Authority Distribution System operations.

**Planned and Actual Daily Deliveries of Product Water**

The volume of Product Water planned to be delivered on each day of the Contract Year under the Projected Annual Delivery Schedule shall be the “Scheduled Daily Delivery Volume” applicable to such day. The Company shall actually deliver Product Water solely based on the specific demands for Product Water made by the Water Authority, and not on the basis of the Projected Annual Delivery Schedule.

Not later than 4:00 PM on each day, the Water Authority shall furnish the Company with an expected firm Product Water demand schedule for the following day (midnight to midnight). The Water Authority shall have the right on any day to modify the expected firm Product Water flow rate demand schedule which was established on the prior day, subject to the following limitations: (1) no modification
to the flow rate set forth in such demand schedule shall be required to take effect less than eight hours after the modification is requested; (2) the flow rate shall not change more than twice during any day, with a minimum of eight hours between consecutive flow rate changes; (3) there shall be no more than six changes in flow rates specified during any seven consecutive days; and (4) there shall be no more than 12 changes in flow rates specified during any 30 consecutive days. These limitations are subject to the Water Authority’s right to request an extraordinary flow rate change, for which the Company shall be compensated.

The Water Authority shall have the right on any day to modify the expected firm Product Water flow rate demand schedule which was established on the prior day, subject to the following limitations: (1) no modification to the flow rate set forth in such demand schedule shall be required to take effect less than eight hours after the modification is requested; (2) the flow rate shall not change more than twice during any day, with a minimum of eight hours between consecutive flow rate changes; (3) there shall be no more than six changes in flow rates specified during any seven consecutive days; and (4) there shall be no more than 12 changes in flow rates specified during any 30 consecutive days.

**Limitations on the Company’s Product Water Supply Obligations**

The Company shall not be obligated to supply Product Water: (1) During any Scheduled Shutdown Hour or any Cabrillo Shutdown Hour; (2) On any day, in volumes in excess of 163 acre feet, multiplied by the Supply Commitment Reduction Percentage; (3) On any day on which the average daily temperature of raw seawater is 14° centigrade or colder, in volumes in excess of 153 acre-feet, multiplied by the Supply Commitment Reduction Percentage; (4) At flow rates other than those specified in the Water Purchase Agreement; (5) In any Billing Period, in volumes in excess of the Maximum Monthly Supply Commitment for the Billing Period; (6) In any Contract Year, in volumes in excess of the Maximum Annual Supply Commitment; (7) In three pump mode during any period that the supplemental high pressure pump is being used, at any time a high pressure pump is out of service for any reason, provided that the Company is expediting repairs consistent with its duty to mitigate; (8) During any period that the supplemental high pressure pump is being used and at any time the supplemental high pressure pump is out of service for any reason, provided that the Company is in compliance with the contract standards and is expediting repairs consistent with its duty to mitigate; and (9) During any period not exceeding 24 hours in duration when the Company is installing or removing the supplemental high pressure pump in response to a Water Authority request; except that the Company shall use all reasonable efforts to provide Product Water in excess of the limitations of this subsection (other than the limitation in item (3) above) when requested by the Water Authority if such Product Water can be provided while operating the Plant in accordance with applicable law, good management practice and within its design limits.

The Company shall be compensated for any additional costs of providing Product Water in the circumstances described in items (1) and (4) above. The Company shall not be compensated for any additional costs of providing Product Water in the circumstances described in items (2), (3), (5) and (6) above, as such costs have been taken into account in the pricing for additional Product Water Units and excess Product Water Units. In the circumstances described in item (7) above, the Plant will not be capable of producing additional Product Water, and accordingly no additional costs will be incurred.

**Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term**

If (1) an Uncontrollable Circumstance limits or precludes the Company from producing and delivering, or (2) (x) there is a formal declaration by the general manager or the board of directors of the Water Authority, based on an emergency condition occurring within the Water Authority Distribution
System, closing all or any portion of the Water Authority Distribution System required to be open for receiving Product Water under sound municipal water utility operating practices and (y) the Pipeline Improvements are removed from service during the warranty period under the Pipeline DBA for purposes of making inspections and repairs pursuant to the warranty provided under the Pipeline DBA, precludes the Water Authority from taking and receiving Product Water, the volume of Product Water not delivered or received on account thereof shall be produced and delivered by the Company and taken and purchased by the Water Authority subsequent to such occurrence, based on the production capacity of the Plant, at a price per Unit equal to the sum of the Fixed Unit Price and the Variable Unit Price prevailing at the time of subsequent purchase or shall be deemed to be produced and delivered. The schedule for such subsequent deliveries, receipts and purchases shall be negotiated by the parties in developing and modifying the Projected Annual Delivery Schedules.

The Term shall be extended for a period not to exceed three years after the originally scheduled expiration date as and to the extent required to allow for all such subsequent purchases not completed as of the original expiration date, as such subsequent purchases are reflected in the balance of Units in the Excused Supply Shortfall Unit Tracking Account and the Excused Demand Shortfall Unit Tracking Account as of such unextended expiration date.

**Flow Rate Limitations**

**Operating Modes**

The Plant can operate in the following pump modes: (1) “three pump mode” meaning the operation of the Plant (using three standard high pressure pumps) to produce a flow rate between 74.4 CFS (+0% and -10%) and 83.7 CFS (the higher CFS amount to be multiplied by the Supply Commitment Reduction Percentage); (2) “two pump mode”, meaning the operation of the Plant (using two standard high pressure pumps) to produce a flow rate between 49.6 CFS (+0% and -10%) and 62 CFS (+10% and -0%) (the higher CFS amount to be multiplied by the Supply Commitment Reduction Percentage); (3) “one pump mode”, meaning the operation of the Plant (using one standard high pressure pump) to produce a flow rate between 24.8 CFS (+0% and -10%) and 31 CFS (+10% and -0%) (the higher CFS amount to be multiplied by the Supply Commitment Reduction Percentage); (4) supplemental high pressure pump mode, meaning the operation of the Plant (using the supplemental high pressure pump) to provide a flow rate between 18.6 CFS and 21.67 CFS; and (5) “shutdown mode”, meaning the shutdown of the Plant.

**Operating Mode Change Performance Test**

The Company shall perform an operating mode change performance test to demonstrate the Plant’s capability to produce Product Water during and after operating mode changes (the “Operating Mode Change Performance Test”). The Operating Mode Change Performance Test may be performed at any time during the first 120 days commencing on the Commercial Operation Date, and in case of failure may be re-performed repeatedly until the Operating Mode Change Performance Test is successfully passed. During the Operating Mode Change Performance Test and any repeated test, the Product Water Quality Guarantee, the other Performance Guarantees, and the Water Authority’s rights and remedies with respect to any non-compliance therewith (including rights and remedies with respect to the delivery of Off-Specification Product Water and Unacceptable Product Water) shall apply. If the Company fails to successfully complete the Operating Mode Change Performance Test prior to the end of the first 120 days commencing on the Commercial Operation Date, all water produced during any subsequent operating mode change will be deemed either Off-Specification Product Water or Unacceptable Water until the Company passes the Operating Mode Change Performance Test. The Water Authority may exercise any of its rights and remedies available upon the delivery of Off-Specification Product Water. Such rights and

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remedies include those described under “Water Authority Remedies for Non-Compliance With Performance Guarantees”, including the right to require the Company to make necessary capital improvements, modifications, repairs and replacements at the cost and expense of the Company. The Company shall have the right to conduct the Operating Mode Change Performance Test as often as necessary to achieve passage.

**Water Authority-Directed Curtailments and Shutdowns**

Operating conditions in the Water Authority Distribution System as a whole may require the Water Authority to immediately curtail receipt of Product Water, and that such conditions may therefore require the immediate curtailment or cessation of ordinary operations at the Plant. The Company shall cooperate with the Water Authority during such conditions.

**Operating Period Shortfall Payments**

The Company shall pay Operating Period Shortfall Payments to the Water Authority, the Water Authority shall pay Monthly Operating Period Shortfall Restoration Payments to the Company, and the Company shall pay the Annual Operating Period Shortfall Payment True-Up Payment to the Water Authority in circumstances set forth below.

Under the Pipeline Installment Sale and Assignment Agreement, the Operating Period Shortfall Payments have been assigned for the payment of the Pipeline Bonds and related costs and shall be paid directly to the Pipeline Trustee, and the amount thereof that is due and payable (whether or not actually paid) shall reduce the Water Authority’s installment payment obligations. Upon the discharge and satisfaction of the Water Authority’s obligations under the Pipeline Installment Sale and Assignment Agreement, such assignment shall no longer be effective and the Company shall make any Operating Period Shortfall Payments that are due after such discharge and satisfaction to the Water Authority. The amount of any such Operating Period Shortfall Payments paid directly to the Water Authority that is measured or calculated by or with reference to principal and interest on the Pipeline Bonds shall remain so measured.

The parties shall measure the Company’s progress month to month in satisfying the Minimum Annual Demand Commitment (“Minimum Demand Progress Benchmark”). Progress shall be measured by (i) the cumulative sum of Monthly Delivered Water Units, Monthly Unexcused Demand Shortfall Units and Monthly Unscheduled Outage Units for such Contract Year, minus (ii) the cumulative sum of the Minimum Monthly Demand Commitment for such Contract Year. Each such cumulative sum shall include all preceding Billing Periods in the Contract Year, plus the current Billing Period. A positive result shall represent a surplus in satisfying the Minimum Annual Demand Commitment. A negative result shall represent a shortfall in satisfying the Minimum Annual Demand Commitment.

“Monthly Operating Period Shortfall Payment Units” shall be determined in accordance with this paragraph. If the Minimum Demand Progress Benchmark for such Billing Period is zero or a positive amount, the Monthly Excused and Unexcused Supply Shortfall Units for such Billing Period shall not be deemed Monthly Operating Period Shortfall Payment Units. If the Minimum Demand Progress Benchmark for such Billing Period is a negative amount, the Monthly Excused and Unexcused Supply Shortfall Units for such Billing Period shall be deemed Monthly Operating Period Shortfall Payment Units, provided that the amount of Monthly Operating Period Shortfall Payment Units so deemed for such Billing Period shall be reduced as necessary so that the ending balance of the Monthly Operating Period Shortfall Payment Unit Tracking Account for such Billing Period shall not exceed the shortfall amount indicated by the Minimum Demand Progress Benchmark for such Billing Period.
In the event that in any Billing Period there are Monthly Operating Period Shortfall Payment Units, the Company shall pay to the Pipeline Trustee as assignee of the Water Authority an amount equal to the product of (1) the number of Monthly Operating Period Shortfall Payment Units for such Billing Period, and (2) the Operating Period Shortfall Payment Unit Price for such Contract Year ("Monthly Operating Period Shortfall Payments").

The Company shall establish and maintain a “Monthly Operating Period Shortfall Payment Unit Tracking Account”, in which it shall record and track the number of Monthly Operating Period Shortfall Payment Units for each Contract Year. The opening balance of the Monthly Operating Period Shortfall Payment Unit Tracking Account for the first Billing Period in each Contract Year shall be zero. Each Billing Period, the Monthly Operating Period Shortfall Payment Unit Tracking Account shall be (i) increased by the amount of Monthly Operating Period Shortfall Payment Units for such Billing Period and (ii) decreased by the amount of Monthly Operating Period Shortfall Restoration Payment Units for such Billing Period. The resulting balance of the Monthly Operating Period Shortfall Payment Unit Tracking Account shall be the opening balance for the subsequent Billing Period, provided that there shall be no carry-over of a balance from Contract Year to Contract Year.

The Company shall have the opportunity to recover amounts it has paid as Monthly Operating Period Shortfall Payments and shall be based on whether the Monthly Operating Period Shortfall Payment Unit Tracking Account has a positive balance in any Billing Period quantified by the Minimum Demand Progress Benchmark. If the Minimum Demand Progress Benchmark for such Billing Period is zero or positive, the entire balance of the Monthly Operating Period Shortfall Payment Unit Tracking Account shall be deemed “Monthly Operating Period Shortfall Restoration Payment Units”. If the Minimum Demand Progress Benchmark for such Billing Period is negative, but the cumulative shortfall so represented is less than the opening balance Monthly Operating Period Shortfall Payment Unit Tracking Account, the amount by which the Monthly Operating Period Shortfall Payment Unit Tracking Account exceeds the Minimum Demand Progress Benchmark shall also be deemed “Monthly Operating Period Shortfall Restoration Payment Units”. If the Minimum Demand Progress Benchmark for such Billing Period is negative, and the cumulative shortfall so represented is equal to or greater than the opening balance of the Monthly Operating Period Shortfall Payment Unit Tracking Account, no Monthly Operating Period Shortfall Restoration Payment Units shall be designated for the Billing Period. If in any Billing Period there are Monthly Operating Period Shortfall Restoration Payment Units, the Water Authority shall pay the Project Company Monthly Operating Period Shortfall Restoration Payments.

**Termination Operating Period Shortfall Payments**

If the Water Authority terminates the Water Purchase Agreement upon the occurrence of a Company Event of Default during any period in which an assignment of the Operating Period Shortfall Payments described above is effective, the Company shall be obligated to pay Monthly Operating Period Shortfall Payments in an amount equal to (1) one-twelfth, multiplied by (2) the annual Pipeline Bond costs for the applicable Contract Year until such time as the Pipeline Bonds are accelerated. Upon such an acceleration, the Company shall pay the Water Authority an amount equal to the sum of the Pipeline Bond principal amounts set forth in the Water Purchase Agreement from the Contract Year in which such an acceleration occurs through the last Contract Year set forth in the Water Purchase Agreement, plus accrued and unpaid interest thereon and any related fees and expenses of the Collateral Agent, the Pipeline Trustee, the CPCFA and any rating service then rating the Pipeline Bonds. If the Water Authority terminates this Water Purchase Agreement upon the occurrence of a Company Event of Default during any period in which the assignment of the Operating Period Shortfall Payments described above is no longer effective, the Company shall pay the Water Authority an amount equal to the sum of the Pipeline Bond principal set forth in the Water Purchase Agreement from the Contract Year in which such a termination occurs through the last Contract Year listed in the Water Purchase Agreement. The Pipeline
Bond principal amounts referenced in this subsection shall be revised to reflect the issuance of any Additional Pipeline Bonds, and as required based on the results of the Performance Test. Payments made by the Company pursuant to this Section are “Termination Operating Period Shortfall Payments”.

**Annual Operating Period Shortfall Payment True-Up**

The Company shall make an Annual Operating Period Shortfall Payment True-Up Payment at the end of each Contract Year which is intended to compensate the Water Authority for any failure by the Company to make Additional Product Water Deliveries to the Water Authority in a Contract Year. This compensation is in addition to the compensation payable by the Company above.

The Excess Product Water Deliveries for such Contract Year shall be applied to reduce the amount of Annual Unexcused Supply Shortfall Units for such Contract Year. The “Annual Unexcused Supply Shortfall Units Reduction” shall be the amount of such reduction. The sum of the Additional Product Water Deliveries for such Contract Year and any Excess Product Water Deliveries remaining shall be applied to reduce the amount of Annual Excused Supply Shortfall Units for such Contract Year. The “Annual Excused Supply Shortfall Units Reduction” shall be the amount of such reduction. The “Adjusted Annual Operating Period Shortfall Payment Units” shall be (a) the Adjusted Annual Supply Commitment for such Contract Year, minus the sum of the Monthly Delivered Water Units, Monthly Unexcused Demand Shortfall Units and Monthly Unscheduled Outage Units, minus (b) the Annual Unexcused Supply Shortfall Units Reduction, minus (c) the Annual Excused Supply Shortfall Units Reduction. The “Annual Operating Period Shortfall Payment True-Up Payment Target Amount” shall be (a) the Adjusted Annual Operating Period Shortfall Payment Units, times (b) the annual Pipeline Bond costs, divided (c) by the Adjusted Annual Supply Commitment. The Annual Operating Period Shortfall Payment Target Amount is understood by the parties to be the amount that is intended to be paid by the Company to the Water Authority, in consideration of the Company’s failure to fully satisfy its Adjusted Annual Supply Commitment. The “Annual Operating Period Shortfall Payment True-Up Payment” shall be (a) the Annual Operating Period Shortfall Payment Target Amount, minus (b) the total amount of Monthly Operating Period Shortfall Payments paid by the Company during a Contract Year net of the total amount of Monthly Operating Period Shortfall Restoration Payments received by the Company during a Contract Year.

**Annual Operating Period Shortfall Payment Unit Price**

The Operating Period Shortfall Payment Unit Price is fixed for each Contract Year as of the Contract Date and is subject to adjustment as described under “Minimum Annual Demand Commitment” and as specifically set forth in the Water Purchase Agreement.
The amount of Pipeline Bond proceeds transferred from the Pipeline Construction Account to the Pipeline Revenue Fund pursuant to the Pipeline Indenture will be deemed to have been used to redeem Pipeline Bonds pursuant to the terms of the Pipeline Indenture and the reduction in Pipeline Bond debt service resulting therefrom will be reflected as a corresponding reduction in the Annual Operating Period Shortfall Unit Price in the above table.

**Subordination**

The right of the Water Authority to receive Annual Operating Period Shortfall Payment True-Up Payments is subordinate to the right of the holders of the Plant Bonds to receive debt service payments, and the right of the Company to receive distributions is subordinate to the right of the Water Authority to receive Annual Operating Period Shortfall Payment True-Up Payments.

**Drought Shortfall Payments**

If in any Billing Period (1) the Water Authority has activated Stage 2 (Supply Enhancement) of its formally promulgated water shortage management and drought response plan, and (2) an amount equal to any Extension Term.
to the sum of the Monthly Delivered Water Units, the Monthly Excused Supply or Demand Shortfall Units, the Monthly Unexcused Demand Shortfall Units and the Monthly Unscheduled Outage Units is less than 90% of the Adjusted Monthly Supply Commitment for such Billing Period, the Company shall make a payment to the Water Authority. Such payment shall be an amount equal to (a) the number of Units of the delivery shortfall as so calculated, multiplied by (b) the Equity Return Charge (the “Drought Shortfall Payment”). The Drought Shortfall Payments are additive to the Operating Period Shortfall Payments, and are not pledged under the Pipeline Installment Sale and Assignment Agreement.

**Raw Seawater Quality and Uncontrollable Circumstances**

The Company shall not be entitled to relief on account of raw seawater quality conditions so long as concentration levels or characteristics of any raw seawater quality parameter are within the allocable range listed in the Specified Raw Seawater Quality Parameters. If the concentration levels or characteristics of any such raw seawater quality parameter are outside the applicable parameter range, however, the Company shall have the right to assert the occurrence of an Uncontrollable Circumstance and to claim performance relief (but not compensation relief).

The Company shall not be entitled to assert the occurrence of an Uncontrollable Circumstance or any other relief if the concentration levels or characteristics of any raw seawater quality parameter which is not specifically listed among the Specified Raw Seawater Quality Parameters; provided, however, that the Company may assert the occurrence of an Uncontrollable Circumstance and shall be entitled to performance relief on account thereof if the concentration levels or characteristics in any such unlisted parameter pose a threat to health or safety or result in the Company being required by a governmental body to reduce or cease Plant operations.

Notwithstanding the fact that “red tide” algae is not listed among the Specified Raw Seawater Quality Parameters, the Company shall nonetheless be entitled to relief based on the occurrence of an Uncontrollable Circumstance if a “red tide” algae bloom occurs that causes the TSS, TOC, turbidity or any other listed Specific Raw Seawater Quality Parameter to be outside the applicable parameter range.

The Company may assert the occurrence of an Uncontrollable Circumstance, and shall be entitled to schedule, performance and compensation relief on account thereof if a spill, release, leak or other similar significant event takes place which introduces contaminants (other than contaminants which are listed among the Specified Raw Seawater Quality Parameters) into the raw seawater in concentrations which materially and adversely affect the ability of the Company to meet the Performance Guarantees or perform the operating work, or materially increase the cost thereof to the Company.

**Water Authority Remedies for Non-Compliance with Performance Guarantees**

If the Company fails to comply with any Performance Guarantee, the Company shall (1) pay any other resulting fines, levies, assessments, impositions, penalties or other charges resulting therefrom; and (2) take any commercially reasonable action (including making all capital investments, improvements or modifications or repairs, replacements and operating and management practices changes) necessary in order to comply with such Performance Guarantee, continue or resume performance and eliminate the cause of, and avoid or prevent recurrences of non-compliance with such Performance Guarantee.

In the event that the Company fails to meet the Performance Guarantees for six Billing Periods in a row, the Water Authority may require a performance test to be conducted by the Company, at the Water Authority’s cost and expense, to determine the cause of such failure. If the cause of such failure to meet the Performance Guarantees is determined, the Company shall use reasonable efforts to make all
necessary repairs and replacements, including major repairs and replacements, or capital investments, improvements or modifications.

**Maintenance, Repair and Replacement**

**Generally**

The Company shall perform all normal and ordinary maintenance of the machinery, equipment structures, improvements and all other property constituting the Plant, shall keep the Plant in good working order, condition and repair, in a neat and orderly condition and in accordance with the contract standards, and shall maintain the aesthetic quality of the Plant as originally constructed and in accordance with the Design Requirements. The Company shall perform all major maintenance, repair and replacement of the machinery, equipment, structures, improvements and all other property constituting the Plant required under the contract standards, including all maintenance, repair and replacement which may be characterized as ‘major’ or ‘capital’ in nature.

**Reverse Osmosis System Replacement Schedule**

The Company shall, prior to the commencement of the second Contract Year and for each Contract Year thereafter, prepare a two-year forward looking schedule for the replacement of the reverse osmosis membranes used in the Plant. This schedule will serve as a planning tool: (1) to project the Company’s schedule to maintain and replace the reverse osmosis membranes in a manner that meets the contract standards; and (2) to determine the Company’s obligations to replace the reverse osmosis membranes.

**Plant Evaluations**

Within 15 days after the Water Authority has delivered its notice of its intent to exercise its Project Assets Purchase Option During the Term (as defined below), or its notice of its intent to exercise its Project Assets Purchase Option On the Expiration Date (as defined below), the independent evaluator shall conduct a final evaluation of the Plant. The final determination by the independent evaluator as to any matter arising involving amounts less than $250,000 (index linked) which is in dispute between the Water Authority and the Company shall be final and binding upon the parties. For disputes involving amounts greater than $250,000 (index linked), the independent evaluator’s determination shall be advisory only, and such dispute shall be handled as described under “Dispute Resolutions”.

**End of Term Plant Condition and Performance Evaluation Requirements**

The following provisions shall apply only in the event the Water Authority exercises its Plant Assets Purchase Option During the Term or Plant Assets Purchase Option on the expiration date.

**End of Term Plant Performance Evaluation**

If the Plant fails to comply with end of Term performance evaluation requirements over a period of six months (which includes (1) no Monthly Unexcused Supply Shortfall Units, (2) an energy consumption requirement, (3) a total chemical cost requirement, and (4) no violation of the Product Water Quality Guarantee), the Company shall, at its cost and expense, shall conduct a test in the same manner and over the same timeframes as required hereunder for the Performance Test that established Provisional Acceptance (“Exit Performance Test”). If the Plant fails the Exit Performance Test, the Company at its own cost and expense shall make all repairs and replacements necessary so that the Plant is capable of achieving the Plant Minimum Performance Criteria. Upon completion of the repair and replacement
work, the Exit Performance Test shall again be conducted. This procedure shall be repeated until the Plant passes the Exit Performance Test.

**Plant Assets Transfer Conditions**

On the termination date, the Plant shall be in a condition: (1) Which is consistent with the Company having performed the contract obligations; (2) Which, with respect to buildings, structures and pipelines that as of the Contract Date were expected to have a useful life of more than 20 years, have functional or structural ratings of at least “3” (with 1 meaning the structure is subject to imminent failure and 5 meaning excellent overall condition); and (3) Which, with respect to Plant equipment’s maintenance, repair and replacement status, meets the contract standards (the “Transfer Condition Requirements”).

The Company and the Water Authority shall conduct a joint inspection and survey of the Plant structures and a separate joint inspection and survey of the Plant equipment over a 45 day period. If these surveys indicate that any element of the Plant, on the termination date, is not reasonably expected to be in a condition consistent with the Transfer Condition Requirements the Company shall deliver to the Water Authority the Company’s plan to perform the additional work necessary to meet the above requirements, together with a cost estimate for the work.

**Transfer Condition Retainage**

Upon completion of the Plant condition survey and work plan required above, the Water Authority: (1) May review and comment on the Company’s work plan; (2) May direct the Company to amend its work plan to incorporate corrective work which the Water Authority reasonably determines is necessary to meet the Transfer Condition Requirements and the cost of such work; and (3) Shall, after giving due consideration to the Company’s cost estimate and the independent evaluator’s assessment, determine in good faith the amount the Water Authority reasonably believes is necessary to complete the additional work required to meet the Transfer Condition Requirements (the “Transfer Condition Retainage”).

If, 90 days prior to the termination date, the Plant (1) has failed to demonstrate that it has the capacity to meet the requirements described under “End of Term Performance Evaluation Requirements” or, if applicable, the Exit Performance Test; or (2) is not being operated or maintained in compliance with the contract standards, then the Water Authority may, acting reasonably, increase the amount of the Transfer Condition Retainage to make the repairs and modifications to the Plant that would be necessary to allow the Plant to meet the requirements of the Exit Performance Test.

**Insurance**

The Company shall obtain, maintain and comply with the terms and conditions of the required insurance, and shall pay all premiums with respect thereto as the same become due and payable; provided, however, that the Company shall not be obligated to carry the insurance set forth below to the extent and for any period that coverage for any particular risk or event is not available on commercially reasonable terms. The Water Authority in any such circumstances shall bear no risk or responsibility upon the occurrence of any such uninsured or underinsured risk or event, and the unavailability of insurance coverage shall not cause any such risk or event to be considered an Uninsurable Force Majeure Event. The Company shall bear the risk of the unavailability of required insurance with qualified insurers and the risk that the premiums payable or the terms and conditions for insuring the risks intended to be covered by the insurance set forth below are to any degree in excess of or are more burdensome than the
premiums, terms and conditions existing on the Contract Date or assumed by the Company in entering into the Water Purchase Agreement.

At the Company’s option, the Company may provide any or all of the following insurance policies by means of a contractor controlled insurance program.

**Insurance During the Construction Period**

During the construction period, the Company shall provide: (1) a builder’s insurance policy (including loss arising from earthquake and earth movement); (2) a professional liability errors and omissions insurance policy; (3) a commercial general liability policy with products and completed operations liability coverage maintained for a period of not less than 10 years following the Commercial Operation Date or the termination date, whichever occurs first; (4) a commercial automobile liability insurance policy; (5) a worker’s compensation insurance policy and employer’s liability insurance; (6) a contractor pollution liability insurance policy; and (7) a pollution legal liability insurance policy, which shall be continued for not less than three years following the Commercial Operation Date.

**Insurance During the Operating Period**

During the operating period, the Company shall provide: (1) all risk property insurance policy (excluding earthquake); (2) a boiler and machinery insurance policy; (3) business interruption insurance policies; (4) a commercial general liability insurance policy; (5) a commercial automobile liability insurance policy; (6) a worker’s compensation insurance policy and employer’s liability insurance; (7) a pollution legal liability insurance policy; (8) an accidental pollution liability insurance policy; and (9) an earthquake and earth movement insurance policy.

**Water Purchase Agreement Not Affected By Damage or Destruction**

Except as otherwise expressly provided in the Water Purchase Agreement, the partial destruction or damage or complete destruction of the Plant by fire or other casualty will not permit either party to terminate the Water Purchase Agreement or to demand any increase in any amounts payable to the Company under the Water Purchase Agreement.

**Uncontrollable Circumstances**

**Insurable Force Majeure Events**

If all or any part of the Plant is damaged or destroyed on account of an Insurable Force Majeure Event, the Company shall promptly repair, replace or restore the part of the Plant so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction in compliance with applicable law and in accordance as described under “Company’s Obligations Upon Material Damage or Destruction”.

The Company shall be relieved from its obligation to perform to the extent that any failure to perform results from an Insurable Force Majeure Event. With respect to schedule relief: (1) The Scheduled Commercial Operation Date shall be extended as and to the extent described under “Scheduled Commercial Operation Date”; and (2) Except as described under “Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term”, the occurrence of an Insurable Force Majeure Event shall not operate to extend the expiration date, and accordingly shall not extend the period of time during which the Company is obligated to perform the contract obligations and entitled to receive the Monthly Water Purchase Payments.
If an Insurable Force Majeure Event occurs, (1) the Company shall not receive any compensation relief, (2) the Water Authority shall continue to have the right to impose deductions for the Company’s failure to meet the Product Water Quality Guarantee, and (3) the Company shall bear all costs resulting from the occurrence of an Insurable Force Majeure Event.

The failure of the Company to promptly repair, replace or restore the Plant as set forth above shall constitute a Company Remediable Breach which, if not remedied by the Company, shall entitle the Water Authority to exercise all of its remedies, including the right, by notice to the Company, (1) to terminate the Water Purchase Agreement, and (2) to step-in and perform the contract obligations as described under “Water Authority’s Temporary Step-In Rights”.

Earthquakes

Public Contracts Code Section 7105 is not applicable to the Plant or the Water Purchase Agreement. Earthquakes are defined and shall be treated as Uninsurable Force Majeure Events, notwithstanding the obligation of the Company to obtain and maintain earthquake insurance as part of the required insurance. In the event an earthquake occurs, (a) the insurance proceeds from earthquake insurance maintained as part of the required insurance shall be applied to the repair, replacement or restoration on the Plant, (b) the Water Authority shall be responsible for all deductible amounts and for costs exceeding the policy coverage limits, and (c) the Unit Price shall be adjusted, and the parties shall have their respective rights, described under “Uninsurable Force Majeure Events”.

Uninsurable Force Majeure Events

If all or any part of the Plant is damaged or destroyed on account of an Uninsurable Force Majeure Event, the Company shall promptly repair, replace or restore the part of the Plant so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction and in compliance with applicable law.

The Company shall be relieved from its obligation to perform to the extent that any failure to perform results from an Uninsurable Force Majeure Event. With respect to schedule relief: (1) The Scheduled Commercial Operation Date shall be extended as and to the extent described under “Scheduled Commercial Operation Date”; and (2) Except as described under “Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term”, the occurrence of an Uninsurable Force Majeure Event shall not operate to extend the expiration date, and accordingly shall not extend the period of time during which the Company is obligated to perform and entitled to receive the Monthly Water Purchase Payments.

If any Uninsurable Force Majeure Event occurs prior to the Commercial Operation Date: (1) The Company shall not be entitled to any adjustment to the Unit Price or other compensation with respect thereto prior to the Commercial Operation Date, nor any adjustment to the Unit Price or other compensation at all if the Commercial Operation Date never occurs; and (2) If the Commercial Operation Date occurs, the Company’s entitlement to compensation shall be solely through an adjustment to the Unit Price, as set forth below.

If an Uninsurable Force Majeure Event occurs on or after the Commercial Operation Date: (1) The Unit Price (subject to the cap described under “Cap on Increases in the Unit Price Due to Uncontrollable Circumstances” shall be: (a) Reduced by an amount equal to avoidable costs; and (b) Increased by an amount necessary to compensate the Company for any increase in the cost to the Company of performing the contract obligations, to the extent resulting from the Uninsurable Force Majeure Event; and (2) The Water Authority shall not have the right to exercise its rights upon any failure
to comply with the Product Water Quality Guarantee, to the extent caused by Uninsurable Force Majeure Event.

In the event that financing is required to pay Compensation Adjustment Event capital costs in connection with the occurrence of an Uninsurable Force Majeure Event, the parties shall have their respective rights and obligations described under “Compensation Adjustment Event Capital Costs and Capital Projects”.

**Company’s Obligations Upon Material Damage or Destruction**

If the Plant suffers damage or destruction that is likely to cost more than $5,000,000, index linked, to repair, replace and restore, the Company shall, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Plant or to facilitate the continued operations of other parts of the Plant, provide the Water Authority, for its comments, with a draft plan for the carrying out of the works necessary to repair, replace and restore the damaged or destroyed portions of the Plant and related assets.

Thereafter, unless the damage or destruction was caused by an Uninsurable Force Majeure Event and a party elects to terminate the Water Purchase Agreement, the Company shall repair, replace or restore the Plant, subject to applicable law.

**Change in Law Events**

The Company shall be relieved from its obligation to perform to the extent that any failure to perform results from a Change in Law Event. With respect to schedule relief: (1) The Scheduled Commercial Operation Date shall be extended as and to the extent described under “Scheduled Commercial Operation Date”; and (2) Except as described under “Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term”, the occurrence of a Change in Law Event shall not operate to extend the expiration date, and accordingly shall not extend the period of time during which the Company is obligated to perform the contract obligations and entitled to receive the Monthly Water Purchase Payments.

If a Change in Law Event (except for a Change in Law Event described in the fourth bullet of the Inclusions section of the definition of “Change in Law” regarding CDPH permitting delay) occurs prior to the Commercial Operation Date: (1) The Company shall not be entitled to any adjustment to the Unit Price or other compensation with respect thereto prior to the Commercial Operation Date, nor any adjustment to the Unit Price or other compensation at all if the Commercial Operation Date never occurs for any reason; and (2) If the Commercial Operation Date occurs, the Company shall be compensated as set forth below, such compensation to be reflected in the Unit Price.

If a Change in Law Event (except for a Change in Law Event described in the fourth bullet of the Inclusions section of the definition of “Change in Law” regarding CDPH permitting delay) occurs on or after the Commercial Operation Date, (1) The Unit Price (subject to the compensation adjustment limitations described under “Cabrillo Risk”, and further subject to the cap on adjustments to the Unit Price described under “Cap on Increases in the Unit Price Due to Uncontrollable Circumstances” shall be: (a) Reduced by an amount equal to avoidable costs; and (b) Increased by an amount necessary to compensate the Company for any increase in the cost to the Company of performing the contract obligations in compliance with applicable law, to the extent resulting from the Change in Law Event; and (2) The Water Authority shall not have the right to exercise its rights upon any failure to meet the Product Water Quality Guarantee, to the extent caused by a Change in Law Event.
Discriminatory or Specified Change in Tax Law

If a Discriminatory Change in Tax Law or Specified Change in Tax Law occurs prior to the Commercial Operation Date: (1) Neither party shall be entitled to any compensation with respect thereto prior to the Commercial Operation Date, nor any compensation at all if the Commercial Operation Date never occurs for any reason; and (2) If the Commercial Operation Date occurs, the Company or the Water Authority shall be entitled to additional compensation for any revenue loss or revenue gain for the Company or any shareholder of the Company (as the case may be) directly attributable thereto, such compensation to be reflected through an adjustment to the Unit Price (subject to the cap on Unit Price adjustments described under “Cap on Increases in the Unit Price Due to Uncontrollable Circumstances”.

If a Discriminatory Change in Tax Law or a Specified Change in Tax law occurs on or after the Commercial Operation Date, the Company or the Water Authority shall be entitled to additional compensation for any revenue loss or revenue gain for the Company or any Shareholder (as the case may be) directly attributable thereto.

Other Uncontrollable Circumstance

The Company shall be relieved from its obligation to perform the contract obligations to the extent that any failure to perform results from an Other Uncontrollable Circumstance (except that, with respect to Regulated Site Conditions or Differing Site Conditions, the Company shall be entitled only to schedule relief). With respect to schedule relief: (1) The Scheduled Commercial Operation Date shall be extended as and to the extent described under “Scheduled Commercial Operation Date”; and (2) Except as described under “Product Water Not Delivered or Received Due to Uncontrollable Circumstances; Extension of Term”, the occurrence of an Other Uncontrollable Circumstance shall not operate to extend the expiration date, and accordingly shall not extend the period of time during which the Company is obligated to perform the contract obligations and entitled to receive the Monthly Water Purchase Payments.

If an Other Uncontrollable Circumstance that is listed or referred to in “Inclusions - Performance, Schedule and Compensation Relief” in the definition of “Uncontrollable Circumstances” (and subject to any specific limitations provided herein with respect to the amount of compensation relief to be provided upon the occurrence of the particular event or circumstance) occurs prior to the Commercial Operation Date: (1) The Company shall not be entitled to any adjustment to the Unit Price or other compensation with respect thereto prior to the Commercial Operation Date, nor any adjustment to the Unit Price or other compensation at all if the Commercial Operation Date never occurs; and (2) If the Commercial Operation Date occurs, the Company shall be compensated as set forth below, such compensation to be reflected in the Unit Price.

If an Other Uncontrollable Circumstance that is listed or referred to in “Inclusions - Performance, Schedule and Compensation Relief” in the definition of “Uncontrollable Circumstances” (and subject to any specific limitations provided herein with respect to the amount of compensation relief to be provided upon the occurrence of the particular event or circumstance) occurs on or after the Commercial Operation Date: (1) The Unit Price (subject to the cap on adjustments to the Unit Price described under “Cap on Increases in the Unit Price Due to Uncontrollable Circumstances” shall be: (a) Reduced by an amount equal to avoidable costs; and (b) Increased by an amount necessary to compensate the Company for any increase in the cost to the Company of performing the contract obligations, to the extent resulting from the Other Uncontrollable Circumstance; and (2) The Water Authority shall not have the right to exercise its rights upon any failure to meet the Product Water Quality Guarantee, to the extent caused by an Uncontrollable Circumstance.
Base, Additional and Excess Product Water Deliveries

Beginning at the start of each Contract Year, the Company shall keep a running cumulative total of Monthly Delivered Water Units, Monthly Unexcused Demand Shortfall Units, and Monthly Unscheduled Outage Units, until such cumulative total equals the Minimum Annual Demand Commitment. Monthly Delivered Water Units, Monthly Unexcused Demand Shortfall Units and Monthly Unscheduled Outage Units so recorded shall be deemed to be “Base Product Water Deliveries”.

Once Base Product Water Deliveries for a Contract Year have reached the Minimum Annual Demand Commitment, the Company shall keep a further running cumulative total of additional Monthly Delivered Water Units delivered in such Contract Year, until such cumulative total equals the Maximum Annual Supply Commitment. Monthly Delivered Water Units so recorded shall be deemed to be “Additional Product Water Deliveries”. Monthly Delivered Water Units in any Contract Year in excess of the Maximum Annual Supply Commitment shall be deemed to be “Excess Product Water Deliveries”.

Excused Supply Shortfall Unit Tracking Account and Excused Demand Shortfall Unit Tracking Account

Account Establishment, Maintenance and Use

The Company shall establish and maintain an Excused Demand Shortfall Unit tracking account and an Excused Supply Shortfall Unit tracking account, in which it shall record and track the number of Monthly Excused Demand Shortfall Units and Monthly Excused Supply Shortfall Units occurring throughout the Term that have not been cured pursuant to the provisions “Changes to Excused Demand Shortfall Tracking Account Balance” and “Changes to Excused Supply Shortfall Tracking Account” below (“Excused Demand Shortfall Unit Tracking Account” and “Excused Supply Shortfall Unit Tracking Account”, respectively). The Excused Demand Shortfall Unit Tracking Account and the Excused Supply Shortfall Tracking Account shall be used, among other things, to make determinations with respect to the extension of the Term as described under “Product Water Not Delivered or Received Due to Uncontrollable Circumstances; Extension of Term”.

Changes to the Excused Demand Shortfall Unit Tracking Account Balance

For each Contract Year:

The opening balance of the Excused Demand Shortfall Unit Tracking Account shall be the closing balance from the prior Contract Year, except that, in the first Contract Year of operations, the opening balance shall be zero.

The opening balance of the Excused Demand Shortfall Unit Tracking Account shall be increased by the lesser of (a) the total amount of Monthly Excused Demand Shortfall Units for such Contract Year, or (b) an amount equal to (i) the amount by which Base Product Water Deliveries for such Contract Year falls short of the Minimum Annual Demand Commitment, multiplied by (ii) a fraction, the numerator of which is the total amount of Monthly Excused Demand Shortfall Units for such Contract Year and the denominator is the sum of the Monthly Excused Demand Shortfall Units and the Monthly Excused Supply Shortfall Units for such Contract Year. Monthly Excused Demand Shortfall Units incurred during such Contract Year that are not added to the Excused Demand Shortfall Unit Tracking Account pursuant to the preceding sentence shall be deemed to have been cured during the Contract Year. For avoidance of doubt, satisfaction of the Minimum Annual Demand Commitment in any Contract Year through Base...
Product Water Deliveries is deemed as curing all Excused Demand Shortfall Units incurred during such Contract Year.

The opening balance of the Excused Demand Shortfall Unit Tracking Account shall be reduced by (a) the sum of the Additional Product Water Deliveries and Excess Product Water Deliveries delivered during such Contract Year, multiplied by (b) a fraction, the numerator of which is the opening balance of the Excused Demand Shortfall Unit Tracking Account and the denominator is the sum of the opening balances of the Excused Demand Shortfall Unit Tracking Account and the Excused Supply Shortfall Unit Tracking Account, provided that the balance of the Excused Demand Shortfall Unit Tracking Account shall never be reduced below zero.

Changes to the Excused Supply Shortfall Unit Tracking Account Balance

For each Contract Year:

The opening balance of the Excused Supply Shortfall Unit Tracking Account shall be the closing balance from the prior Contract Year, except that, in the first Contract Year of operations, the opening balance shall be zero.

The opening balance of the Excused Supply Shortfall Unit Tracking Account shall be increased by the lesser of (a) the total amount of Monthly Excused Supply Shortfall Units for such Contract Year or (b) an amount equal to (i) the amount by which Base Product Water Deliveries for such Contract Year falls short of the Minimum Annual Demand Commitment, multiplied by (ii) a fraction, the numerator of which is the total amount of Monthly Excused Supply Shortfall Units for such Contract Year and the denominator is the sum of the Monthly Excused Demand Shortfall Units and the Monthly Excused Supply Shortfall Units for such Contract Year. Monthly Excused Supply Shortfall Units incurred during such Contract Year that are not added to the Excused Demand Shortfall Unit Tracking Account pursuant to the preceding sentence shall be deemed to have been cured during the Contract Year. For avoidance of doubt, satisfaction of the Minimum Annual Demand Commitment in any Contract Year through Base Product Water Deliveries is deemed as curing all Excused Supply Shortfall Units incurred during such Contract Year.

The opening balance of the Excused Supply Shortfall Unit Tracking Account shall be reduced by the sum of the Additional Product Water Deliveries and Excess Product Water Deliveries incurred during such Contract Year times (ii) the fraction in which the numerator is the opening balance of the Excused Supply Shortfall Unit Tracking Account and the denominator is the sum of the opening balances of the Excused Demand Shortfall Unit Tracking Account and the Excused Supply Shortfall Unit Tracking Account, provided that the balance of the Excused Supply Shortfall Unit Tracking Account shall never be reduced below zero.

Electricity Charges

The “Electricity Charge” for each Billing Period shall be an amount, expressed in dollars per acre foot, equal to the sum of the Fixed Electricity Charge and the Variable Electricity Charge for such Billing Period,

The Fixed Electricity Charge will be calculated annually in advance of each Contract Year, and it will be based on the Minimum Annual Demand Commitment. It will be revised during the Contract Year if the tariff rates change.
The Variable Electricity Charge will be calculated monthly in arrears for each Billing Period, and it will be based on the Monthly Delivered Water Units and the current tariff rates during the Billing Period.

**Guaranteed Energy Consumption**

“Total Guaranteed Energy Consumption” during each Billing Period shall be the kilowatt-hours of electricity calculated using the power guarantee formulas and equal the sum of the On-Peak Guaranteed Energy Consumption, the Semi-Peak Guaranteed Energy Consumption, and the Off-Peak Guaranteed Energy Consumption.

“On-Peak Guaranteed Energy Consumption” during each Billing Period shall be the kilowatt-hours of electricity calculated during SDG&E on-peak rate periods based on the power guarantee formulas and equal to the sum of the Guaranteed Specific Energy Consumption Amount for all 15 minute periods during on-peak hours.

“Semi-Peak Guaranteed Energy Consumption” during each Billing Period shall be the kilowatt-hours of electricity calculated during SDG&E semi-peak rate periods based on the power guarantee formulas and equal to the sum of the Guaranteed Specific Energy Consumption Amount for all 15 minute periods during semi-peak hours.

“Off-Peak Guaranteed Energy Consumption” during each Billing Period shall be the kilowatt-hours of electricity calculated during SDG&E off-peak rate periods based on the power guarantee formulas and equal to the sum of the Guaranteed Specific Energy Consumption Amount for all 15 minute periods during off-peak hours.

“Guaranteed Specific Energy Consumption Rate” shall be the kilowatt-hours per thousand gallons (kWh/kgal) for each 15 minute period calculated using the power guarantee formulas set forth in this subsection. Each month will be divided into 15 minute periods. Each 15 minute period will have its own Guaranteed Specific Energy Consumption Rate (kWh/kgal).

The power guarantee formulas require Product Water flow rate, seawater total dissolved solids and seawater temperature, and result in the Guaranteed Specific Energy Consumption Rate in kWh/kgal for that period. The three variables are shown below and will be recorded for each 15 minute period of operations during the Billing Period.

For one pump mode, the Guaranteed Specific Energy Consumption Rate shall be as follows: $\frac{91.914387451668 - 3.8524795482509 \times Q - 0.002928232582424 \times TDS + 0.30653540997084 \times T + 0.074967969341097 \times Q^2 + 3.9737002996794E-08 \times TDS^2 - 0.0021863779489905 \times T^2 + 0.00002973043558543 \times Q \times TDS - 0.008245586504917 \times Q \times T - 0.0000023551873157782 \times TDS \times T + 0.72 + 5.04}{...}$

For two pump mode, the Guaranteed Specific Energy Consumption Rate shall be as follows: $\frac{39.440044040402 - 0.82716000458555 \times Q - 7.2402861447362 \times 10^{-4} \times TDS - 0.024305837397357 \times T + 2.222614582509 \times 10^{-5} \times Q \times TDS + 0.72 + 5.04}{...}$

For three pump mode when the flow rate is between 48.0 - 53.49 MGD, the Guaranteed Specific Energy Consumption Rate shall be as follows: $\frac{-85.540317351847 + 4.8604139852367 \times Q - 1.8053939570046 \times 10^{-3} \times TDS + 0.38145466797851 \times T - 0.053247134055229 \times Q^2 + 1.7601299568608 \times 10^{-8} \times TDS^2 + 5.9902760601242 \times 10^{-4} \times T^2 + 1.7314982177605 \times 10^{-5} \times Q \times TDS - 5.6200213254797 \times 10^{-3} \times Q \times T - 4.596022946823 \times 10^{-6} \times TDS \times T + 0.72 + 5.04}{...}$
For three pump mode when the flow rate is from 53.5 - 54.0 MGD, the Guaranteed Specific Energy Consumption Rate shall be as set out in the table below:

<table>
<thead>
<tr>
<th>TDS, ppm</th>
<th>28,000</th>
<th>33,500</th>
<th>34,500</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feed Water Temp, C</td>
<td>Plant kWh/kgal</td>
<td>Plant kWh/kgal</td>
<td>Plant kWh/kgal</td>
</tr>
<tr>
<td>12</td>
<td>10.72</td>
<td>11.50</td>
<td>12.03</td>
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<td>14</td>
<td>10.42</td>
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<td>18</td>
<td>10.21</td>
<td>10.93</td>
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<td>20</td>
<td>10.15</td>
<td>10.87</td>
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<td>10.10</td>
<td>10.45</td>
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<tr>
<td>30</td>
<td>10.10</td>
<td>10.33</td>
<td>10.58</td>
</tr>
<tr>
<td>Intake Pump Station</td>
<td>0.72</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Product Pump Station</td>
<td>5.04</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Linear interpolation for other operating conditions: (1) for a seawater temperature not given in this table, a linear interpolation will be done in order to determine the value of the Guaranteed Specific Energy Consumption Rate at that temperature; (2) if the actual seawater TDS is not equal to one of the three concentration levels set forth in this table, a linear interpolation will be done in order to determine the Guaranteed Specific Energy Consumption Rate at that TDS level.

“Guaranteed Specific Energy Consumption Amount” is equal to the amount of kilowatt-hours (kWh) consumed during each 15 minute period. It is calculated as the product of (i) the Guaranteed Specific Energy Consumption Rate (kWh/kgal) and (ii) the amount of Product Water delivered, expressed in thousand gallons (kgal), during the applicable 15 minute period. For example: (i) 16.57 kWh/kgal x (ii) 562.5 kgal = 9,320.6 kWh. Each month will be divided into 15 minute periods. Each 15 minute period will have its own Guaranteed Specific Energy Consumption Amount (kWh).

The reference to “5.04” in any formula in this section represents the “Product Pump Specific Energy” described in the Performance Test. To the extent the Product Pump Specific Energy is adjusted as part of the Performance Test, the reference to “5.04” in this section shall be changed to the value resulting from such adjustment.

Guaranteed Demand

“Guaranteed Non-Coincident Maximum Demand” for the Billing Period shall be the power demand, expressed in kilowatts (kW), equal to the highest Guaranteed Specific Energy Consumption Amount during the Billing Period divided by 0.25 hours. For example: 9,320.6 kWh ÷ 0.25 hours = 37,282.4 kW.

“Guaranteed On-Peak Maximum Demand” for the Billing Period shall be the highest power demand, expressed in kilowatts (kW), equal to the Guaranteed Specific Energy Consumption Amount during SDG&E on-peak rate periods minute period for the Billing Period divided by 0.25 hours. For example: 9,000.0 kWh ÷ 0.25 hours = 36,000.0 kW. Note that if the Guaranteed Non-Coincident
Maximum Demand occurs during an on-peak period, it will equal the Guaranteed On-Peak Maximum Demand for that Billing Period.

Adjustment to Guaranteed Specific Energy Consumption Rate

The Guaranteed Specific Energy Consumption Rates shall be adjusted pursuant to this subsection. If the total energy consumption of the Plant for the 4th full Contract Year after the Commercial Operation Date is less than 90% of the Total Guaranteed Energy Consumption for such Contract Year, then commencing at the beginning of the 5th full Contract Year after the Commercial Operation Date each Guaranteed Specific Energy Consumption Rate shall be reduced by the percentage amount by which such total energy consumption is less than 90% of such Total Guaranteed Energy Consumption.

The Electricity Tariff

The “Electricity Tariff” means the least-cost electricity rate structure offered by the Electricity Supplier, taking into account the Project’s demand for uninterruptable power supply, and the pricing provisions set forth in the Water Purchase Agreement.

The “Electricity Supplier” means SDG&E or an electricity supplier designated by the Water Authority.

In the event of a change in the Electricity Tariff or other components of the Electricity Charge, Poseidon shall prepare and deliver to the Water Authority a revised Electricity Charge Schedule reflecting the change or changes, which shall apply for both the Fixed and Variable Electricity Charges if there have been changes to both charges. The new Electricity Charge Schedule shall be deemed effective as of the date that the change or changes go into effect, and the parties shall recalculate the Monthly Water Purchase Payments in accordance with the new Electricity Charge schedule, and shall determine the amount of overpayment or underpayment, if any.

The Fixed Electricity Charge

“Fixed Electricity Charge” for each Contract Year shall be the dollar-per-acre foot amount that is the sum of the Distance Adjustment Fee, Customer Service Charge, the Fixed Demand Charge, and the Standby Charge for the Contract Year divided by the Minimum Annual Demand Commitment. The Fixed Electricity Charge is represents the fixed electricity costs of the project that are incurred when the project is in a standby, non-production mode. The Fixed Electricity Charge will be calculated annually in advance of each Contract Year, and it will be revised during the Contract Year if the tariff rates change.

“Distance Adjustment Fee” for each Contract Year shall be the amount determined prior to the Contract Year as the product of 1) the Distance Adjustment Fee ($/Foot/month), 2) the distance, measured in feet, from the SDG&E substation to the meter on the Plant site, and 3) 12 months.

“Customer Service Charge” for each Contract Year shall be the amount determined prior to the Contract Year as the product of 1) the applicable SDG&E fixed monthly dollar and 2) 12 months. The Customer Service Charge is a fixed monthly dollar amount due regardless of electricity consumed.

“Fixed Demand Charge” for each Contract Year shall be the amount determined as the product of 1) 50% of the highest Guaranteed Non-Coincident Maximum Demand from the preceding Contract Year, expressed in kilowatts (kW), 2) the applicable monthly SDG&E AL-TOU Non-Coincident Maximum Demand Charge ($/kW), and 3) 12 months. 50% of the highest non-coinicident maximum demand from
the preceding Contract Year is considered a fixed charge because it is billed by SDG&E as a cost to the Plant regardless of water production/electricity consumption.

“Standby Charge” for each Contract Year shall be the charge for the amount of power that would be demanded and energy that would be consumed if the Plant was in hot standby condition, not producing any Product Water. The average power in hot standby condition shall initially be assumed to be 2,500 kW, but the final hot standby condition average power to be used to calculate the Standby Charge shall be established during a hot standby condition test.

The Standby Charge for each Contract Year is calculated as product of 1) the Monthly Standby Consumption (kWh), 2) the Average Standby Electricity Rate ($/kWh), and 3) 12 months. Monthly Standby Consumption is the product of 1) 2,500 kW, 2) 24 hours per day, and 3) 30.42 days per month (2500 kW x 24 hours x 30.42 days/mo = 1,825,200 kWh). The Average Standby Electricity Rate is calculated for each Contract Year. As the Standby Charge is a fixed charge that consists of SDG&E rates and charges that would otherwise be considered variable if the Plant was producing water, the portion of the $/month Standby Charge associated with Monthly Delivered Water Units will reduce the Variable Electricity Charge for each month.

The Variable Electricity Charge

“Variable Electricity Charge” for each Billing Period shall be the per-acre foot amount equal to the variable electricity costs of the project that result from the power guarantee formulas and are incurred when the project is producing water. The Variable Electricity Charge will be calculated monthly in arrears for each Billing Period, and it will be based on the Monthly Delivered Water Units and the current tariff rates during the Billing Period. There are two types of variable electricity costs: Energy Charges and Demand Charges. Energy Charges are calculated based on kilowatt-hours of energy consumption ($/kWh) and Demand Charges are calculated based on kilowatts of power utilized ($/kW). The portion of the monthly Standby Charge associated with Monthly Delivered Water Units, which is billed via the Fixed Electricity Charge, will be subtracted from the variable charges in order to calculate the Variable Electricity Charge for each month. Any Standby Charges associated with Monthly Unexcused Demand Shortfall Units and Monthly Unscheduled Outage Units will not be subtracted from the variable charges. Thus, the amount of the monthly Standby Charge that will be subtracted from the variable charges equals Monthly Delivered Water Units divided by monthly Base Product Water Deliveries times the monthly Standby Charge. The Variable Electricity Charge shall be determined at the end of the Billing Period and shall be equal to (1) the Energy Charges plus the Demand Charges less the Standby Charges for Monthly Delivered Water Units for the Billing Period divided by (2) the Monthly Delivered Water Units for such Billing Period.

“Energy Charges” for each Billing Period shall be the dollar amount that results from the sum of: (a) the product of (i) the On-Peak Guaranteed Energy Consumption (kWh) and (ii) the on-peak energy rates ($/kWh); (b) the product of (i) the Semi-Peak Guaranteed Energy Consumption (kWh) and (ii) the semi-peak energy rates ($/kWh); (c) the product of (i) the Off-Peak Guaranteed Energy Consumption (kWh) and (ii) the off-peak energy rates ($/kWh); and (d) the product of (i) the Total Guaranteed Energy Consumption (kWh) and (ii) the California Department of Water Resources bond charge ($/kWh) + State regulatory charge ($/kWh) + State surcharge ($/kWh).

The Total Guaranteed Energy Consumption is the sum of the On-Peak Guaranteed Energy Consumption, Semi-Peak Guaranteed Energy Consumption, and Off-Peak Guaranteed Energy Consumption. Total Guaranteed Energy Consumption is used when calculating the California Department of Water Resources bond charge, State regulatory charge, and State surcharge.
Based on the current applicable SDG&E AL-TOU and EECC tariff schedules, the following tariffs are considered Energy Charges: AL-TOU On-Peak, AL-TOU Semi-Peak, AL-TOU Off-Peak, EECC On-Peak, EECC Semi-Peak, and EECC Off-Peak. Additionally there are taxes and other charges that are included in the Energy Charges: California Department of Water Resources bond charge, State regulatory charge, and State surcharge.

“Demand Charges” for each Billing Period shall be the amount equal to the dollar amount that results from the sum of: (a) the product of the (i) the Guaranteed Non-Coincident Maximum Demand (kW) less the kilowatts billed via the fixed charge and (ii) SDG&E AL-TOU Non-Coincident Maximum Demand charge ($/kW); (b) the product of the (i) the Guaranteed On-Peak Maximum Demand (kW) and (ii) SDG&E AL-TOU On-Peak Maximum Demand charge ($/kW); and (c) the product of the (i) the Guaranteed On-Peak Maximum Demand (kW) and (ii) SDG&E EECC On-Peak Maximum Demand charge ($/kW).

Based on the current applicable SDG&E AL-TOU and EECC tariff schedules, the following charges are considered Demand Charges: AL-TOU Non-Coincident Maximum Demand (Less the amount billed via the fixed charge), AL-TOU On-Peak Maximum Demand, and EECC Maximum On-Peak Demand.

The Average Standby Electricity Rate

In the calculation of the Standby Charge, the Average Standby Electricity Rate is required. The “Average Standby Electricity Rate” for each Contract Year shall be the dollar-per-kilowatt-hour ($/kWh) amount equal to the total electricity costs of the project assuming it was in hot standby condition for the entire Contract Year divided by the kilowatt-hours that would have been consumed in Hot Standby Condition for the Contract Year. The Average Standby Electricity Rate will be calculated annually in advance of each Contract Year, and it will be revised during the Contract Year if the tariff rates change. The Average Standby Electricity Rate consists of both on-peak demand charges and energy charges. In the calculation of the Average Standby Electricity Rate, it is assumed that the 2,500 kW of average power is consistent throughout every hour of every month during the Contract Year. This assumption is used in calculating both the demand and energy portions of the Average Standby Electricity Rate. There are two types of electricity costs included in the calculation of the Average Standby Electricity Rate: Energy Charges and Demand Charges. Energy Charges are calculated based on kilowatt-hours of energy consumption ($/kWh) and Demand Charges are calculated based on kilowatts of power utilized ($/kW).

Monthly Water Purchase Payments

The Water Authority shall pay the Company a Monthly Water Purchase Payment for each Billing Period equal to: (1) the number of Monthly Delivered Water Units delivered during such Billing Period that constitute Base Product Water Deliveries, multiplied by the sum of the Fixed Unit Price and the Variable Unit Price; plus (2) the number of Monthly Unexcused Demand Shortfall Units and Monthly Unscheduled Outage Units that constitute Base Product Water Deliveries occurring during such Billing Period, multiplied by the Fixed Unit Price; plus (3) the number of Monthly Delivered Water Units delivered during such Billing Period that constitute Additional Product Water Deliveries, multiplied by the Variable Unit Price; plus (4) the number of Monthly Delivered Water Units delivered during such Billing Period that constitute Excess Product Water Deliveries, multiplied by the sum of the Variable Unit Price and the Excess Product Water Deliveries Incentive Unit Price; plus or minus (5) direct payments between the Water Authority and the Company, all subject to the adjustments and cap provided for in the Water Purchase Agreement.
Fixed Unit Price

The “Fixed Unit Price” shall be an amount equal to the sum of (1) the Debt Service Charge, (2) the Equity Return Charge, (3) the Fixed Operating Charge, and (4) the Fixed Electricity Charge. The Fixed Unit Price shall be subject to adjustment as described under “Minimum Annual Demand Commitment”.

Debt Service Charge

The Debt Service Charge for each Contract Year shall be the per acre-foot amount set forth in the table below. The Debt Service Charge is fixed for each Contract Year as of the Contract Date and is subject to adjustment as described under “Minimum Annual Demand Commitment” and as specifically set forth in the Water Purchase Agreement.

<table>
<thead>
<tr>
<th>Contract Year Ending</th>
<th>Plant Bond Principal ($s)</th>
<th>Plant Bond Interest ($s)</th>
<th>Plant Bond Debt Service ($s)</th>
<th>Minimum Annual Demand Commitment (AF)</th>
<th>Debt Service Charge ($/AF)</th>
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<td>16,131,327.08</td>
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<td>26,517,250.00</td>
<td>26,517,250.00</td>
<td>48,000.0</td>
<td>552.44</td>
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</tbody>
</table>

Any Extension Term .................................................................................................................. 1,107.29
**Equity Return Charge**

The Equity Return Charge for each Contract Year shall be the per acre-foot amount set forth in the table below. The Equity Return Charge is fixed for each Contract Year as of the Contract Date and is subject to adjustment as described under “Minimum Annual Demand Commitment” and as specifically set forth in the Water Purchase Agreement.

<table>
<thead>
<tr>
<th>Contract Year Ending</th>
<th>Annual Equity Return Target Amount ($s)</th>
<th>Minimum Annual Demand Commitment (AF)</th>
<th>Equity Return Charge ($/AF)</th>
</tr>
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Any Extension Term.................................................................................................................. 790.37
Fixed Operating Charge

The “Fixed Operating Charge” as of the Series 2012 Closing Date shall be $405.49. The Fixed Operating Charge shall be index-linked and is subject to adjustment as described under “Minimum Annual Demand Commitment” and as specifically set forth in the Water Purchase Agreement.

Variable Unit Price

The “Variable Unit Price” shall be an amount equal to the sum of (1) the Variable Operating Charge, and (2) the Variable Electricity Charge.

Variable Operating Charge

The “Variable Operating Charge” as of the Series 2012 Closing Date shall be $104.96. The Variable Operating Charge shall be index-linked, and shall be subject to adjustment as specifically set forth in the Water Purchase Agreement.

Annual Tracking Account Reduction Charge

“Annual Tracking Account Reduction Charge” means the sum of (1) the Annual Excused Demand Shortfall Unit Tracking Account Reduction Charge, and (2) the Annual Excused Supply Shortfall Unit Tracking Account Reduction Charge.

Annual Excused Demand Shortfall Unit Tracking Account Reduction Charge

To the extent that Additional Product Water Deliveries or Excess Product Water Deliveries are applied to reduce the Excused Demand Shortfall Unit Tracking Account balance, such application will result in a charge equal to (1) the number of Units so applied, multiplied by (2) the Fixed Unit Price (“Annual Excused Demand Shortfall Unit Tracking Account Reduction Charge”).

Annual Excused Supply Shortfall Unit Tracking Account Reduction Charge

To the extent that Additional Product Water Deliveries or Excess Product Water Deliveries are applied to reduce the Excused Supply Shortfall Unit Tracking Account balance, such application will result in a charge equal to (1) the number of Units so applied, multiplied by (2) the sum of the Fixed Unit Price and the Operating Period Shortfall Payment Unit Price (“Annual Excused Supply Shortfall Unit Tracking Account Reduction Charge”).

Annual Adjusted Supply Commitment True-Up Payment by the Company

Annual Adjusted Supply Commitment True-Up Payment

The Company shall make an Annual Adjusted Supply Commitment True-Up Payment to the Water Authority at the end of each Contract Year. The “Annual Adjusted Supply Commitment True-Up Payment” shall be an amount equal to the positive balance, if any, of: (1) The Base Product Water Deliveries for such Contract Year, multiplied by the Fixed Unit Price, minus (2)(a) a fraction, the numerator of which is the sum of the Monthly Delivered Water Units, Monthly Unexcused Demand Shortfall Units and Monthly Unscheduled Outage Units for such Contract Year, and the denominator of which is the Adjusted Annual Supply Commitment for such Contract Year, and the denominator of which is the Adjusted Annual Supply Commitment for such Contract Year, multiplied by (b) the Fixed Annual Costs.
Subordination

The Company shall be obligated to make Annual Adjusted Supply Commitment True-Up Payments solely from amounts available for such purposes in the Distribution and Stabilization Fund established under the Collateral Trust Agreement and upon the terms and conditions set forth therein. The right of the Water Authority to receive Annual Adjusted Supply Commitment True-Up Payments is subordinate to the right of the holders of the Permitted Debt to receive debt service payments, and the right of the Company to receive distributions is subordinate to the right of the Water Authority to receive Annual Adjusted Supply Commitment True-Up Payments.

Cap on Increases in the Unit Price Due to Uncontrollable Circumstances

The “Baseline Unit Price” shall be (1) the sum of the Fixed Unit Price and the Variable Unit Price at such time, and (2) the sum of all Unit Price adjustments to be made based on the events or circumstances other than those set forth below, and effective at such time that increase the Fixed Unit Price and the Variable Unit Price. The Baseline Unit Price shall not include any Unit Price adjustments under such subsection and effective at such time that decreases the Fixed Unit Price or the Variable Unit Price, such as decreases resulting from a refinancing gain.

The sum of the increases in the Fixed Unit Price and the Variable Unit Price to be made based on the events or circumstances described under: (1) “Cabrillo Risk”, “Uninsurable Force Majeure Events”, “Change in Law Events”, “Discriminatory or Specified Changes in Tax Law” and “Other Uncontrollable Circumstances”, and (2) any equitable adjustment to reflect the terms of any financing of any ‘Base Design Build Price Adjustment Event Capital Costs’ as defined and provided in the Pipeline DBA (which increases reflect the cumulative cost of all (a) Uninsurable Force Majeure Events, Change in Law Events, Other Uncontrollable Circumstances, and Discriminatory or Specified Changes in Tax Law, and (b) any such equitable adjustments reflecting the terms of any financing of any ‘Base Design-Build Price Adjustment Event Capital Costs’ as defined and provided for in the Pipeline DBA) occurring in the aggregate up to the time of any particular calculation shall not exceed an amount equal to 30% of the Baseline Unit Price at any time, nor shall the sum of such increases effective in any one Contract Year exceed an amount equal to 10% of the Baseline Unit Price effective in the immediately preceding Contract Year (such limitations together constituting the “Baseline Unit Price Cap”). Accordingly, the Company shall not be entitled to, and shall forego, any compensation on account of such event or circumstance to the extent the sum of any such increases would at any time cause the Baseline Unit Price Cap to be exceeded. There shall be no deferral or carry forward of any such foregone compensation.

Dispute Resolution

It is the express intention of the parties that all legal proceedings related to the Water Purchase Agreement or to the Plant or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in the County of San Diego, California.

Either party may request non-binding mediation of any dispute arising under the Water Purchase Agreement. The non-requesting party may decline the request in its discretion.

Water Authority’s Temporary Step-In Rights

If (1) a ‘Notice of Grantee Event of Default’ has been given under the Ground Lease and the Water Authority reasonably determines that the underlying ‘Grantee Event of Default’ (as defined in the Ground Lease) would reasonably be expected to result in termination of the Ground Lease, or (2) the
Water Authority reasonably considers that the Company has breached any obligation under the Water Purchase Agreement, or another event has occurred, that is likely to create an immediate and serious threat to public health or safety on account of the quality or quantity of Product Water being delivered or not being delivered to the Water Authority Distribution System, then the Water Authority, acting reasonably, may either: (1) require the Company by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs including, if applicable due to breach of any Project Contract, suspension of the Project Contractor, and the Company shall use all reasonable efforts to comply with the Water Authority’s requirements as soon as reasonably practicable; or (2) If it considers, acting reasonably, there is not sufficient time, or that the Company is not likely to be willing and able to take the necessary steps, take such steps as it considers are appropriate to mitigate or rectify such state of affairs.

Company Remediable Breach Cure and Remedial Program

After the occurrence of a Company Remediable Breach and while it is continuing, the Water Authority may serve a notice on the Company specifying in reasonable detail the type and nature of the Company Remediable Breach and: (1) The Company shall remedy such Company Remediable Breach referred to in such notice (if it is continuing) within 60 days after such notice or within such longer period as is reasonably required for the Company to rectify or remedy such Company Remediable Breach as long as the Company is diligently pursuing such rectification or remedy, but in no event exceeding 180 days after such notice; or (2) If either the Water Authority (as set forth in its notice) or the Company reasonably considers that a Company Remediable Breach cannot reasonably be remedied within 60 days of such notice, the Company shall deliver to the Water Authority within 10 Business Days of such notice a reasonable program (set forth, if appropriate, in stages) for remedying the Company Remediable Breach. The program will specify in reasonable detail the manner in, and the latest date by which the Company Remediable Breach is proposed to be remedied (which date shall be no longer than the maximum cure period provided under item (1) above.

Water Authority Termination Right

If a Company Event of Default occurs, then the Water Authority may (if the Company Event of Default continues unwaived and unremedied), subject to the terms of the Collateral Agent’s Remedies Agreement, terminate the Water Purchase Agreement by notice to the Company.

Company Options Upon Water Authority Event of Default

If the relevant matter or circumstance has not been rectified or remedied by the Water Authority: (1) in the case of a Water Authority Event of Default under item (1) of the definition thereof within 10 days of such notice; or (2) in the case of a Water Authority Event of Default under item (2) of the definition thereof, within at least 60 days after the notice provided by the Company, but in no event exceeding 180 days after such notice.

The Company may serve a further notice on the Water Authority terminating the Water Purchase Agreement with immediate effect and, in the case of a Water Authority Event of Default under item (1) of the definition thereof, within 30 days of such notice, the Company also may bring an action to enforce payment of the amount due.

In the case of a Water Authority Event of Default under items (3) or (4) of the definition thereof, concurrently with, or at any time after, the delivery of the Company’s notice, the Company may serve a further notice on the Water Authority terminating the Water Purchase Agreement with immediate effect.
Water Authority Termination Rights

The Water Purchase Agreement may be terminated by the Water Authority prior to the expiration date: (1) In the event the Series 2012 Closing Date does not occur by the date that is 45 days following the Contract Date; (2) In connection with a Company Event of Default for failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date; (3) In connection with the inability of the Company to finance the reinstatement of the Plant following the occurrence of an Uninsurable Force Majeure Event; (4) In connection with the inability of the Company to finance certain costs, as described under “Change in Law Events”; (5) In connection with the inability of the Company to finance certain costs, as described under “Other Uncontrollable Circumstance”; (6) In connection with a Company Event of Default; (7) Upon the exercise by the Water Authority of any of its options to purchase the Plant as described under “Plant Assets Purchase Option During the Term”; or (8) If the Ground Lease terminates on account of the condemnation or taking by eminent domain of the whole or substantially all of the Plant site and the Plant.

Company Termination Rights

The Water Purchase Agreement may be terminated by the Company prior to the expiration date: (1) In the event the Series 2012 Closing Date does not occur by the date that is 45 days following the Contract Date; (2) In connection with an Water Authority Event of Default; or (3) In the event of a termination of the Pipeline DBA as a result of a Water Authority event of default under the Pipeline DBA.

Purchase of the Plant

The Water Authority has the option to purchase the Plant as set forth below. The Water Authority has no obligation to purchase the Plant under any circumstances.

Plant Assets Purchase Options During Term

The Water Authority shall have the option, exercisable in its discretion, to purchase the Plant at any time following the date that is 10 years following the Commercial Operation Date (“Project Assets Purchase Option During the Term”).

If the Water Authority exercises such purchase option, the Water Authority shall pay to the Company a purchase price equal to the aggregate amount, without duplication, of: (1) the aggregate principal amount of Plant Bonds and Approved Permitted Debt outstanding, together with accrued interest thereon and any applicable bond redemption premium, and any other Plant Bond and Approved Permitted Debt breakage, prepayment or other termination costs; (2) the payments owed employees and the operating service provider breakage costs; and (3) the net present value, calculated annually as of the purchase date of the Plant using a discount rate of 5%, of the annual equity return target amount for each of the Contract Years from the Contract Year in which the purchase date of the Plant occurs through the final Contract Year.

Water Authority Plant Assets Purchase Option in the Event of Financing Unavailability

The Water Authority shall have the option, exercisable in its discretion, to purchase the Plant for the same purchase price specified under “Plant Assets Purchase Options During Term” in the event financing is unavailable to pay Compensation Adjustment Event capital costs.
Plant Assets Purchase Option Upon a Company Event of Default

The Water Authority shall have the option, exercisable in its discretion, to purchase the Plant upon a Company Event of Default for a purchase price equal to (1) the aggregate principal amount of Plant Bonds and Approved Permitted Debt outstanding as of the termination date, together with any accrued interest thereon, minus (2) an amount equal to all amounts on deposit in the funds and accounts held under the Collateral Trust Agreement or the Plant Indenture for the benefit of the holders of the Plant Bonds and Approved Permitted Debt on the Plant purchase date (except amounts held in the Plant Contractor Security Account to the extent that such amounts are required to be held in escrow under applicable law).

Plant Assets Purchase Option at the Expiration Date

The Water Authority shall have the option, exercisable in its discretion, to purchase the Plant on the expiration date for a purchase price equal to one dollar (“Project Assets Purchase Option on the Expiration Date”).

Limitation on Assignment by Company

The Company shall not assign, transfer or otherwise dispose of any interest in the Water Purchase Agreement or a Project Contract except: (1) As security (in accordance with the Collateral Agent’s Remedies Agreement or otherwise substantially in a form approved by the Water Authority, acting reasonably) for any loan made to the Company under the Plant financing agreements; (2) In connection with the exercise of rights of the Collateral Agent under the Collateral Agent’s Remedies Agreement; or (3) Otherwise: (a) prior to the day that is two years after the Commercial Operation Date (the “Transfer Restriction Date”), with the prior written consent of the Water Authority, which may be given or withheld in the Water Authority’s discretion; and (b) after the Transfer Restriction Date, with the prior written consent of the Water Authority, which will not be unreasonably withheld or delayed; provided that in the case of an assignment under subsections (2) or (3) above, the assignee assumes all the obligations of the Company under the Water Purchase Agreement.

Limitations on Change in Control

No Change in Control of the Company shall be permitted (whether by the Company or otherwise) to occur except: (1) In connection with the exercise of rights of the Collateral Agent under the Collateral Agent’s Remedies Agreement; (2) Arising from any bona fide open market transaction in any shares or other securities of the Company or of any affiliate of a shareholder of the Company effected on a recognized public stock exchange; (3) Any assignment, sale or transfer of any direct or indirect legal, beneficial or equitable interest in any shares, shares of the Company or equity of the Company (or of any person who directly or indirectly owns shares or equity in the Company) to Stonepeak Partners Infrastructure Fund LP or any of its affiliates and any subsequent assignment, sale or transfer by Stonepeak Partners Infrastructure Fund LP, any of its affiliates or any subsequent assignee, purchaser or transferee of part or all of any such transferred interest; or (4) Otherwise: (a) prior to the Transfer Restriction Date, with the prior written consent of the Water Authority, which may be given or withheld in the Water Authority’s discretion; and (b) after the Transfer Restriction Date, with the prior written consent of the Water Authority, which will not be unreasonably withheld or delayed.

In determining whether to give its consent to any Change in Control pursuant to item (4)(b) above, the Water Authority shall take into consideration the following factors: (1) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective affiliates; (2) the backgrounds and reputations of the parties involved in the transaction; and (3) the impact of the transaction on the Company's operations and financial condition.
of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors, and employers and each of their respective affiliates (including the absence of criminal, civil, or regulatory claims or actions against any such person and the quality of any such person’s past or present performance on the other projects); (3) compliance with the Water Authority’s conflict of interest requirements; and (4) the ability of the Company to meet its obligations under the Water Purchase Agreement after the transfer.

**Limitation on Assignment by the Water Authority**

The Water Authority shall not assign, transfer or otherwise dispose of any interest in the Water Purchase Agreement except to another governmental body which assumes, and is legally capable of discharging, all the obligations of the Water Authority under the Water Purchase Agreement without the prior written consent of the Company, which may be given or withheld in the Company’s discretion.

**Company’s Obligation to Indemnify**

The Company shall indemnify and keep elected officials, members, appointed officers, employees, representatives, agents and contractors of the Water Authority (each a “Water Authority Indemnitee”) indemnified at all times from and against all loss-and-expense that any Water Authority Indemnitee may sustain in connection with any loss of or physical damage to property or assets of any Water Authority Indemnitee, or any claim made by one or more third parties (including for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any Water Authority Indemnitee, arising by reason of any (except to the extent caused by Water Authority fault): (1) Breach of any representation or warranty by the Company under the Water Purchase Agreement; (2) Negligent act or omission of the Company; (3) Willful misconduct of the Company; (4) Non-compliance by the Company with any of the provisions of the Water Purchase Agreement or any document, instrument or agreement delivered to the Water Authority as required under the Water Purchase Agreement; (5) Release of hazardous substances by the Company; (6) Breach by the Company of, or non-compliance by the Company with, any governmental approval or applicable law, or the failure of the Company to obtain all necessary governmental approvals in accordance with the Water Purchase Agreement; or (7) Legal proceeding brought by a third party prior to the date that is one year following the Contract Date seeking to prevent construction or operation of the Plant (including legal proceedings relating to environmental reviews and governmental approvals), other than legal proceedings relating to the power of the Water Authority to enter into the Water Purchase Agreement or the proceedings of the Water Authority conducted in connection with.

**Covenant Against Sale of the Plant**

The Company shall not sell, lease, assign, convey, move or otherwise transfer its ownership interest in the Plant or the Plant site without the consent of the Water Authority given in its discretion, except in connection with an assignment of the Water Purchase Agreement as described under “Limitation on Assignment by Company”.

**Covenant Not to Construct a Separate, Stand-Alone Seawater Desalination Facility**

The Company covenants that neither the Company nor any affiliate shall own, develop, finance or lease a seawater desalination facility in San Diego County that is separate and stand-alone from the Plant, whether on or off the Plant site without the Water Authority’s consent, given at its discretion.
No Other Business

The Company shall not engage in any business or activity other than the business or activities conducted for the purposes of the Plant or its performance under the Pipeline DBA, or otherwise expressly permitted under the Water Purchase Agreement. The Company shall not treat water other than raw seawater, and shall not use the Plant for any purpose other than the purposes contemplated hereby or to serve or benefit any person other than the Water Authority. The Company shall not deliver Product Water to any person other than the Water Authority, and shall not impose a fee or charge on any person other than the Water Authority for the supply of Product Water.

SUMMARY OF CERTAIN PROVISIONS OF CAM NO. 001

Prior to the Financial Closing Date, Cabrillo informed the Company of the potential for additional Project and Plant site development modifications which may be agreed to by the Company to accommodate Cabrillo’s plans for development of adjacent and adjoining property. The Company assured Cabrillo of its commitment to cooperate with Cabrillo in this regard.

The Company acknowledges that, under the Water Purchase Agreement, and particularly as described under “Cabrillo Risk”, the Company bears all compensation, schedule, and performance risks relating to the performance of any of its assurances to the Cabrillo entities described in the paragraph above. The Company acknowledges that it bears all cost risk with respect to preforming its obligations under the Cabrillo site lease, and any additional obligations under the paragraph above. Such additional obligations may entail making modifications to the Design Requirements. Such modifications shall neither constitute an Uncontrollable Circumstance nor a Compensation Adjustment Event. There shall be no adjustment to the Unit Price, direct payments or any other compensation by the Water Authority for any such modification.

The Company represents that the Ground Lease is in full force and effect and no fact, condition or circumstance exists which would give rise to a right of Cabrillo to terminate the Ground Lease. The Company will take all steps necessary to maintain the Ground Lease in full force and effect.

SUMMARY OF CERTAIN PROVISIONS OF CAM NO. 002

The Contract Date occurred on December 20, 2012.

The Financial Closing Date occurred on December 24, 2012.

SUMMARY OF CERTAIN PROVISIONS OF CAM NO. 003 AND WATER PURCHASE AGREEMENT AMENDMENT NO. 001

The parties agree to amend the requirements for the Water Authority interface monitoring equipment system design criteria.
SUMMARY OF CERTAIN PROVISIONS OF CAM NO. 004 AND WATER PURCHASE AGREEMENT AMENDMENT NO. 002

The parties agree to amend the requirements for the Water Authority interface monitoring equipment system design criteria.

Definitions

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

Monthly Unexcused Supply Shortfall Units means, for any Billing Period, Monthly Shortfall Units (if any), other than Monthly Unscheduled Outage Units, that result from (1) the Company’s failure to deliver Product Water in volumes up to the Adjusted Monthly Supply Commitment for such Billing Period, to the extent such failure is not caused by Uncontrollable Circumstances or Product Water Supply Relief Event, and (2) during the Product Water Pipeline Improvements warranty period, any Product Water that (a) is delivered to the Product Water delivery point, but is thereafter not received at the Twin Oaks water treatment plant clearwell due to water losses in the Product Water Pipeline Improvements to the extent that such losses are caused by the failure of the Product Water Pipeline Improvements to comply with the warranty applicable thereto under the Pipeline DBA, or (b) is not delivered to the Product Water delivery point on account of the inability of the Water Authority to receive Product Water due to the failure of the Product Water Pipeline Improvements to comply with such warranty, and (3) during the Plant Primary Warranty Period or Plant Secondary Warranty Period, is not delivered due to failure of the Plant to comply with the warranty applicable under the Plant EPC Contract.

Plant Primary Warranty Period has the meaning set forth in the Plant EPC Contract and the Pipeline EPC Contract.

Plant Secondary Warranty Period has the meaning set forth in the Plant EPC Contract and the Pipeline EPC Contract.

Product Water Supply Relief Event means planned shutdowns for the sole purpose of Plant warranty inspections and repairs during the Primary Warranty Period and the Secondary Warranty Period.

Downtime for Planned Warranty Inspections and Repairs

To the extent practicable, the Company shall limit Plant shutdowns for warranty inspections and repairs to 240 hours per Contract Year, and schedule such shutdowns in advance with the Water Authority. Plant warrant inspection and repairs exceeding 240 hours in any Contract Year shall be subject to the Water Authority’s approval (which shall not be unreasonably withheld).

Product Water Not Delivered or Received Due to Certain Uncontrollable Circumstances; Extension of Term

If (1) an Uncontrollable Circumstance or a Product Water Supply Relief Event limits or precludes the Company from producing and delivering, or (2) (x) there is a formal declaration by the general manager or the board of directors of the Water Authority, based on an emergency condition occurring within the Water Authority Distribution System, closing all or any portion of the Water Authority Distribution System required to be open for receiving Product Water under sound municipal water utility
operating practices and (y) the Pipeline Improvements are removed from service during the warranty period under the Pipeline DBA for purposes of making inspections and repairs pursuant to the warranty provided under the Pipeline DBA, precludes the Water Authority from taking and receiving Product Water, the volume of Product Water not delivered or received on account thereof shall be produced and delivered by the Company and taken and purchased by the Water Authority subsequent to such occurrence, based on the production capacity of the Plant, at a price per Unit equal to the sum of the Fixed Unit Price and the Variable Unit Price prevailing at the time of subsequent purchase or shall be deemed to be produced and delivered. The schedule for such subsequent deliveries, receipts and purchases shall be negotiated by the parties in developing and modifying the Projected Annual Delivery Schedules.

The Term shall be extended for a period not to exceed three years after the originally scheduled expiration date as and to the extent required to allow for all such subsequent purchases not completed as of the original expiration date, as such subsequent purchases are reflected in the balance of Units in the Excused Supply Shortfall Unit Tracking Account and the Excused Demand Shortfall Unit Tracking Account as of such unextended expiration date.

Flow Rate Limitations

Operating Mode Change Performance Test

The Company shall perform an operating mode change performance test to demonstrate the Plant’s capability to produce Product Water during and after operating mode changes (the “Operating Mode Change Performance Test”). The Company shall conduct the Operating Mode Change Performance Test prior to the end of the first quarter of the first full Contract Year immediately following the Commercial Operation Date, and in case of failure may be re-performed repeatedly until the Operating Mode Change Performance Test is successfully completed. During the Operating Mode Change Performance Test and any repeated test, the Product Water Quality Guarantee, the other Performance Guarantees, and the Water Authority’s rights and remedies with respect to any non-compliance therewith (including rights and remedies with respect to the delivery of Off-Specification Product Water and Unacceptable Product Water) shall apply. If the Company fails to successfully complete the Operating Mode Change Performance Test prior to the end of the first quarter of the first full Contract Year immediately following the Commercial Operation Date, all water produced during any subsequent operating mode change will be deemed either Off-Specification Product Water or Unacceptable Water until the Company passes the Operating Mode Change Performance Test. The Water Authority may exercise any of its rights and remedies available upon the delivery of Off-Specification Product Water. Such rights and remedies include those described under “Water Authority Remedies for Non-Compliance With Performance Guarantees”, including the right to require the Company to make necessary capital improvements, modifications, repairs and replacements at the cost and expense of the Company. The Company shall have the right to conduct the Operating Mode Change Performance Test as often as necessary to achieve passage.

SUMMARY OF CERTAIN PROVISIONS OF CAM NO. 005

Closure of the Power Station and the Adoption of the Ocean Plan Amendment

The intake facilities for the Plant are currently permitted and configured to draw the Plant’s seawater supply off of the existing Power Station once-through cooling water system. With the State Water Resources Control Board’s once-through cooling policy, adopted in 2010, effectively phasing out once-through cooling for power plants, this intake configuration was always viewed with the understanding that the Power Station would ultimately shut down. The Company was notified of the impending planned shutdown and decommissioning of the Power Station. Since the existing intake
configuration and regulatory approvals for the Plant are predicated on operation of the power plant and its associated cooling water flows, the transition to a “stand-alone” operation of the desalination plant will require permit modifications and upgrades to the raw seawater intake system to be completed prior to the decommissioning of the Power Station. Beyond the intake and discharge system modifications that are required due to Power Station’s shutdown in order to transition to stand-alone operation of the Plant, additional intake and discharge system improvements will be required in order to comply with the Ocean Plan Amendment adopted by the State Water Resources Control Board in May 2015 that applies to the Plant’s desalination intakes and discharges (the “Ocean Plan Amendment”).

Uncontrollable Circumstances and Impact under the Water Purchase Agreement

Both the closure of the Power Station and the adoption of the Ocean Plan Amendment are Uncontrollable Circumstances under the Water Purchase Agreement and will result in increasing the Water Authority’s costs. To address the effects of these Uncontrollable Circumstances, modifications need to be made to the Plant. The Water Authority’s responsibility to pay for such modifications are only triggered once they have been accepted. The Water Purchase Agreement anticipated the closure of the Power Station and characterizes the event as a Change in Law Event, but with Water Authority’s cost liability capped. The adoption of the Ocean Plan Amendment is a Change in Law Event which will materially increase the Company’s costs of performing its obligations under the Water Purchase Agreement, and therefore also an Uncontrollable Circumstance. As a result, the Water Authority will be required to pay, through adjustments to the Unit Price, for the capital and operating costs related to the intake and discharge system modifications needed because of the closure of the Power Station and the adoption of the Ocean Plan Amendment (the “Modifications”).

Schedule Overview

The CAM sets forth the current expected schedule detailing each major milestone in financing, permitting, designing, and constructing the Modifications. This schedule will be updated as the parties learn of information or events which impact any of the listed activities.

Definition of Modifications

The CAM sets forth a preliminary scope of work, estimated costs for the Modifications, and allocation of such costs provided by the Company. Based on information provided by Company prior to the execution of the second Contract Administration Memorandum and supplement to the Water Purchase Agreement, the parties shall agree upon: (i) which elements of the Modifications would have been required if the Ocean Plan Amendment had not been adopted (the “Closure Modifications”) and which elements are required as a result of adoption of the Ocean Plan Amendment (the “Compliance Modifications”); and (ii) the respective permitting, engineering, procurement, design, construction, operating, and electricity costs of the respective elements, such that all costs are allocated or prorated into one or the other category. This determination shall be the basis for the bond sizing and adjustments to Unit Price.

Risk Allocation

The risks between the Company and the Water Authority will be allocated in a manner consistent with that outlined in the Water Purchase Agreement for the Project. As was the case for the Plant, the Company will be responsible for the design, construction, financing, and operation of the Modifications, while the Water Authority shall be responsible for making payments upon acceptance of the Modifications, in each case subject to the applicable provisions of the Water Purchase Agreement. The parties agree that the Company will be compensated for constructing the Modifications through
adjustments to the Capital Charge which will reflect a firm fixed design-build price and a firm fixed construction completion date.

The parties agree that the risk allocation between the Company and the design-build subcontractor selected by the Company is of material concern to the parties. The Company shall use reasonable efforts to maximize the extent to which construction and acceptance risks related to the Modifications are passed through to the design-build contractor pursuant to the design-build subcontract.

Based on: (x) information that will be provided by the Company following receipt of design/engineering/construction proposals and prior to bond issuance, and (y) the Company’s right to compensation relief under the Water Purchase Agreement, the parties shall agree upon: (i) capital costs eligible for recovery; (ii) operation and maintenance costs eligible for recovery; (iii) the allocation of the construction costs, including the firm fixed design-build price and direct out-of-pocket costs of design and permitting the Modifications into costs related to the closure of the Power Station (“Closure Costs”), and costs related to the adoption of the Ocean Plan Amendment (“Compliance Costs”); and (iv) the Company’s administrative, overhead, management, and risk-related costs. Once determined, the Company shall bear the responsibility for any actual costs that exceed Closure Costs or Compliance Costs.

The Company will use all reasonable efforts to ensure that the owner of the Power Station (“NRG”) will operate the NRG Pumps until the Modifications have been accepted and are commercially operational. The Water Authority will reasonably cooperate with the Company in such efforts.

**Procurement of Subcontractors**

The Company has the obligation to undertake a competitive procurement for all subcontractors retained by the Company. The Water Authority shall have the right to review any competitive procurement-related documents prepared by the Company prior to release, and to reasonably approve the selection of all subcontractors retained by the Company.

**Financing**

The Company will bear all responsibility for raising funds to finance the cost of constructing the Modifications. The Company will give the Water Authority and its financial advisors the opportunity to be substantially involved in all matters pertaining to the development and execution of the financing plan, including direct participation in, and review of, the structuring, maturities, interest rates and pricing of the financing.

**Construction and Acceptance Testing**

The parties do not know the extent to which the Plant will need to be shut down during the Modifications construction work. The parties shall work together to create and implement a shutdown schedule for the Modifications shutdowns. To the extent that the shutdown schedule permits the Modifications shutdowns to exceed or to occur at a different time than Scheduled Shutdown Hours, Product Water undelivered due to a Modifications shutdown will be considered Monthly Excused Supply Shortfall Units. Undelivered Product Water resulting from a Modifications shutdown not excused by the shutdown schedule or by an Uncontrollable Circumstance will be characterized as either Monthly Unexcused Supply Shortfall Units or Monthly Unscheduled Outage Units. The Company will use reasonable efforts to mitigate the amount of undelivered Product Water due to a Modifications shutdown.
Operation and Maintenance

The parties agree to meet and discuss any adjustments that will need to be made to any of the Performance Guarantees, operational requirements, or maintenance requirements set forth in the Water Purchase Agreement.

The parties acknowledge that the operating protocol does not currently address events such as the Modifications construction work or a Modifications shutdown. The parties agree that they will update the operating protocol to: (i) address appropriate coordination and communication necessary to efficiently and effectively manage flow rate changes resulting from a Modifications shutdown; and (ii) require the Company to receive written consent from the Water Authority prior to restarting the Plant after a Modifications shutdown.

Adjustments to Unit Price

The adjustments to the Unit Price associated with the Modifications shall comprise of (i) adjustments to the Debt Service Charge and Equity Return Charge (together, the “Capital Charge Adjustments”), and (ii) adjustments to the operating charge and electricity charge (together, the “Operating and Electricity Charge Adjustments”). Each of the Capital Charge Adjustments and Operating and Electricity Charge Adjustments are subject to caps. Similar to the approach taken when originally financing the Plant, the Water Authority shall be responsible for producing quantitative schedules supporting computation of adjustments to the Unit Price for review and approval by the parties. The parties agree that neither the Capital Charge Adjustments nor the Operating and Electricity Charge Adjustments shall be owed and payable by the Water Authority until the Modifications have passed the Modifications acceptance test and have commenced commercial operation in full accordance with Applicable Law.

SUMMARY OF CERTAIN PROVISIONS OF CAM NO. 006

Pretreatment Filter Backwash Recycling System Performance Test Requirements

While not necessary for typical routing operation of the Plant, backwash clarifies currently do not meet certain Applicable Law requirements. The Performance Test requires the clarifier decant flow to be recycled to the headworks of the Plant. The Company and the Water Authority agree to allow the EPC Contractor additional time to demonstrate the recycling capabilities of the backwash treatment system subject to certain terms and conditions, including: (1) The EPC Contractor agrees, at its expense, to design, install, and demonstrate the capabilities of the clarifiers and any addition equipment (the “Modified Backwash Treatment System”) required to demonstrate compliance with the Performance Test in accordance with Applicable Law governing recycling of clarified backwash water. (2) The Company shall retain $4.5 million, which is the Company’s estimate of 150% of the estimated cost of pilot testing, design, procurement, installation, and verification of the Modified Backwash Treatment System, including any anticipated costs reasonably incurred by the Company and the Water Authority in reviewing and approving the design, installation and verification of the Modified Backwash Treatment System (the “Backwash Retainage”). The Backwash Retainage shall be released after the EPC Contractor successfully completes the testing requirements for the Modified Backwash Treatment System in accordance with the Performance Test and receipt of the written confirmation from the operator that it will maintain, repair and replace the Modified Backwash Treatment System in accordance with the O&M Agreement. (3) The EPC Contract shall design, procure, install, and commission the Modified Backwash Treatment System on or before April 28, 2017 consistent with the Plant EPC Contract. After this date, the EPC Contractor shall be ready to demonstrate the capabilities of the Modified Backwash Treatment System consistent with the Performance Test. The EPC Contractor shall complete any installation and
testing that requires a partial or complete Plant shutdown scheduled for the period beginning February 18 and ending February 24, 2017. (4) The EPC Contractor shall test and demonstrate the capabilities of the Modified Backwash Treatment System consistent with the requirements of the Performance Test.

SUMMARY OF CERTAIN PROVISIONS OF CAM NO. 007 AND WATER PURCHASE AGREEMENT AMENDMENT NO. 003

Project Completion

The Company shall achieve Project Completion on or before October 1, 2017.

Performance Test

The EPC Contractor shall complete the demonstration of the capabilities of the recycling capabilities of the backwash treatment system in accordance with this section no later than September 15, 2017.

SUMMARY OF CERTAIN PROVISIONS OF CAM NO. 008

Decrease in Operating Period Shortfall Payment Unit Price Due to Deemed Pipeline Bond Redemptions

In accordance with the Pipeline Indenture, $2.6 million has been transferred from the Pipeline Indenture’s Construction Account to the Revenue Fund. The Water Purchase Agreement deems this transfer to have been used to redeem Pipeline Bonds. The resulting deemed reduction in Pipeline Bond debt service reduces the Operating Period Shortfall Payment Unit Price as set forth in the following updated Table 1.3 to Appendix 10 of the Water Purchase Agreement.
### Table 1.3

**Operating Period Shortfall Payment Unit Price**

<table>
<thead>
<tr>
<th>Contract Year Ending</th>
<th>Pipeline Bond Principal ($s)</th>
<th>Pipeline Bond Net Interest ($s)</th>
<th>Net Deposits to DSRF (M$)</th>
<th>Annual Pipeline Bond Costs ($s)</th>
<th>Minimum Annual Demand Commitment (AF)</th>
<th>Annual Operating Period Shortfall Pmt Unit Price ($/AF)</th>
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<tr>
<td>6/30/2016</td>
<td>6,081,152.43</td>
<td>67,320.35</td>
<td>-</td>
<td>10,064,482.28</td>
<td>48,000.00</td>
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<td>6/30/2017</td>
<td>9,997,161.93</td>
<td>-</td>
<td>40,339.87</td>
<td>6,121,492.30</td>
<td>29,200.00</td>
<td>209.68</td>
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<td>6/30/2018</td>
<td>-</td>
<td>10,677,210.28</td>
<td>57652804.2</td>
<td>18,685,000.00</td>
<td>7,825,000.00</td>
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</tr>
<tr>
<td>6/30/2019</td>
<td>9,866,661.93</td>
<td>81,728.44</td>
<td>90,358.93</td>
<td>10,251,890.37</td>
<td>48,000.00</td>
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<td>6/30/2020</td>
<td>9,861,598.48</td>
<td>72,496.65</td>
<td>11,119,376.7</td>
<td>48,000.00</td>
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<td>6/30/2021</td>
<td>9,831,817.70</td>
<td>74,309.07</td>
<td>11,198,405.4</td>
<td>48,000.00</td>
<td>237.47</td>
<td>243.46</td>
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<td>6/30/2022</td>
<td>9,780,587.88</td>
<td>76,166.80</td>
<td>11,398,754.6</td>
<td>48,000.00</td>
<td>255.89</td>
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<td>6/30/2023</td>
<td>9,713,047.68</td>
<td>78,070.97</td>
<td>11,685,868.4</td>
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<td>266.04</td>
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<td>6/30/2024</td>
<td>9,628,132.70</td>
<td>80,022.74</td>
<td>11,984,405.4</td>
<td>48,000.00</td>
<td>273.47</td>
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<td>6/30/2025</td>
<td>9,524,532.58</td>
<td>82,023.31</td>
<td>12,282,805.8</td>
<td>48,000.00</td>
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<td>6/30/2026</td>
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<td>84,073.89</td>
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<td>48,000.00</td>
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<td>6/30/2027</td>
<td>9,256,106.93</td>
<td>86,175.74</td>
<td>12,922,286.6</td>
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<td>6/30/2028</td>
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<td>6/30/2031</td>
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<td>6/30/2032</td>
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<td>6/30/2034</td>
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<td>102,435.87</td>
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<td>48,000.00</td>
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<td>6/30/2036</td>
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<td>107,621.69</td>
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<td>6/30/2037</td>
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<td>110,312.23</td>
<td>16,194,617.48</td>
<td>48,000.00</td>
<td>412.97</td>
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<td>6/30/2038</td>
<td>5,825,805.25</td>
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<td>15,926,375.29</td>
<td>48,000.00</td>
<td>423.60</td>
<td>427.19</td>
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</tbody>
</table>

Any Extension Term: 427.19

*Note: This Table 1.3 sets forth the Operating Period Shortfall Payment Unit Price in accordance with the term so defined in Section 1.1 (Definitions). This table may be revised: (i) if any Pipeline Bond proceeds are transferred from the Construction Account to the Revenue Fund pursuant to Section 603(e) of the Pipeline Indenture, as further described in subsection 6.2(C) (Decrease in the Operating Period Shortfall Payment Unit Price Due to Certain Pipeline Bond Redemptions), or (ii) based on the results of the Performance Test in accordance with subsection 9.4(C) (Decrease to the Fixed Unit Price and the Annual Operating Period Shortfall Payment Unit Price).*

**Waiver of Product Water Pipeline Completion Deadline**

There was a delay in the completion of the Product Water Pipeline, and the Company did not comply with the time limit set forth in the Pipeline DBA. The Water Authority hereby waives the...
NOTE – TO BE UPDATED: The parties expect to enter into CAM No. 009 and amendment No. 004 prior to the issuance of the Series 2019 Pipeline Bonds and the following draft description is subject to change.

SUMMARY OF CERTAIN PROVISIONS OF CAM NO. [009] AND WATER PURCHASE AGREEMENT AMENDMENT NO. [004]

Establishment of a New Plant Completion Deadline

There has been delay in demonstrating the capabilities of the Modified Backwash Treatment System and achieving Project Completion of the Plant in accordance with Water Purchase Agreement Amendment No. 3. The Water Authority hereby waives the requirements that (i) the Modified Backwash Treatment System demonstrate that it meets the criteria set forth in the Water Purchase Agreement by no later than September 15, 2017, and (ii) the Plant achieve Project Completion on or before October 1, 2017.

The Company shall achieve Project Completion on or before December 31, 2019.

The Company shall complete the demonstration of the recycling capabilities of the backwash treatment system in accordance with the Performance Test no later than December 15, 2019.

Milestone Schedule in CAM No. 5

There have been delays under the schedule set forth in CAM No. 5 because of ongoing discussions with the San Diego Regional Water Quality Control Board regarding whether the proposed design of the intake and discharge modifications comply with the Ocean Plan Amendment. The parties agree that the schedule set forth in CAM No. 5 shall no longer apply and that they will cooperate to update this attachment, along with other portions of CAM No. 5, once a new National Pollutant Discharge Elimination System Permit for the Project is issued.

NOTE – TO BE UPDATED: The parties expect to enter into CAM No. 010 and amendment No. 005 prior to or upon the issuance of the Series 2019 Pipeline Bonds and the following draft description is subject to change.

SUMMARY OF CERTAIN PROVISIONS OF CAM NO. [010] AND WATER PURCHASE AGREEMENT AMENDMENT NO. [005]

Decrease in the Operating Period Shortfall Payment Unit Due to Pipeline Bond Refunding

After the [Existing Pipeline Bonds] are refunded, Operating Period Shortfall Payments will be calculated in reference to the costs related to the [New Pipeline Bonds]. As a result, Table 1.3 of Appendix 10 of the WPA will need to be revised to reflect the new, reduced Operation Period Shortfall Payments.

Company’s Expenses Related to the Pipeline Bond Refunding
The Company shall be responsible for all of its costs, including for third party professional services, in connection with the Pipeline Bond refunding. Such Company expenses shall include, but not be limited to, internal staff time and expenses of legal counsel.

Definitions

Additional Pipeline Bonds means one or more series of additional bonds issued, executed, authenticated and delivered under the Pipeline Indenture or pursuant to a trust indenture by and between the CPCFA and the Pipeline Trustee. ‘Additional Pipeline Bonds’ include bonds issued to refund some or all of the then-outstanding Pipeline Bonds.

Operating Period Shortfall Payment Unit Price means the price per Monthly Operating Period Shortfall Payment Unit set forth in the Water Purchase Agreement, adjusted if and to the extent required by the Water Purchase Agreement for (1) a decrease in the Operating Period Shortfall Payment Unit Price due to certain Pipeline Bond redemptions, (2) a decrease in the Maximum Annual Supply Commitment based on the Performance Test and the Water Authority exercises its right to reduce the Minimum Annual Demand Commitment, or (3) due to issuance of Additional Pipeline Bonds.

Adjustments to the Operating Period Shortfall Payment Unit Price Due to the Issuance of Additional Pipeline Bonds

Upon the issuance of any Additional Pipeline Bonds, the calculation of the Operating Period Shortfall Unit Price, shall be updated to reflect such issuance. The parties shall document the revised Operating Period Shortfall Unit Price in a Contract Administration Memorandum.

Issuance of Additional Pipeline Bonds

Subject to the terms and conditions of the Pipeline Indenture (including the requirements to obtain the Company’s consent prior to the issuance of Additional Pipeline Bonds that would increase the amounts that could become payable as Operating Period Shortfall Payments), the Water Authority may issue Additional Pipeline Bonds from time to time. The Company shall provide reasonable assistance to the Water Authority in connection with the issuance of Additional Pipeline Bonds, including providing the Water Authority with existing relevant data regarding the Project and the Company. The Company shall not take any action which seeks to cause the delay of an issuance of Additional Pipeline Bonds.]
APPENDIX H

Summary of Certain Provisions of the Plant Engineering, Procurement and Construction Services Agreement
Summary of Certain Provisions of the Operation, Maintenance, Repair and Replacement Agreement
Summary of Certain Provisions of the Ground Lease
I. SUMMARY OF CERTAIN PROVISIONS OF THE PLANT ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT

The following summarizes certain provisions of the Desalination Facility Engineering, Procurement and Construction Services Agreement (the “Plant EPC Contract”), dated as of December 20, 2012 (the “Effective Date”), as amended through [_______________, 2019] by and between Poseidon Resources (Channelside) LP (the “Company”) and Kiewit Shea Desalination, a joint venture of Kiewit Infrastructure West Co. (“Kiewit”) and J.F. Shea Construction, Inc. (“Shea”) and collectively (the “EPC Contractor”).

Definitions

Any capitalized term used in this summary and not defined below is defined in Appendix A, Summary of Certain Definitions.

EPC Contractor’s Scope of Work

Subject to the terms of the Plant EPC Contract, EPC Contractor is to perform all acts or actions required or necessary in connection with the design, engineering and procurement of materials and equipment and the packing, transportation, assembly, installation, construction, start-up, warranting, testing and guaranteeing of the Plant (“Work”). The Work includes the following: designing the Plant; materials, equipment and systems procurement; performing and arranging for the supply, transport, delivery, installation, testing, erection and warranty of the materials, equipment and systems; designing, constructing, installing and erecting the Plant in conformance with applicable laws; obtaining and maintaining all applicable permits designated as EPC Contractor’s responsibility under the Plant EPC Contract; provision of required spares; through Provisional Acceptance, assisting the Company in obtaining and maintaining all applicable permits that the Company must obtain under the Plant EPC Contract; start-up and testing of the Plant; providing the Company with all drawings, records, manuals, registers and written procedures required to operate and maintain the Plant and training of the Company’s operational staff via classroom and hands-on sessions pursuant to the terms hereof; and other acts as may be necessary to provide the Company with a fully operational Plant which meets or exceeds the Guaranteed Performance Levels during the Performance Test and otherwise satisfies the conditions in the Plant EPC Contract. EPC Contractor’s obligations and areas of responsibilities include:

- Engineering, Design, Construction and Construction Management
- Procurement
- Standard of Performance Criteria
- Nondiscrimination
- Permitting
- Utilities
- Personnel Training
- Clean-Up and Waste Disposal
- Project Schedule, Critical Path Method Schedule and Progress Reports
- Taxes
- Protection of Property
Compensation and Payment

As full compensation for the Work, the Company agreed to pay EPC Contractor $429,856,000 (the “Plant Contract Price”) in monthly installments as the Work progresses, based on completion of specified tasks related to the design, start-up an commissioning and general construction of the Plant, as well as installation and testing of individual Plant components (the intake pump station, pretreatment filter area, reverse osmosis facility, etc.), plus equitable adjustments for changes in the Project schedule agreed by the parties, scope changes approved or implemented in accordance with the Plant EPC Contract, and post-Effective Date changes in applicable laws that change EPC Contractor’s tax costs (reduced to reflect an equitable portion of the effect of lower taxes on EPC Contractor as a result of the change in law) which aggregated $[______].

[The Company has retained $4.5 million of the amounts invoiced by EPC Contractor as retainage to secure performance of EPC interest obligations for the upgrade of the Plant's backwash treatment system.] The Company may also deduct costs resulting from EPC Contractor’s material breach of the Plant EPC Contract from any amounts owed, and may set off from its payments, and/or apply retainage against, amounts due from EPC Contractor to the Company.

Liens

Within 15 days of final payment to EPC Contractor or to any subcontractor from whom EPC Contractor obtains lien waivers, EPC Contractor must either deliver to the Company a copy of a final unconditional waiver and release or post security to fully indemnify the Company from any loss from claims of such subcontractors.

Security

The Plant EPC Contract required EPC Contractor to post a construction performance bond (“Performance Bond”) and a payment bond (“Payment Bond”) covering the Work as required under the Plant EPC Contract. The Performance Bond must be in an amount equal to the Liability Limit which, as adjusted after Provisional Acceptance, equals $220 million, less damages incurred and paid by EPC Contractor under the Pipeline EPC Contract in excess of $29,382,000) and covers EPC Contractor’s obligations under the Plant EPC Contract through Project Completion, as well as EPC Contractor’s warranty obligations. The Collateral Agent is a co-obligee on the Performance Bond and has agreed not to make, and to waive any ability to make, a claim on the Performance Bond for damages in excess of the Liability Limit. The Company has agreed to indemnify EPC Contractor for claims by such co-obligee on the Performance Bond in excess of the Liability Limit. The Payment Bond must be in an amount equal to the Plant Contract Price. EPC Contractor is also required to deliver a $7 million performance bond (the “Restoration Bond”) to Cabrillo covering EPC Contractor’s obligations to restore the Plant Site after a
termination for EPC Contractor’s default and a parent guaranty of EPC Contractor’s obligations from Kiewit Infrastructure Co. (“Guarantor”).

**Commissioning and Plant Mechanical Completion**

“Plant Mechanical Completion” means when, except for punch list items that do not affect the performance or operation of the Plant, such as painting, landscaping and so forth, (a) all pipelines (excluding the Pipeline), facilities, materials and equipment for the Plant have been installed in accordance with the requirements of the technical scope of services set forth in the scope book for the Plant EPC Contract, and inspected and approved for alignment, lubrication, rotation, vibration, leakage, noise, and hydrostatic and pneumatic pressure integrity; (b) all systems required to be installed by EPC Contractor have been installed and tested; (c) the Plant has been flushed and cleaned out as necessary and as required by CDPH to enable start-up and operation; (d) all the equipment and systems can be operated in a safe and prudent manner and have been installed in a manner that does not void any subcontractor or vendor warranties; (e) the Plant is ready to commence start-up, Performance Testing, and operations in accordance with the Plant EPC Contract’s standards of performance; and (f) an initial punch list is established and mutually agreed upon by Owner and Contractor. Appendix 6.1 of the Plant EPC Contract sets out the following requirements that must be met in order for the Plant to achieve Plant Mechanical Completion:

Demonstrate that all key Plant equipment, processes and systems, subsystems and the Plant as a whole function in accordance with the scope book, specifications, subcontractor warranty conditions and applicable laws, permits and standards, including:

- All pumps operate through their specified design range and are verified for proper rotation, speed, flow rate, pressure and design point;

- Plant systems and sub-systems meet the Plant EPC Contract’s performance standards and are installed as designed;

- All required automatic, manual and remote-control features are provided and operable;

- All required valves, water quality sensors and analyzers, pressure and flow sensors, liquid level sensors, indicators, alarms, leak detectors, monitors, controls, field devices and panel devices are provided, correctly calibrated and operable over their full range;

- All required inlet, outlet, sensor taps and drain connections are included and operable;

- All required liquid dosing metering pumps, accessories, appurtenances, and injection systems are provided, installed and operable over the full operational range for each chemical;

- Software and hardware operational interlocks and startup, shutdown, control loop functions and proper sequencing within all programmable logic controllers, HMIs, SCADA and other control locations are fully functional.
All equipment manufacturers’ equipment warranty, start-up and operating instructions draft standard operating procedures for system and subsystem start-up, operating and shutdown are available on-site; and

A complete Plant start-up and shutdown cycle has been demonstrated.

Demonstrate that the Plant is ready for start-up and commissioning and submit documentation allowing the Company to confirm that start-up readiness verification has been completed; and

Perform dry and wet commissioning of the Plant; and

Provide the Company with a Plant Mechanical Completion Procedure Report with test results and documentation.

Plant Mechanical Completion was achieved on [__________] following notice by EPC Contractor to the Company, the Water Authority and the financing parties’ engineer and the Company’s review and approval of the EPC Contractor’s punch list of items of Work to be performed or corrected to ensure full compliance with the Plant EPC Contract which did not affect the performance or safe operation of the Plant.

Performance Testing

EPC Contractor submitted to owner a detailed plan setting forth the performance testing activities, monitoring, calculation methodologies, specific test instruments or equipment and applicable calibration procedures proposed for demonstration of achievement of the Minimum Performance Criteria, and commenced performance testing upon the Company’s and the financing parties’ engineer’s approval once (i) the Plant achieved Plant Mechanical Completion, (ii) EPC Contractor during commissioning, successfully delivered enough Product Water to displace any water found in the Pipeline or the Water Authority’s Pipeline 3 or Twin Oaks Valley Water Treatment Plant improvements and delivered Product Water continuously for 3 consecutive days on a 24-hours a day basis at flow rates using 3 high pressure pumps, (iii) required utilities were connected, and (iv) EPC Contractor met with the Company and the Water Authority to provide a forecast of expected Product Water.

Performance testing requirements are included to demonstrate the ability of the Plant to operate as intended and meet contractual and regulatory requirements for capacity, water quality, chemical consumption and power consumption. The Plant EPC Contract sets forth the following criteria (the “Minimum Performance Criteria”) that must be met in order for EPC Contractor to achieve Provisional Acceptance:

The total cost of chemicals consumed during the 30-day test does not exceed 120% of a maximum chemical cost (expressed as $/Kgal of product water), determined based on the weighted average total suspended solids for the 30-day test.

The amounts of coagulant (Ferric Sulfate, FS, or Fe2(SO4)) used during the 30-day test does not exceed 120% of a maximum coagulant amount, determined based on the weighted average total suspended solids for the 30-day test.
The Plant produces a minimum of 1,400 million gallons ("MG") during the 30-day test (to be increased proportionately if the Plant consumes more than the maximum power amount during the test); provided that any excess above 57 MG in any day will not be counted towards this minimum;

The Plant produces a minimum of 378 MG (times the amount of water produced during the 30-day test divided by 1,564 MG) over a consecutive 7-day period;

The Plant complies with the Project’s National Pollutant Discharge Elimination System ("NPDES") permit requirements and all other applicable laws during the performance test;

Power consumption for the water produced during the test does not exceed 110% of a specified maximum amount determined based on weighted average temperature and total dissolved solids during the 30-day performance test and accounting for energy specific to the product water pump and intake pump; and

All output of the reverse osmosis system is in compliance with applicable CDPH regulations;

The Plant EPC Contract also provides that in order to achieve Provisional Acceptance without EPC Contractor being liable for liquidated damages, the following “Guaranteed Performance Levels” must also be met:

The total chemical cost and the total amount of coagulant consumed do not exceed 100% of the maximum amounts described above;

The Plant produces at least 1,564 MG during the 30-day performance test; and

Power consumption for the water produced during the test does not exceed 100% of specified guaranteed amount described above.

The EPC Contractor demonstrated by performance testing that the Minimum Performance Criteria and the Guaranteed Performance Levels were achieved and therefore was not obligated to pay liquidated damages or otherwise perform corrective work to achieve such requirements as set forth in the Plant EPC Contract ("Performance Guarantee Payments").

Provisional Acceptance

The Plant EPC Contract requires the Company to take “Provisional Acceptance” of the Project when the following conditions have been met:

EPC Contractor has provided the Company with final performance test results demonstrating that the Plant meets the Minimum Performance Criteria and complies with the Plant EPC Contract’s standards of performance;

Plant Mechanical Completion has been achieved; and
Pipeline Mechanical Completion (as defined in “Pipeline EPC Contract” in Appendix I) has been achieved;

Unless furnished earlier in connection with Plant Mechanical Completion, EPC Contractor has (i) protected the reverse osmosis membranes in accordance with the manufacturer’s storage requirements; (ii) tested and disinfected the pressure vessels, (iii) loaded the reverse osmosis membranes; (iv) protected the membranes from damage due to disinfectants in feedwater; (v) obtained membrane data required for normalization by the RO membrane manufacturer’s methodology; and (vi) maintained the data to map reverse osmosis element placement; and

If not already passed during the performance test, EPC Contractor has completed necessary repairs and passed a test of the Plant’s surge protection system (“Surge Protection System Test”).

Provisional Acceptance was achieved on [______________].

**Project Completion**

[UPDATE] Project Completion was initially required to be achieved within 120 days after Provisional Acceptance. The Company and the Water Authority have agreed to extend such date to [______________] including to permit installation and testing of the upgrade of the Plant’s backwash treatment system. Project Completion will be achieved when the following conditions have been satisfied:

- Provisional Acceptance has been achieved;
- All punch list items have been completed;
- EPC Contractor has completed all Work (including correction of any known defects) other than warranty Work;
- If not met at Provisional Acceptance, each reverse osmosis train has met certain output requirements;
- The Company has received final lien waivers from EPC Contractor and its subcontractors;
- EPC contractor has delivered copies of equipment and fixture warranties and related operating manuals received from equipment suppliers;
- EPC Contractor has delivered two sets of as-built drawings to the Company;
- EPC Contractor has delivered a claims statement setting forth in detail all claims known to it of every kind whatsoever of EPC Contractor connected with or arising out of the Work prior to the date of the statement; and
- If the Plant failed the Surge Protection System Test during performance testing, in addition to the completion of repairs or modifications required prior to
Provisional Acceptance (if any), EPC Contractor has completed all other necessary repairs or modifications.

Within 10 days after receiving notice from EPC Contractor that Project Completion has been achieved, the Company will either certify that Project Completion has been achieved or notify EPC Contractor of the reasons why Project Completion has not been achieved, in which case EPC Contractor will take all steps necessary to achieve Project Completion and re-submit the notice, until such time as Project Completion has been achieved.

Liquidated Damages and Bonuses

The Plant achieved Provisional Acceptance by the date which was 1,065 days after the date specified by the Company for the commencement of construction, as extended for any Force Majeure Events or Scope Changes (the “Guaranteed Completion Date”). Accordingly, the EPC Contractor was not required to pay delay damages (“Late Completion Payments”) as set forth in the Plan EPC Contract.

Early Completion Bonus

[EPC Contractor was not entitled to an early completion.]

Limitation of Liability

After Provisional Acceptance, EPC Contractor’s Liability Limit will not exceed $200,000,000, minus (i) the Repair Credit, (ii) all damages incurred by EPC Contractor to the Company prior to Provisional Acceptance under the Pipeline EPC Contract, (iii) all damages incurred by EPC Contractor to the Company and/or the co-obligees after Provisional Acceptance under the Pipeline EPC Contract in excess of $29,382,000 (proportionately adjusted to reflect any changes to the Plant Contract Price after the Effective Date), and (iv) all damages incurred by EPC Contractor to the Company and/or the co-obligees under the Plant EPC Contract; provided, that, to the extent that such liability results from a breach by IDE Americas under the IDE Americas Subcontract, the EPC Contractor’s liability will not exceed the IDE Americas Subcontract Price minus (a) the cost incurred by IDE Americas or the EPC Contractor (to the extent such costs of the EPC Contractor are solely attributable to IDE Americas’ breach of the IDE Americas Subcontract) of any corrective work described above under “Corrective Work”; (b) the reasonable costs incurred by IDE Americas with respect to the warranty provided and reimbursements to the Company for damages to the Water Authority pursuant to the IDE Americas Subcontract; and (c) all liabilities and damages incurred by EPC Contractor to the Company and/or the co-obligees as a result of IDE Americas’ breach of the IDE Americas Subcontract prior to Provisional Acceptance. The Liability Limit will not apply to EPC Contractor’s Plant Site restoration obligations, which are covered by the Restoration Bond.

Neither party will be liable for special or consequential damages, except for third party personal injury or property damage claims (and the performance and delay liquidated damages).

Kiewit and Shea are jointly and severally liable for all EPC Contractor obligations under the Plant EPC Contract.

Warranties

EPC Contractor warrants to the Company that the Work will be performed in accordance with the Plant EPC Contract and generally accepted professional engineering standards and practices applicable to
recognized engineers performing comparable work, applicable laws and permits, standard industry practices, and codes and standards and the Work and all equipment, materials, systems and supplies will be new and of good quality, free from defects in workmanship or materials. EPC Contractor further represents and warrants that it and its subcontractors are fully qualified and capable of performing the Work in accordance with the Plant EPC Contract. The warranty will be in effect for 1 year after Provisional Acceptance. This term will be extended for any repair work for a year from the date of such repair, but in no event beyond 2 years after Plant Mechanical Completion. The Company must notify EPC Contractor of any defects within 30 days of discovery, and EPC Contractor will not be responsible for any further exacerbation or deterioration if the Company notifies EPC Contractor of the defect more than 5 days after discovery.

EPC Contractor will use commercially reasonable efforts to ensure that all subcontracts will provide that items are new and of good quality, free from defects in workmanship or materials and that subcontractors will repair subcontract items if notified of a defect within 1 year from Provisional Acceptance, and that all subcontract items will comply with the standards of performance in the Plant EPC Contract. EPC Contractor’s warranty obligations do not include the pretreatment warranty provided by IDE Americas under the IDE Americas Subcontract.

The Company may direct EPC Contractor to perform tests during the first year after Provisional Acceptance to identify defects requiring correction. EPC Contractor will coordinate with the Company in correcting any defects to minimize any adverse effect on Plant operations and will comply with all warranty procedures in the Plant EPC Contract. If correcting the defect requires shutdown or reduced operation of the Plant, EPC Contractor will not be considered to be in default if the Company does not agree to shutdown the Plant and will not be responsible for additional exacerbation and extra repair costs if the Company postpones EPC Contractor’s warranty work until scheduled outages or operation reductions.

EPC Contractor warrants that title to the Plant and all Work and materials provided under the Plant EPC Contract will pass to the Company free and clear of all liens and other encumbrances and not subject to any agreement under which a security interest is retained by any person.

**Force Majeure**

Either party will be excused from obligations, except for payment obligations, it is unable to perform due to a “Force Majeure Event,” which means an event beyond the reasonable control, and not caused by the willful or negligent acts, of the party. Force Majeure Events include strikes or labor disputes (except strikes at the Plant Site by EPC Contractor or subcontractor employees); hurricanes, floods, monsoons, typhoons, lightning, or other unusually severe weather conditions; archeological findings at the Plant Site; earthquakes; fires; shipping accidents; explosions; acts of declared or undeclared war; civil disturbance; terrorism; acts of foreign political powers; act of God or the public enemy; power supply failures or interruptions (including Power Station outages, but excluding failures caused by EPC Contractor’s failure to perform its obligations); interference or interruption by Cabrillo (excluding Cabrillo’s actions in connection with a breach of the Site Lease caused by EPC Contractor’s performance of the Work) or the Company causing EPC Contractor to suffer delay or extra costs, or any unreasonable delay or failure to act of a governmental authority with respect to a requested action necessary for the performance of the Work (provided that such requested action is legal, customary and within such authority’s jurisdiction and application therefor was made in a proper and timely manner and was diligently pursued), and any legal proceeding filed by a third party delaying the progress of the Project. Force Majeure Events do not include late delivery of or damage to equipment or materials (except if caused by a Force Majeure Event); economic hardship; known subsurface conditions at the Plant Site; manpower, materials or equipment shortages (unless caused by a Force Majeure Event); EPC
Contractor’s failure to obtain or maintain required permits; delay or failure in obtaining materials or equipment or Subcontractor delay, default or failure (unless caused by a Force Majeure Event); and changes in laws.

The party claiming the Force Majeure Event (or a force majeure event under the Pipeline EPC Contract, but only if and to the extent that force majeure event prevents the party from performing under the Plant EPC Contract) must provide written notice to the other party within 3 business days of discovery, and a written description of the event within 8 days after discovery. Suspension of obligations will be of no greater scope and for no longer duration than reasonably required by the Force Majeure Event. The party claiming the Force Majeure Event must use commercially reasonable efforts to continue to perform, to correct the event excusing performance and to mitigate damages to the other party, and must notify the other party when it is able to resume performance.

**Indemnification**

EPC Contractor will indemnify the Company, the financing parties, the engineering firm assisting the Company in Project progress review, the Company’s title company, the financing parties’ engineer, Water Authority and any person on whose property EPC Contractor performs Work (as well as the directors, officers, agents, successors or assigns of each of them) against losses arising from claims by third parties arising out of injury or death of persons or third party property loss or damage to the extent caused by (i) negligent acts or omissions by EPC Contractor or its subcontractors in performing the Work (except for negligence or willful misconduct of the Company or its other contractors) or (ii) failure to comply with the Plant EPC Contract; provided that the Company will bear its proportionate share of the liability.

The Company will indemnify EPC Contractor (including its subsidiaries and affiliates and the directors, officers, agents, successors or assigns of each of them) against losses arising from (i) any actions brought by owners of the Plant Site other than Cabrillo with respect to such owners’ rights to the Plant Site and (ii) injury or death of persons or third party property loss or damage to the extent caused by failure to comply with the Plant EPC Contract; provided that the EPC Contractor will bear its proportionate share of the liability.

EPC Contractor will indemnify the Company from claims (except for claims pertaining to technology or intellectual property provided by IDE Americas) arising from infringement of patents or other intellectual property rights with respect to the Work or the Project. If any part of the Project is found to constitute an infringement, EPC Contractor will use commercially reasonable efforts to secure for the Company a license for continued use of the Work and, if unable to do so, will replace the affected Work or equipment at its own cost.

The Company will indemnify EPC Contractor against damages from hazardous materials existing at the Plant Site, not including the cost of removing hazardous materials that are EPC Contractor’s responsibility under the Plant EPC Contract, and unless (i) the presence of such hazardous materials after the Commencement Date arises out of EPC Contractor’s obligations under the Plant EPC Contract, or (ii) EPC Contractor fails to immediately notify the Company of, or intentionally aggravates, the condition. EPC Contractor will indemnify the Company against damages from hazardous materials brought onto, used or created at the site by EPC Contractor except with respect to the hazardous materials EPC Contractor is responsible for removing under the Plant EPC Contract, and unless the Company caused the release or knowingly aggravated it.
Insurance

The Plant EPC Contract contains comprehensive insurance provisions, requiring EPC Contractor to maintain Worker’s Compensation Insurance, Automobile Liability Insurance, Comprehensive General Liability Insurance, Permanent Property Insurance, Pollution Insurance, Excess Liability Insurance, Professional Liability Errors and Omissions Insurance and Marine Cargo Insurance and Protection and Indemnity Insurance policies. These policies must be primary, name the Company, Cabrillo, the financing parties and Water Authority as additional insureds and contain a waiver of the right of subrogation against the Company, Cabrillo, the Water Authority and the financing parties. EPC Contractor will be responsible for all deductibles, and must require Major Subcontractors to obtain insurance as required under the Plant EPC Contract. The Company must obtain Builder’s Risk Insurance.

Default and Remedies

Either party will be in default for: (i) commencement of a voluntary or involuntary bankruptcy proceeding which, in the case of an involuntary proceeding, is not dismissed or stayed within 60 days; (ii) any representation or warranty was false when made and the party fails to cure within 30 days of notice; (iii) attempting to assign or transfer without written consent; (iv) a default under the Pipeline EPC Contract; and (v) material breach of the Plant EPC Contract that is not remedied within 30 days of notice (or 180 days if the party is diligently pursuing cure, provided that such cure is effected in such a manner and within such a time that such failure to comply could not reasonably be expected to have a material adverse effect on the other party or the Project).

In addition, EPC Contractor will be in default for: (i) failure to make a payment due to the Company within 45 days (15 business days for Late Completion Payments) provided the payment is not subject to a good faith dispute; (ii) knowing failure to maintain required insurance coverages or any other failure to maintain required insurance not remedied within 5 business days of actual knowledge; (iii) its failure, or failure by a subcontractor, to comply with any provisions of applicable laws or permits that is not cured within 10 days of actual knowledge (or 120 days if EPC Contractor is diligently pursuing cure, provided that such cure is effected in such a manner and within such a time that such failure to comply could not reasonably be expected to have a material adverse effect on the Company or the Project); (iv) unexcused cessation or abandonment of the Work that is not cured within 5 business days of notice (unless due to an emergency and with reasonable justification); and (v) with respect to Guarantor: (w) a voluntary or involuntary bankruptcy proceeding is commenced (which, in the case of an involuntary proceeding, is not dismissed or stayed within 60 days); (x) any representation or warranty was false when made and Guarantor fails to cure within 30 days of notice; (y) the guaranty is not in full force without the Company’s written consent; or (z) Guarantor repudiates or challenges the validity of the guaranty.

If EPC Contractor defaults, the Company may: (i) immediately terminate the Plant EPC Contract in whole or in part (and, if in whole, terminate the Pipeline EPC Contract as well); (ii) request that EPC Contractor withdraw from the Plant Site and take possession of all designs and facilities necessary to complete the Work; (iii) have the Work finished; and (iv) seek recovery of damages resulting from EPC Contractor’s default, subject to the limitations in the Plant EPC Contract.

The Company will also be in default for failure to pay EPC Contractor within 45 days from the date such payment is due. The Company will not be in default if (i) the payment is being disputed in good faith, (ii) the undisputed portion has been paid and (iii) the aggregate of all payments withheld by the Company and letters of credit provided by EPC Contractor in exchange for withheld payments does not exceed $7,500,000, but will be in default if either EPC Contractor has provided a letter of credit for the disputed amount or court or dispute resolutions have found the unpaid amount to be due to EPC Contractor and the Company fails to pay within 15 business days (or within 15 business days after the
If the Company defaults on its payment obligations, EPC Contractor may (prior to the expiration of the 45 day notice period) suspend performance on 10 days’ written notice until the Company has paid (with a Scope Change to reflect EPC Contractor’s extra costs from the suspension) and terminate the Plant EPC Contract upon 60 days’ written notice. For any other the Company default, EPC Contractor may immediately terminate the Plant EPC Contract and seek recovery of damages resulting from the Company’s default, subject to the limitations in the Plant EPC Contract.

Assignment

The Company may assign its rights and obligations under the Plant EPC Contract to: (i) Water Authority, upon termination or expiration of the Water Purchase Agreement, (ii) its lenders for financing or (iii) a transferee of all or a substantial portion of the Project with substantially similar financial and operational capabilities, and the assignment to whom could not otherwise reasonably be expected to have a material adverse effect on EPC Contractor. EPC Contractor may assign its rights under the Plant EPC Contract to the sureties providing the performance bond in the event that the sureties are performing the Plant EPC Contract. No other assignments are permitted without consent. However, the Company will consent to EPC Contractor assigning its right to payment to financial institutions providing credit to EPC Contractor (provided the assignment will not affect EPC Contractor’s ability to perform or the Company’s rights under the Plant EPC Contract). Any assignee of the Plant EPC Contract will assume all outstanding amounts owing to the remaining party and the assignor will be jointly and severally liable with the assignee to the remaining party for outstanding amounts not fully paid within 45 days after the assignment. Any party assigning the Plant EPC Contract prior to Project Completion will also assign its rights under the Pipeline EPC Contract, provided that if the Company assigns prior to Project Completion and EPC Contractor is in default, the Company may, but will not be required to, assign its rights under the Pipeline EPC Contract.

Design Documents

EPC Contractor will make all design information related to the Project available for review and comment by the Company, the engineering company retained by the Company, and the financing parties’ engineer, but such review will not release EPC Contractor from any duties and EPC Contractor will retain ownership of the documents. The Company has a license to use EPC Contractor’s design and engineering information for the Project and any expansion of the Plant of up to 20% of the Plant’s output.

Confidentiality

Each party will hold any engineering, technical, financial or commercial information related to the Project in confidence for 3 years following Project Completion (except for information that can be shown by written records to have been previously in the public domain or receiving party’s possession, or to have been received by a party free of confidentiality obligations from a third party or information that is required by law to be disclosed to a governmental authority), and will be liable to the other party for any disclosure of such information by its officers, employees and affiliates. Each party will obtain prior written consent before publishing the terms and conditions of the Plant EPC Contract or the Project, provided that the Company may disclose terms to its lenders, potential lenders, potential equity investors, rating agencies and consultants as required to obtain financing, and may disclose a summary of the Plant EPC Contract subject to EPC Contractor’s approval. EPC Contractor will require its subcontractors, and the Company will require its lenders, potential lenders, potential equity investors, and rating agencies, to enter into appropriate nondisclosure agreements. The Company will also require any consultants and
advisors in the business of designing, constructing and/or operating reverse osmosis desalination facilities to enter into direct nondisclosure agreements with EPC Contractor, unless the Company is disclosing only the Plant EPC Contract (without its appendices) to the consultant and requires the consultant to enter into an appropriate nondisclosure agreement. EPC Contractor will not issue any press releases regarding the Project without the Company’s prior written consent.

The following information (unless it is Non-Disclosable Information, as defined in the following sentence) is not subject to the confidentiality requirements in the Plant EPC Contract:

The Water Purchase Agreement and all of its appendices;

Reports, notices, certificates, audited financial statements or other documents that the Company delivers or causes to be delivered to the Union Bank, N.A. (or any successor fiduciary institution serving as trustee under the Plant Indenture) under or in connection with the Plant’s financing agreements, including reports prepared by the consulting engineer for the holders of the bonds under the Plant Indenture and continuing disclosure reports required under applicable securities laws;

Information supplied to any governmental authority, including regulating reports, information and sampling and testing results;

The report of the performance test results prepared pursuant to the Plant EPC Contract; and

Photographs or videos of the exterior of the Plant, or of the interior of the Plant that provide a general overview to the interior of the Plant but do not show the details of the advanced technologies of the Project.

The following will constitute “Non-Disclosable Information”:

Detailed plans, drawings and specifications of the Plant;

Financial information regarding EPC Contractor;

Details of any subcontracts; and

Details of the Plant EPC Contract, other than as specifically permitted herein.

Dispute Resolution

If the Parties’ representatives cannot resolve a dispute within 30 days, the Parties will submit the matter to mediation under the Construction Industry Mediation Rules of the American Arbitration Association for 30 days. If the matter is not resolved through mediation, either party may submit the dispute to litigation. Substantially similar disputes under the Pipeline EPC Contract may be consolidated with disputes under the Plant EPC Contract, and EPC Contractor will consent to joinder of the Water Authority, at Owner’s determination, in disputes regarding whether Provisional Acceptance has been achieved. Disputes arising from IDE Americas’ work under the IDE Americas Subcontract will be resolved via (i) 10 business days of executive negotiations, followed by 20 business days of mediation followed by judicial reference for disputes of $1,000,000 or more, or (ii) arbitration for disputes of less than $1,000,000 and, in either case, the prevailing party will be entitled to recovery reasonable attorneys’
fees and costs. Disputes regarding whether repair or replacement of a portion of the Plant is within EPC Contractor’s warranty obligations or IDE Americas’ obligations under the O&M Agreement will be resolved through immediate joint submission to binding arbitration.

**Effect of Third Party Decisions or Requirements**

Where any of EPC Contractor’s rights under the Plant EPC Contract are subject to consent or approval from the Company’s lenders or engineer, the Company will be liable to EPC Contractor for the failure or refusal of such parties to provide such approval to the same extent, if any, that the Company would be liable under the Plant EPC Contract if it had the right to make the decision and took the action taken by such parties. In addition, either party’s requirement to comply with any determination or requirement of a third party will not excuse that party from its obligations under the Plant EPC Contract, nor affect the other party’s rights under the Plant EPC Contract.

**Miscellaneous**

The Plant EPC Contract contains other customary provisions, including those addressing EPC Contractor’s status as an independent contractor, representations and warranties, and cooperation with financing parties.
II. SUMMARY OF CERTAIN PROVISIONS OF THE OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT AGREEMENT

The following summarizes certain provisions of the Operation, Maintenance, Repair and Replacement Agreement (the “O&M Agreement”), dated as of December 20, 2012, (the “Effective Date”), as amended as of [ ], 2019, by and between Poseidon Resources (Channelside) LP (the “Company”) and IDE Americas, Inc. (“IDE Americas”).

Definitions

Any Capitalized term used in this summary and not defined below is defined in Appendix A, Summary of Certain Definitions.

Term

The Term of the O&M Agreement is 30 years from the Turnover Date.

IDE Americas’ Responsibilities

Included with IDE Americas’ responsibilities under the O&M Agreement are the following:

Mobilize and prepare for taking over the Plant on the date on which responsibility for the Plant transfers from the Company to IDE Americas (the “Turnover Date”);
Operate, maintain and repair the Plant, including repair or replacement of Plant components (but excluding items covered by Contractor’s warranty under the Plant EPC Contract or other Plant warranties made available to IDE Americas by the EPC Contractor), consistent with the O&M Agreement, standard industry practices, generally accepted national standards of professional care, applicable laws and permits, the operation and maintenance manual, codes and standards and the site description in the Plant EPC Contract scope book (collectively, the “Standards of Performance”);
Pay all costs associated with operation and maintenance (“O&M”) of the Plant, except for property taxes, sales and use taxes, gross receipts taxes, and taxes resulting from transfer of the Plant, which will be paid by the Company;

Obtain, at its expense, all materials, tools and supplies for operating and maintaining the Plant, including fuel, water, sewer, heat, security, transportation and telecommunications service, but excluding electricity;

Implement and maintain a program of planned operation and maintenance according to an operation and maintenance plan (the “Operating Protocol”);

Update the operation and maintenance manual (“O&M Manual”) prepared by Contractor within 60 days after the Turnover Date and annually thereafter (or within 60 days after changes to the Plant) as necessary;
Prepare and deliver to the Company at least 10 days prior to the Turnover Date a maintenance, repair and replacement plan for inclusion in the O&M Manual establishing the minimum standards for ongoing maintenance, repair and replacements;

Coordinate with the Company for planned maintenance requiring partial or complete Plant shutdown and make all major equipment repairs and replacements in a major equipment repair and replacement schedule;

Keep maintenance logs;

Update the Operating Protocol at least 90 days before each Contract Year;

Determine and maintain appropriate staffing levels and comply with the requirements described in “Staffing” below;

Immediately notify the Company of environmental violations, serious injuries, significant equipment damage, citizen complaints or threatened or potential action;

Cooperate with the Company and the EPC Contractor in design review, O&M Manual preparation, training, start-up, commissioning and testing;

Pay all fines and costs imposed on IDE Americas and/or the Company resulting from IDE Americas’ failure to comply with its obligations under the O&M Agreement and applicable laws;

Cooperate generally with the Company, the Water Authority, Cabrillo, the City of Carlsbad, the government and the general public;

Obtain the Company’s written consent (not to be unreasonably withheld or delayed) before entering into any subcontract for reverse osmosis membranes or any subcontract (except for subcontractors for consumables or materials) of over $500,000;

Immediately notify the Company if the Plant produces water that does not meet the quality or quantity standards in the O&M Agreement, if an IDE Americas event of default occurs or if IDE Americas violates any condition in an applicable permit or increases deliveries of water to make up for previous shortfalls;

Maintain the capability of the Product Water pump station at a level meeting the requirements of the performance test (but in no event higher than the level demonstrated in the performance test) under the Plant EPC Contract;

Operate the Plant in accordance with the Operating Protocol to avoid sudden, significant changes in flows rates (“Flow Rates”) and pressure of Product Water beyond the Delivery Point, and compensate the Company for the costs of repairing damage to the Pipeline or the Water Authority’s distribution system caused by IDE Americas’ failure to do so (provided, that IDE Americas will have no liability for such costs if it operates the Plant’s
pressure surge control facilities and pressure control/reduction facilities in accordance with the operating manual for such facilities and the Operating Protocol and maintains such facilities in accordance with the Operation and Maintenance Manual);

Attend monthly operations meetings and any special meetings reasonably requested by the Water Authority;

Respond to, log and (if valid) promptly rectify or respond to complaints and communications;

Cooperate with the Company and Water Authority for up to 90 days after a purchase of the Plant by Water Authority (with payment of reasonable costs plus a 20% mark up);

With respect to any material non-compliance with applicable laws: respond to all inquiries, attend all meetings, provide all corrective action plans and other documentation required by governmental authorities, and promptly provide the Company with written notice of the violation and copies of notices issued by governmental authorities and provide the Company with a reasonable opportunity to comments on any proposed response to any material non-compliance prior to implementing such response;

Maintain the aesthetic quality of the Project as originally constructed, keep the grounds neat and orderly; maintain and repair signage, fencing and security systems; provide all landscaping services and maintain the on-site irrigation system; and

Comply with the Water Authority’s discrimination/harassment prohibition policy.

Permitting

Obtain and maintain all permits designated as IDE Americas’ responsibility in the O&M Agreement, all other permits necessary for IDE Americas and any subcontractors to do business where the Plant is located and any other permits required for the Services that are customarily maintained by operators for similar projects under similar operation and maintenance contracts, except for the permits designated as the Company’s responsibility and other permits required for the Services that are customarily maintained by owners of similar projects under similar operation and maintenance contracts;

Indemnify the Company from damages if it fails to obtain any required permit;

Provide the Company with copies of draft permit applications and final permits; and

Provide permitting support to the Company, with reimbursement for reasonable out-of-pocket costs;

Records and Monitoring

Establish and maintain, and grant the Company and the Water Authority access to, a computerized information system for operations and maintenance data and process control;
Make available to the Company, upon request, copies of operation and maintenance records kept by IDE Americas in its performance of the Services; maintain cost records for 10 years;

maintain and make available to the Company upon request copies of material design documents and record drawings and update such records annually to show material changes to the Plant made by IDE Americas;

Deliver updated as-built drawings within 60 days following the end of each Contract Year;

Develop reporting procedures and submit monthly operations reports, annual operations and maintenance reports, default reports and information required to comply with greenhouse gas reporting requirements;

Provide the Company with an emergency plan 90 days before the anticipated Turnover Date, take all actions deemed in good faith to be reasonable and appropriate in the event of an emergency, and notify the Company of the emergency event and its response;

Photograph and videotape (to the extent accessible) and prepare an itemized inventory of material Plant property (the “Baseline Plant Record”) and update the Baseline Plant Record and annually; update as-built drawings or other material documentation within 60 days of changes affecting such documents;

Cooperate fully with the Company’s annual and biennial maintenance inspections of the Plant;

**Safety**

Keep the Plant free from waste and rubbish caused by operation and maintenance activities;

Take reasonable precautions for the safety of employees, visitors, the Plant, the Power Station, other property constituting part of the Project, adjacent property and Water Authority property affected by Plant operations;

Give all notices and comply with all applicable laws relating to safety of persons or protection of property;

Designate a qualified employee at the Plant to develop and implement safety requirements and coordinate safety activities with federal, state, local and Water Authority officials;

Develop and implement a health and safety program;

Make all modifications to the Plant required by OSHA;

Comply with Cabrillo’s safety requirements; and

Prepare a security plan, conduct vulnerability assessments, guard against damage to property, and maintain and repair surveillance and security equipment;

**Metering and Testing**

Test raw source water and Product Water at state-certified laboratories in accordance with the Operating Protocol; and

Maintain, repair and replace meters for the volume of raw source water delivered to the Plant and the volume of Product Water delivered to the Delivery Point;
Maintenance of Records

Maintain the records specified in the O&M Agreement in electric and hard copy form (wherever practical) in a form capable of audit for 10 years (or such longer period required by law) and make such records available to the Company for inspection; and

Either deliver records no longer required to be maintained pursuant to the O&M Agreement to the Company or destroy such records if the Company does not elect to receive them.

Maintenance

IDE Americas must provide an annual maintenance schedule prior to the Turnover Date and 60 days prior to each Contract Year setting forth regularly scheduled repairs and maintenance, with no more than 240 hours during which the Plant is shut down during the Contract Year. Downtime will, to the extent practicable, be scheduled for December through March. IDE Americas will notify the Company of Plant shutdowns (60 days prior for scheduled maintenance and immediately for unanticipated shutdowns) and coordinate with the Company on unanticipated maintenance that could affect the quantity or quality of Product Water produced. IDE Americas may schedule from its major equipment repair and replacement schedule and reverse osmosis system replacement schedule if it provides the Company with a reasonable justification for the deviation and the deviation is consistent with the standards in the O&M Agreement. IDE Americas will use reasonable efforts to schedule repairs and maintenance during planned shutdowns of the Power Station or the Water Authority’s distribution system.

Staffing

IDE Americas must staff the Plant with qualified personnel who meet California’s licensing and certification requirements, including a full-time Plant Manager (the “Chief Operator”), possessing a Grade T 5 operator’s certification, whose sole employment responsibility will be managing IDE Americas’ performance of the Service. Collectively, the Chief Operator and those reporting directly to the Chief Operator must have experience with all of the advanced technologies utilized in the Plant. IDE Americas’ senior management personnel will communicate directly with the Company and the Water Authority’s Director of Engineering and Director of Operations (or management personnel senior to such positions), during normal business hours and at any time during emergencies, regarding any material aspect of the Services which the Water Authority believes has resulted or may result in a breach of the O&M Agreement. IDE Americas will respond promptly to any communications from, attend meetings reasonably called by, and furnish any information requested by the Company or such Water Authority personnel, in each case that has a bearing on the performance of the Services with respect to which IDE Americas has responsibility, involvement or knowledge. The Company Authority may, after first meeting with the Water Authority and IDE Americas to attempt to resolve the dispute, require removal of the Chief Operator for persistent failure to manage the Plant in accordance with the Standards of Performance or if an unworkable relationship has developed between the Chief Operator and the Water Authority or the Company.

Legal Compliance

IDE Americas will operate and maintain the Plant to comply with all applicable laws and use reasonable efforts to minimize noise, odors and emissions of hazardous materials and dust. IDE Americas will store, use and dispose of hazardous materials in accordance with a hazardous materials management program and emergency/spill response plan. IDE Americas must provide the Company with a written description of activities with potentially adverse environmental effects which differ materially from the description of the Plant in the Facility EPC Contract and steps taken to mitigate the effects. IDE
Americas will advise the Company of complaints received and intended responses. IDE Americas is responsible for all notification and reporting requirements associated with the release of hazardous materials from the Plant or site and to immediately notify the Company and the appropriate governmental authorities if it discovers the release of any hazardous materials. IDE Americas is responsible for remediating, at its sole cost, any release of hazardous materials caused by IDE Americas during the term.

IDE Americas will timely supply correct and complete information and take all actions in connection with the applicable permits, including requirements under the Company permits designated as IDE Americas’ responsibility in the O&M Agreement. All information to be supplied with respect to the Company’s New Domestic Water Supply Permit must be submitted to the Company for review and comment at least 14 days before it is submitted to the California Department of Public Health. IDE Americas will prepare all periodic reports required by all applicable permits and under applicable laws with respect to the Plant, and will provide the Company with copies of such regulatory reports for the Company’s New Domestic Water Supply Permit at least 14 days before filing. Material final communications and reports will be provided to the Company simultaneously with their submittal to the applicable governmental authority. IDE Americas is responsible for any schedule or cost consequences from the submission of materially incorrect or incomplete information, and will advise the Company if it becomes aware of potential material changes in regulatory requirements.

IDE Americas will dispose of all liquid and solid byproducts and solid waste resulting from O&M activities, as well as non-compliant desalinated water.

**Security**

IDE Americas was required to and provided the Company with a $10,000,000 performance bond with at least a 3 year term (to be renewed for at least another 3 years at least 6 months before its expiration). The face amount will be increased each third Contract Year, starting with February 1 of the 3rd Contract Year to match the limitation of liability in Section 13.2, but cannot be decreased. If the bond issuer falls below either a rating of A by Standard & Poor’s or A by Moody’s Investor Service, IDE Americas must replace the bond within 30 days with one issued or confirmed by an institution meeting the rating requirements. The Company may draw on the bond if IDE Americas fails to cure a default (after the applicable cure period for such default) within 3 days of the Company giving IDE Americas notice of the event of default and its intent to draw on the bond. If the Company assigns the agreement, IDE Americas will transfer or replace the bond within 30 days, at the Company’s expense.

IDE Americas was also required to and provided a parent guaranty from I.D.E. Technologies, Ltd.

**Product Water Quality**

IDE Americas must deliver Product Water to the flange of the downstream side of the Product Water flowmeter (the “Delivery Point”) that complies with the quality parameters, chlorination levels and monitoring frequencies set forth in the O&M Agreement (the “Product Water Quality Standards”). The Company may require IDE Americas to alter the limits for chlorine residual and chloramine/ammonia ratio set forth in the O&M Agreement to meet the Water Authority’s requirements for blended water conveyed to its distribution system, subject to an adjustment in compensation. IDE Americas must report immediately (upon having actual knowledge) the delivery of any Product Water that does not meet the Product Water Quality Standards.
Energy Consumption

If the energy used to run the Plant for the first twelve months of operation is more than the guaranteed energy consumption for that period, IDE Americas was required to make such repairs, replacements and improvements as IDE Americas (in consultation with the Company) reasonably determined necessary to correct the causes of such overconsumption; provided that IDE Americas’ obligations to make such improvements are deemed to have been completed when (i) IDE Americas’ reasonable costs of conducting such improvement program equal $10,000,000 or (ii) the energy used to run the Plant has met the guaranteed energy consumption for a consecutive twelve-month period, whichever occurs first.

Product Water Quantity

IDE Americas is obligated to deliver an amount of Product Water equal to (i) the amount of Product Water produced during the 30-day performance test under the Plant EPC Contract (up to 1,564 million gallons (“MG”)), (ii) divided by 1,564 MG, (iii) multiplied by 18,250 MG (the “Committed Annual Volume”). If the production capacity of the Plant improves subsequent to the first Contract Year, the Company may request, subject to IDE Americas’ approval, an increase in the Committed Annual Volume up to 18,250 MG.

Prior to each Contract Year, the Company and IDE Americas will prepare a proposed water production plan (“Projected Annual Delivery Schedule”) setting forth proposed daily and monthly quantities of Product Water deliveries equaling, in the aggregate, the Committed Annual Volume and accounting for scheduled Plant maintenance of up to 240 hours per year, planned shutdowns of the Water Authority’s distribution system and the Power Station, the timing of any planned capital modifications to be made to the Plant and other relevant considerations. Actual deliveries of Product Water will be determined by requests submitted by the Company the afternoon prior to each day of the term specifying Flow Rates (with up to 2 Flow Rate changes) for such day, which may be modified the day-of as long as (i) no modification if required to take effect less than 8 hours after the request; and (ii) the Flow Rate does not change more than twice per day (with a minimum of 8 hours between each change), 6 times per week and 12 times per month. The “Firm Daily Demand Order” is the volume of Product Water produced by the Flow Rates demanded by the Company (as adjusted for day-of modifications). IDE Americas will not be obligated to deliver more than 54 MG per day or the Committed Annual Volume per year unless it can do so consistent with applicable law and receives additional compensation. Absent express approval from the Company, IDE Americas may not deliver less than 95% or more than 105% of the current Flow Rate demanded by the Company, or volumes in excess of the volumes demanded by the Company for a month. The sum of the Firm Daily Demand Orders for a given month is the “Approved Monthly Quantity”.

IDE Americas will store a 12 MGD-capacity high pressure water pump (the “Supplemental High Pressure Pump”), which the Company may direct IDE Americas to install for a period (the “Supplemental High Pressure Pump Service Period”) of up to 4 months during each Contract Year.

IDE Americas may propose a schedule to deliver make-up or excess Product Water, provided that the additional volumes do not cause the amount of Product Water delivered in the year to exceed the Committed Annual Volume, and subject to the Company’s reasonable approval (which may be withheld if the Water Authority declines, in its sole discretion, to accept such make-up volumes).

Product Water that IDE Americas is unable to deliver due to the following reasons will be deemed delivered for the purpose of calculating quantity shortfall liquidated damages:
A shortfall in source water meeting the influent specifications, including due to shutdowns of the Power Station;

The Company’s inability to take delivery, including due to shutdowns of the Water Authority’s distribution system;

A Force Majeure event;

Unavailability of sufficient electric power;

A Source Water Deviation (as described below);

Inability to comply with a request for an extraordinary Flow Rate change;

Termination or non-renewable of a permit to be obtained by the Company, or of a permit to be obtained by IDE Americas if due to the Company’s acts or omissions;

Suspension of production and/or delivery of Product Water by the Company (including instructions to reduce production);

Material breach of the O&M Agreement by the Company;

Product Water in excess of 50 MGD (or its equivalent over shorter periods) during periods when the temperature of the intake seawater is between 12 degrees Celsius and 13.99 degrees Celsius;

Outage of a standard high pressure pump while operating using three pumps during a Supplemental High Pressure Pump Service Period (as long as IDE Americas is using commercially reasonable efforts to address the outage);

Outage of the Supplemental High Pressure Pump during a Supplemental High Pressure Pump Service Period (as long as IDE Americas is using commercially reasonable efforts to address the outage); and

Outage of up to 8 hours for each installation of the Supplemental High Pressure Pump in preparation for a Supplemental High Pressure Pump Service Period, and for 8 hours for each removal of the Supplemental High Pressure Pump at the end of the Supplemental High Pressure Pump Service Period.

In addition, IDE Americas will be deemed to have delivered up to the first 531,137 kgal of Firm Daily Demand Orders which it fails to deliver in any year for any unplanned production shortfall and IDE Americas will not be obligated to produce Product Water during periods of Plant maintenance or repairs in the annual maintenance schedule up to 240 hours per year.

The O&M Agreement sets forth the Flow Rates that the Plant can achieve when it is operating 1, 2 or 3 high pressure pumps (“One,” “Two” or “Three Pump Mode”, respectively) or the supplemental high pressure pump (“Supplemental High Pressure Pump Mode”). The Company may not direct IDE Americas to operate in Supplemental High Pressure Pump Mode unless the Plant is operating in a Supplemental High Pressure Pump Service Period. The Company may only demand Flow Rates in Three Pump Mode during the first 60 days starting on the Turnover Date (the “First Operating Period”) (which
Flow Rates will be determined by the Company maintained throughout this period), except during the performance of the operating mode change performance test described below, and may demand Flow Rates in any mode (other than Supplemental High Pressure Pump Mode) during the second 60 days (the “Second Operating Period”) and in any mode thereafter, but will use reasonable efforts to order at least three Flow Rate changes requiring a change in mode during each 7 day period during the Second Operating Period. IDE Americas will conduct a performance test during the First and/or Second Operating Periods to ensure that the Plant can correctly switch between modes. If the Company demands extraordinary changes in Flow Rates outside of these parameters, IDE Americas must use reasonable efforts to make these changes (within 30 minutes for the volume of water delivered and 4 hours for the volume of water produced for downward changes, and within 4 hours for upward changes). If a problem occurs in the Water Authority’s distribution system, IDE Americas will use all reasonable efforts to permit a necessary Flow Rate change to assist the Company in responding to such problem, provided that IDE Americas can do so consistent with applicable law, standard industry practices and the Plant’s design limits.

**Payment and Invoicing**

The Company will make monthly payments to the Operator consisting of a fixed fee, a variable fee, a chemical fee, and any flow rate change payments and, if applicable the Excess Rate.

The monthly fixed fee will be in an amount equal to $981,103.89, adjusted by increases in the consumer price index for the San Diego Metropolitan Statistical Area from July 2012 (currently [$1,131,138.30]). The fixed fee will be reduced proportionately for shortfalls of IDE Americas’ Product Water delivery obligations. The fixed fee will also be reduced every two years to reflect 50% of any savings in labor costs from a base amount set forth in the O&M Agreement.

The variable fee will consist of $0.1425 per thousand gallons (“kgal”) of Product Water delivered, adjusted by increases in the consumer price index from July 2012 (currently [$0.1643]).

The chemical fee will consist of $0.1758/kgal for Product Water delivered, adjusted by increases in the Producer Price Index (industry: chemical mfg; product: chemical mfg; series ID: PCU325---325---) published by the Bureau of Labor Statistics from July 2012 (currently [$0.1970]).

IDE Americas will receive an adjustment to its monthly fee to provide compensation for complying with the Water Authority’s blended water requirements.

The O&M Agreement contains an energy adjustment, pursuant to which increases in energy costs resulting from energy consumption above a stipulated guaranteed amount are borne by IDE Americas. IDE Americas receives the benefit of savings resulting from energy consumption below the guaranteed amount as follows: (i) for the first 36 months of operation, IDE Americas receives 75% of the first 10% of any savings and 50% of any additional savings; (ii) after 36 months of operation, IDE will receive 50% of all such savings; and (iii) if IDE Americas had paid performance liquidated damages to EPC Contractor under the IDE Americas Subcontract with respect to energy consumption during the Plant’s performance test, IDE will receive 100% of all such savings until such time as IDE Americas has received savings equal to the lesser of the performance liquidated damages paid under the IDE Americas Subcontract or $10,000,000. If energy consumption for the fourth year of operation is less than 90% of the guaranteed amount, the Company will thereafter be required to meet a reduced guaranteed amount. The reduction will be a percentage amount by which the actual energy consumption in the fourth year is less than the original guarantee minus 10%. As an example, if the consumption in the fourth year of operation is 86% of the guaranteed amount, the guarantee will be reduced by 4% to 96% of the original guarantee.
For each flow rate change outside of the O&M Agreement’s standard parameters (either at the Company’s request or necessitated by a problem in the Water Authority’s distribution system), IDE Americas will receive a payment of $450, $900 or $1,350 (each adjusted for increases in the consumer price index from the date on which the O&M Agreement is executed), depending on the magnitude of the change in the Plant’s operating mode.

If the Company expands or modifies the Plant or a change in law occurs, the O&M Agreement will be amended to reflect the consequences thereof, which may include an equitable adjustment to the amounts payable to IDE Americas as a result of any increased capital or operational expenses.

If IDE Americas produces more than 54 MG per day or the Committed Annual Volume per year at the Company’s request, it will be entitled to receive an “Excess Rate” of $0.382/kgal (adjusted for yearly changes in the consumer price index) for such water in addition to the variable and chemical fees.

IDE Americas will deliver invoices within 20 days of the end of the month showing the net amount due from either party, and the paying party must pay undisputed amounts within 15 business days (or, with respect to the Company and if the invoice is not delivered within 5 days of the end of the month, within 15 days after the first day of the next month). Late payments will be charged the lesser of 1.5% interest or the maximum amount permitted by law. Disputed amounts resolved in the non-paying party’s favor will be paid with interest from the date the payment was originally due.

**Damages**

In addition to the reduction in the fixed fee for Product Water shortfalls described above, IDE Americas is obligated to pay liquidated damages for shortfalls below 96% of the amounts demanded by the Company for each month, quarter and 6-month period amounts at rates of $0.61 per kgal, $1.23 per kgal and $1.84 per kgal, respectively. In addition, IDE Americas will be subject to payment of liquidated damages (equal to 50% of the corresponding damages owed by the Company under the Water Purchase Agreement) for failure to deliver at least 90% of Product Water required during months in which the Water Authority has activated Stage 2 of its drought response plan (“Drought Shortfall Payments”).

If IDE Americas delivers water that does not meet the Product Water quality standards in the O&M Agreement, Owner may elect either to deem such water not delivered or to deem the water delivered but impose liquidated damages equal to the Water Authority’s then-current Melded M&I Treatment Rate.

Payments to IDE Americas will also be reduced by $500 (adjusted for changes in the consumer price index) per occurrence for failures (3 failures of the same obligation or 3 different failures within a year) to:

- Report a material violation of an applicable law or permit;
- Respond to or report a complaints and communications as required by the O&M Agreement;
- Attend Water Authority meetings as reasonably requested, with advance notice from the Company;
- Provide the Company with reports, records, logs or other documents as and when required under the O&M Agreement;
- Respond to alarms at the Plant as required by the O&M Agreement;
Provide plans, proposals, reports or other required deliverables with respect to a Force Majeure event;

Properly sample or report testing results as required by applicable law or the O&M Agreement; and

Mitigate noise complaints as required by the O&M Agreement.

IDE Americas must also pay all fines, penalties or other levies imposed on IDE Americas and/or the Company by any governmental authority pursuant to applicable laws resulting from failure to comply with its obligations under the O&M Agreement, and all costs (including reasonable legal fees) incurred in remedying the consequences of any such failure to comply with applicable laws.

The Company’s Responsibilities

The O&M Agreement requires the Company to:

Arrange for the sale of Product Water;

Give IDE Americas limited access to the Plant Site prior to the Turnover Date and access to all areas of the Plant Site necessary for IDE Americas to meet its obligations under the O&M Agreement on and after the Turnover Date;

Obtain all permits designated as the Company’s responsibility in the O&M Agreement;

Provide the Plant on the Turnover Date as constructed under the EPC Contract and in a condition capable of meeting the quantity and quality standards in the O&M Agreement;

Cooperate with IDE Americas to maintain good relationships with the Water Authority, Cabrillo and the government;

Provide water, sewer, electricity and telecommunications connections;

Provide electricity for the Plant’s operation;

Provide access to (i) seawater at the locations set forth in the Ground Lease and (ii) the concentrate discharge receiving point set forth in the NPDES waste discharge permit; and

Install and provide access to the Pipeline.

From and after the end of the warranty period under the Plant EPC Contract, make available to IDE Americas all warranties pertaining to the Plant and its components provided to the Company by the EPC Contractor, to the extent not expired.

Plant Site Access

The Company will grant IDE Americas access to the Plant Site sufficient to meet its obligations. IDE Americas is entitled to recover reasonable and documented costs arising from any interruption or
delay of its access to the Plant Site (other than due to an IDE Americas default or its Pretreatment Warranty work) and will be entitled, starting at Plant Provisional Acceptance, to its fixed fee (and not liable for liquidated damages) if the Plant cannot be operated as a result. IDE Americas must accommodate EPC Contractor’s and its subcontractors’ presence on the Plant Site to perform punch list and warranty work.

**Source Water Deviations**

If the quality of raw intake source water exceeds the influent specifications set forth in the O&M Agreement (a “Source Water Deviation”), the parties will meet to review ways to reduce any adverse effect and IDE Americas must take reasonable corrective measures (capped at $100,000), subject to reimbursement or an increase in its fixed fee if such corrective measures increase IDE Americas’ cost of operating the Plant. If modifications to the Plant of more than $100,000 are required to address the source water deviation (or if the Company wishes to undertake significant modifications to save the cost of corrective measures otherwise required to address the deviation), the Company may undertake the modifications at its own cost (including paying IDE Americas’ fixed fee and reasonable demobilization costs if the Plant must be taken out of operation). The Plant’s guaranteed unit power consumption will be increased to reflect any increase in energy consumption as a reasonable result of the source water deviation.

**Insurance**

The O&M Agreement contains comprehensive insurance provisions, requiring IDE Americas to maintain worker’s compensation insurance, employer’s liability insurance, comprehensive general liability insurance, business automobile liability insurance, excess liability insurance and sudden and accidental pollution insurance policies. These policies must name the Company, Water Authority, the City of Carlsbad, Carlsbad Housing and Redevelopment Commission and Cabrillo as additional insureds, not contain exclusions for claims arising out of these parties’ negligence and contain a waiver of subrogation. IDE Americas must require all subcontractors to obtain workers’ compensation, employer’s liability, general liability, automobile liability, excess liability and professional liability insurance policies, including a waiver of any rights of subrogation against the Company.

The Company must maintain all risk property damage insurance (including boilers and machinery coverage), worker’s compensation, commercial general liability insurance, business interruption insurance and excess liability insurance policies naming IDE Americas as an additional insured and waiving rights of subrogation.

**Changes**

IDE Americas may make improvements to the Plant (outside of ordinary repairs and replacements) of up to $1,000,000 in capital costs and $2,000,000 in aggregate costs, and may also make improvements: (i) at its own cost and subject to the Company’s reasonable approval, to rectify problems with the Plant; (ii) for any other reason, with the Company’s approval (in its sole discretion) and subject to agreeing on an equitable sharing of cost savings; and (iii) to install more energy efficient membranes. The Company may make improvements to the Plant with an equitable adjustment to IDE Americas’ compensation.

If a change in applicable law or new law adopted after the execution of the O&M Agreement increases IDE Americas’ costs or affects its obligations, IDE Americas will be entitled to an equitable adjustment of its compensation and/or obligations.
Liens

IDE Americas must discharge or bond any liens on the Plant or the Plant Site arising out of its Services within 15 days from imposition.

Custody of the Plant

The Company transferred responsibility for operation and maintenance of the Plant to IDE Americas effective on the Turnover Date (which occurred once the Plant completed the performance test and achieved the Minimum Performance Criteria under the Plant EPC Contract).

At least 350 days prior to an intended termination for convenience or 720 days prior to the end of the term, the Company will provide IDE Americas with a notice (the “Exercise Notice”), subsequent to which the Plant will be monitored for 6 months (starting no later than 60 days after delivery of the Exercise Notice) to determine if the Plant, without needing extraordinary operation or maintenance requirements: produces the Approved Monthly Quantities, does not exceed 110% of guaranteed energy consumption or 120% of a maximum chemical consumption, and meets the Product Water Quality Standards. If these standards are not met during the 6-month exit performance period, IDE Americas must run a 30-day exit performance test of the Plant (the “Exit Performance Test”), conducted in the same manner as the performance test under the Plant EPC Contract, to demonstrate that the Plant achieves the Minimum Performance Criteria set forth in the Plant EPC Contract. If the Minimum Performance Criteria are not met, IDE Americas must make all necessary repairs and replacements and re-run the Exit Performance Test until the Minimum Performance Criteria have been achieved.

In addition, upon termination of the O&M Agreement, the Plant must meet the following “Transfer Condition Requirements”: (i) be in a condition consistent with IDE Americas having performed the Services in accordance with the O&M Agreement; (ii) buildings, structures and pipelines that were expected to have a useful life of more than 20 years as of the Turnover Date (excluding structures that have been abandoned in place) must be in fair functional and structural condition as assessed pursuant to the O&M Agreement; and (iii) must meet the standards in the O&M Agreement. Within 15 days after delivery of an Exercise Notice from the Company, IDE Americas and the Company will conduct a joint inspection and survey of Plant structures and a separate inspection and survey of Plant equipment over a 45-day period to determine whether the Plant meets the Transfer Condition Requirements. If any element of the Plant does not meet the Transfer Condition Requirements, IDE Americas will within 60 days deliver a plan and cost estimate for bringing such element into compliance with the Transfer Condition Requirements, and the Company may withhold retainage in an amount calculated to cover the costs of work required to meet the Transfer Condition Requirements from remaining payments to IDE Americas (provided, that IDE Americas may instead post a letter of credit in an amount equal to this retainage). At least 120 days prior to termination, IDE Americas and the Company will perform another joint inspection and survey to assess the progress of the transfer condition work. If, 90 days prior to termination, the Plant has not met the Exit Performance Test or other exit requirements or is not being operating and maintained in accordance with the Standards of Performance, the Company may increase the amount of transfer condition retainage withheld. Within 30 days after termination, the Company will either notify IDE Americas that the Transfer Condition Requirements have been met or explain why such requirements have not been met. If the Plant did not comply with Transfer Condition Requirements at termination, the Company may use the remaining retainage to complete work necessary to cause such compliance, or draw upon the performance bond.
Default and Termination

Either Party will be in default for: (i) failure to pay any amount owed to the other Party (including, with respect to IDE Americas, liquidated damages) within 30 business days after the due date; (ii) commencement of a voluntary bankruptcy proceeding or consent to a proceeding commenced against it, or general failure to pay debts as they become due; (iii) an involuntary bankruptcy proceeding which is not dismissed or stayed within 60 days; (iv) any representation or warranty was false when made, materially and adversely affects the other Party’s ability to perform and the Party fails to cure within 30 days of notice; (v) attempt to assign or transfer in breach of the O&M Agreement without written consent; and (vi) material breach of the O&M Agreement that is not remedied within 30 days of notice (or 180 days if the Party is diligently pursuing cure).

In addition, IDE Americas will be in default for: (i) failure to provide an maintain in full force the performance bond; (ii) with respect to Product Water quality: (a) an exceedance of the same primary drinking water standard maximum contaminant level in 2 consecutive months or 3 times in a year or (b) the issued by CDPH of a “boil water” notice on the basis of Product Water delivered; (iii) with respect to Product Water quantity: (a) delivery of less than 85% of the aggregate Firm Daily Demand Orders in 2 consecutive years; or (b) delivery of less than 70% of the aggregate Firm Daily Demand Orders in a year; (iv) knowing failure to maintain required insurance coverages or any other failure to maintain required insurance not remedied within 14 business days of actual knowledge; and (iii) failure (or failure by a subcontractor) to comply with material provisions of applicable laws or permits that is not cured within 10 days of actual knowledge (or 120 days if IDE Americas is diligently pursuing cure). IDE Americas will also be in breach if its parent guarantor commences a voluntary bankruptcy proceeding, has an involuntary proceeding commenced against it that is not dismissed or stayed within 60 days, makes a materially misleading representation or warranty adversely affecting the Company and fails to remedy it within 30 days of written notice, fails to keep the guaranty in full force and effect, or repudiates or challenges the validity of the guaranty.

If IDE Americas defaults, the Company may: (i) terminate the O&M Agreement, in addition to any remedies available at law or in equity; (ii) upon such termination, require IDE Americas to withdraw from the Plant Site and take possession (upon payment of reasonable costs) of facilities, materials and equipment; and (iii) receive from IDE Americas all amounts payable to the Company through the effective date of the termination and draw on the performance bond.

If the Company defaults, IDE Americas may terminate the O&M Agreement and exercise any remedies at law or in equity.

The Company may terminate the O&M Agreement for convenience upon 90 days’ written notice to IDE Americas. If this termination occurs prior to the commencement of construction, IDE Americas will not receive any payment. If the termination occurs after the commencement of construction, IDE Americas will be paid: (i) if prior to the 3rd anniversary of the Turnover Date, $4,000,000; or (ii) if between the 3rd and 10th anniversaries of the Turnover Date, an amount starting at $4,000,000 and decreasing each month. In either case, IDE Americas will also be entitled to reasonable and documented demobilization costs, cancellation charges, the fees to which IDE Americas is otherwise entitled as of the date of the termination, and the unrecovered costs of any improvements made to the Plant at IDE Americas’ expense (and not made to rectify a problem with the Plant). If the Company terminates on or after the 10th anniversary of the Turnover Date, IDE Americas will only be entitled to the costs and charges in the preceding sentence.

Upon termination or expiration of the O&M Agreement, IDE Americas must: (i) remove all of its temporary equipment, machinery and facilities and repair damage caused by the removal; (ii) clean the
Plant Site and Plant; (iii) remove all employees and subcontractors; (iv) deliver copies of the subcontracts to the Company, as reasonably available, with a statement of their status; (v) transfer to the Company all special order items; (vi) offer to sell the Company or Water Authority spare parts and other moveable property at fair market value; and (vii) deliver to the Company all keys and access codes; existing designs, records and documents in IDE Americas’ control; and information about legal proceedings relating to the termination.

**Indemnification**

Both Parties indemnify the other (including, with respect to the Company, the Water Authority, the Company’s lenders and the engineering firm assisting the lenders, any person on whose property IDE Americas performs the Services and, with respect to either Party, its subsidiaries and affiliates, and the directors, officers, agents, successors or assigns of each of them) against (i) losses arising from injury or death of persons or third party property loss or damage caused by failure to comply with the O&M Agreement; provided that the other Party will bear its proportionate share of the liability or (ii) the presence, release or exacerbation of hazardous materials (prior to commencement of the Services, with respect to the Company, and due to IDE Americas fault, with respect to IDE Americas). IDE Americas also indemnifies the Company against injury or death of persons or third party property loss or damage caused by negligent acts or omissions by IDE Americas or any subcontractors in performance of the Services, with the Company bearing a proportionate share of liability. The indemnification provision is subject to the limitation on liability.

**Limitation of Liability**

Absent gross negligence, willful misconduct or fraud, IDE Americas’ aggregate liability to the Company under the O&M Agreement will not exceed:

- For Drought Shortfall Payments in any Contract Year: $2,000,000 (adjusted for changes in the consumer price index);
- For all other damages in any Contract Year: $3,500,000 (adjusted for changes in the consumer price index); and
- Upon the Company’s termination of the O&M Agreement for an event of default: (i) until the date (x) that is one year after the Turnover Date, if the Plant’s energy consumption is below a stipulated guaranteed amount during such year or (y) on which IDE Americas has either completed improvements (or spent $10,000,000 on improvements) to improve the Plant’s energy consumption or met the guaranteed energy consumption for twelve consecutive months: $20,000,000 (less amounts spent by IDE Americas on such energy consumption improvements), and (ii) after such date, $10,000,000 (adjusted for changes in the consumer price index).

**Force Majeure**

Either Party will be excused from obligations, except for payment obligations, it is unable to perform due to a “Force Majeure Event,” which means an event beyond the reasonable control, and not caused by the willful or negligent acts, of the Party. During a Force Majeure Event, the Company will reimburse IDE Americas for reasonable and documented extra costs of producing water attributable to the Force Majeure Event. Force Majeure Events include acts of God (but not reasonably anticipated weather conditions for the Plant’s area), landslide, earthquake, fire, explosion, flood, sabotage or similar occurrence; acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; the
failure of a government authority or private utility to provide utilities; strikes, lock outs, work stoppages or labor disputes (other than those of IDE Americas’ employees or subcontractors); underground or latent conditions not known as of execution; the presence of subsurface structures or conditions with historical geological, archaeological, religious or similar significance or endangered species habitats at the Plant; and any denial of an application to or a delay in the review, issuance or renewal of or suspension, termination or interruption of, any permit. Force Majeure Events do not include strikes of IDE Americas or its subcontractors; failure of a subcontractor or supplier to furnish labor, materials, services or equipment unless due to a force majeure event; equipment failure (unless caused by a force majeure event); source water deviations or shortfalls; or denial of an application for or delay in the review, issuance, renewal of or the suspension, termination, or interruption of, any permit or other consent if caused by a Party’s failure to apply for or use commercially reasonable efforts to prosecute the application for such permit or consent.

The Party claiming a Force Majeure Event must promptly notify the other Party in writing within three days after obtaining knowledge of the Force Majeure Event, use good faith best efforts and diligence to remedy its inability to perform and provide written notice as soon as it is able to resume performance.

Confidentiality

Each Party will hold in confidence proprietary engineering, technical, financial or commercial information of the other Party (except for information in the public domain, already in the receiving Party’s possession or received from a third party free of confidentiality obligations) identified as confidential in writing for 3 years after termination of the O&M Agreement, and will be liable for disclosure of such information by its officers, employees or affiliates. Where the Company or the Water Authority will have continuous online access to any of IDE Americas’ confidential information, the requirement for identifying this information as confidential will be satisfied if IDE Americas gives the Company a written notice that all information accessible to the Company on an online basis is confidential. The Company may disclose the terms and a summary of the O&M Agreement (approved by IDE Americas) to obtain financing. IDE Americas will require its subcontractors and sureties to enter into nondisclosure agreements regarding the Company’s confidential information and will be liable for any disclosures. The Company will require its lenders, potential lenders, equity investors and rating companies to enter into appropriate nondisclosure agreements regarding IDE Americas’ confidential information and will be liable for any disclosures. The Company will also require any consultants in the desalination business to enter into direct nondisclosure agreements with IDE Americas and, if the consultant has not entered into such a direct agreement, will be liable for any disclosures.

Notwithstanding the foregoing, neither party will be breach of its confidentiality obligations under the O&M Agreement for disclosing information which it can show by written records is or has become part of the public domain or was possessed, free of confidentiality obligations, by a third party not in breach of confidentiality obligations. A party receiving confidential information will also not breach its confidentiality obligations due to disclosures required under any applicable law or regulation. The Company may disclose to the Water Authority any confidential information of IDE Americas which it is required to disclose under the Water Purchase Agreement, it being understood that the Water Authority is permitted to disclose such confidential information to the extent it is required to do so by law or under the rules of transparency applicable to public authorities in California. The Company will be in breach of its confidentiality obligations under the O&M Agreement to the extent that it discloses confidential information to the Water Authority that is not required to be disclosed under the Water Purchase Agreement or the Water Authority makes public confidential information that it is not required to disclose under applicable law or transparency rules.
Dispute Resolution

Disputes over whether EPC Contractor or IDE Americas is responsible for a certain repair or replacement will be resolved through binding arbitration by a single arbitrator, with a decision to be rendered within 5 business days of receipt of written submissions or hearing, as applicable. All other disputes will be submitted to a dispute coordination committee, comprised of 2 management representatives from each Party and an independent representative agreed upon by the Parties. If the committee fails to resolve the dispute within 10 business days, the Parties may agree to submit the dispute to arbitration or either Party may commence a legal action in court. In addition, either party may request non-binding mediation of any dispute, with the other party’s agreement, by a professional mutually acceptable to, and with not relationship with, the Parties.

Assignment

The Company may assign: (i) to Water Authority upon termination of the Water Purchase Agreement, (ii) to its lenders for financing or (iii) to a transferee of all or a substantial portion of the Plant with substantially similar financial and operational capabilities, and the assignment to whom could not otherwise reasonably be expected to have a material adverse effect on IDE Americas. IDE Americas may assign its rights under the O&M Agreement to the sureties providing the performance bond in the event that the sureties are performing the O&M Agreement and may assign its right to payment to financial institutions providing credit to IDE Americas (provided the assignment will not affect IDE Americas’ ability to perform or the Company’s rights under the O&M Agreement). No other assignments are permitted without consent.

Effect of Third Party Decisions or Requirements

To the extent that IDE Americas’ rights under the O&M Agreement are subject to consent or decision by the Company’s lenders or the lenders’ engineer, the Company will be liable to IDE Americas for failure to provide such consent or decision to same extent that the Company would be liable if the Company were the one with the right to make such decision. Neither the Company nor IDE Americas will be excused from performance of its obligations under the O&M Agreement by reason of being required to comply with any requirement, instruction or determination of a third party.

Intellectual Property

IDE Americas will own the intellectual property rights to any drawings, designs or other documents containing know-how or technological information prepared or procured by it for the O&M Agreement. The Company will have a royalty-free, non-exclusive interminable license (assignable to any successor in ownership of the Plant) to use these intellectual property rights to operate and maintain the Plant, and for any expansions of the Plant up to 20% of its output or any extension necessary to connect the Plant to another desalination facility.

Miscellaneous

The O&M Agreement contains other customary provisions, including those addressing IDE Americas’ status as an independent contractor, representations and warranties, cooperation with the financing parties.
III. SUMMARY OF CERTAIN PROVISIONS OF THE GROUND LEASE

The following summarizes certain provisions of the Second Amended and Restated Ground Lease and Easement Agreement, dated as of April 7, 2010 (the “Agreement Date”), as amended (the “Ground Lease”), by and between Cabrillo Power I LLC (“Cabrillo”) and Poseidon Resources (Channelside) LP (the “Company”).

The Parties originally entered into a Ground Lease and Easement Agreement on July 11, 2003 (the “Original Effective Date”), which was amended on August 25, 2009 to reconfigure the Leased Premises, and further amended on the Agreement Date to modify certain easements and other rights under the Ground Lease. The Ground Lease has subsequently been amended to extend the construction commencement and completion deadlines and to make additional changes to the terms. Also see Summary of Certain Provisions of the Eleventh Amendment to the Ground Lease below.

Definitions

Any capitalized term used in this summary and not defined below is defined in Appendix A, Summary of Certain Definitions.

Term

The initial term of the Ground Lease expires 35 years from the date that the Plant achieves commercial operation, with the option to extend for 2 consecutive 10 year terms. Cabrillo may terminate the Ground Lease if construction has not commenced by December 31, 2012, or if Substantial Completion has not occurred by June 30, 2016, provided that the latter deadline will be extended for 2 years if a mortgagee with rights in the Company’s improvements is diligently pursuing Substantial Completion.

Basic Obligations

Under the Ground Lease, the Company is leasing a portion of the Power Station property (“Leased Premises”) to construct and operate the Plant, and has acquired easements appurtenant to the Leased Premises, including easements for:

Constructing, operating and maintaining a water intake pipeline and pump station, water discharge pipeline and retaining walls between the Leased Premises and the Power Station’s cooling water discharge facilities;

Constructing, operating and maintaining a water transmission pipeline;

Constructing, using and maintaining a sanitary discharge pipeline and potable water pipeline;

Ingress and egress;

The use of Cabrillo’s existing seawater intake/outfall facilities, intake/discharge channel and discharge pond Intake and outfall (“Existing Seawater Facilities”) and constructing and maintaining New Pumping Facilities (defined below) following a Permanent Pump Shutdown (as described below);
Five temporary construction easement areas (the “Temporary Construction Easement Areas”) as described in “Construction” below; and

Dredging the portion of the Agua Hedionda Lagoon west of the North County Transit District railroad tracks (“Outer Lagoon”), should Cabrillo fail to perform such dredging following a Permanent Pump Shutdown (as described below).

The Company’s activities may not have a “Material Adverse Effect” (defined as any current or prospective interference with, impairment of, delay affecting, increase in the cost of, or any other adverse impact or effect on any specified condition, asset, property, circumstance, event, activity or other matter which, on a single occurrence basis or when cumulated with other interferences on the same conditions, etc., directly or indirectly results in, causes or contributes to a Party incurring any cost, expense, loss or liability that exceeds $200,000 in any 12-month period and is not reimbursed within 30 days) on an enumerated risk factor, including the lateral and subjacent support for the Power Station, the avoidance of threat, damage or injury to health, safety, life or property, any increased costs, expenses or liability in connecting with the Power Station, the environmental condition of Cabrillo’s properties, and Cabrillo’s ability to obtain permits and comply with applicable law (each, a “Cabrillo Risk Factor”), and Cabrillo reserves the right to modify or shut down the Power Station, with the limitations discussed below. In addition to other rights reserved under the Ground Lease, Cabrillo reserves rights of ingress and egress on roadways across the Leased Premises, the right to install underground utilities, and the right to construct and maintain an overhead 138 kV power line. Cabrillo may also undertake the demolition, removal and relocation of its wastewater treatment plant, and the Company will reimburse Cabrillo for the reasonable and documented costs of such demolition activities upon the later to occur of 30 days after the Company makes it first draw of the construction financing funds (“Financial Closing Date”) or the date on which Cabrillo provides documentation of incurred costs, unless (i) the Financial Closing Date does not occur, in which case the demolition will be at Cabrillo’s sole expense; or (ii) the demolition is not completed by December 31, 2012, in which case the Company may elect to complete these activities itself only reimburse Cabrillo for costs incurred prior to notification of this election.

The Water Authority will have the right to enter the Leased Premises and easements to perform or enforce any of its rights under the Water Purchase Agreement, as long as it complies with all applicable provisions of the Ground Lease.

The Company must submit various materials, including a site plan, the scope book to the Plant EPC Contract, permitting materials, operating procedures for the Plant’s intake/discharge facilities, laydown and staging plan, etc. for review and comment by Cabrillo according to the schedule in the Ground Lease, and must also submit any other regulatory or legal filings that could reasonably be expected to have a material adverse effect on Cabrillo (collectively, “Submittal Items”). The Company will design the improvements generally according to the preliminary site plan to enable the Power Station to operate independently from the Plant.

The Company will deliver to Cabrillo an ALTA/ACSM survey and a complete set of as-built drawings within 120 days of the earlier to occur of (a) the date on which potable water is first sold from the Plant or (b) the date on which the performance guarantees have been achieved under the Plant EPC Contract (“Substantial Completion”).

Cabrillo must use reasonable efforts to provide the Company with the ability to interconnect to the Power Station’s auxiliary electrical system, telephone, water and sewer utilities and information data system.
**Maintenance, Compliance with Law and Inspection**

The Company will be responsible for maintenance of its improvements, the Leased Premises and easement areas in accordance with prudent industry practices for similar facilities. The Company must conduct its operations in a workmanlike and commercially reasonable manner, regularly clean up any litter it deposits on Cabrillo’s property, provide adequate security and protection for its improvements and personal property on the Leased Premises and easement areas, and properly and promptly install, maintain or repair any component of its improvements that is necessary for the normal operation of the Power Station. The Company must comply with all applicable laws and any covenants, restrictions or other matters of title that are senior to its rights under the Ground Lease. Cabrillo and its consultants have the right to enter the Leased Premises and easement areas and the Company’s improvements for inspection, at Cabrillo’s expense (unless the inspection is ordered by a governmental authority or a violation of law or imminent default is found), at any time in the case of an emergency, and otherwise at reasonable times.

**Rent and Payment**

The Company pays a fixed annual rent of $340,000, which will increase to $1,287,000 per year on June 30, 2017 and is subject to adjustment based on the change in the consumer price index from August 2009. The rent will be adjusted by $0.67 per square foot (or $1.96 per square foot after June 30, 2017) if after Substantial Completion the total area of the Leased Premises and easement areas is different from the area calculated as of the execution of the Ground Lease. Rent during any extended term will be the fair market rental value adjusted for changes in the consumer price index from the date this value is determined (but no lower than the previous year’s rent).

The Company must also pay the following as additional rent:

- Reimbursement for costs Cabrillo incurs because of the Company’s activities, including increased costs of running the Power Station and any costs of compliance with Clean Water Act Section 316(b) incurred due to the Company’s operation of the Plant;
- Reimbursement for increases in Cabrillo’s costs of operating or maintain the Power Station due to the Company’s operation of the Plant;
- Reimbursement for Cabrillo’s reasonable expenses incurred in cooperating or assisting the Company, at the Company’s request, with any transaction pursuant to the Ground Lease;
- During construction of the Plant, $331,000 per year for use of temporary construction easement areas (reduced for any month when Cabrillo is unable to provide a total of 6.5 acres of temporary construction easement space);
- In the event of a Permanent Pump Shutdown, the cost of dredging the Outer Lagoon, as well as any other dredging required by a governmental body in connection with the Company’s operations; and
- Taxes and other charges or fees from governmental authorities on the Leased Premises, its operations or improvements, as well as any such charges imposed on Cabrillo as a result of the Company’s actions.

The Company will also be responsible for (i) all taxes and assessments imposed on the Leased Premises or the Company’s improvements, result from execution of the Ground Lease or arise out of the
Company’s use of the Leased Premises or development of its improvements and (ii) a proportionate share of any such taxes and assessments that are not taxed separately from Cabrillo’s property.

Construction

The Company shall have the right to construct its improvements so long as (i) no breach by the Company has occurred and is not then fully cured and (ii) such construction (a) does not disturb or interfere with any existing taxes and assessments, covenants, conditions, restrictions, rights of way, easements, licenses, laws and other matters affecting title, matters that would be disclosed by an inspection or accurate ALTA/ACSM survey or rights reserved by Cabrillo under the Ground Lease (“Permitted Exceptions”) that are senior to the Company’s rights under the Ground Lease and (b) could not reasonably be expected to have, and does not have, a Material Adverse Effect on a Cabrillo Risk Factor.

Upon 60 days’ notice to Cabrillo, the Company will have use of the Temporary Construction Easement Areas for: (i) material/soil storage, receiving/warehousing, delivery/receiving; (ii) equipment and vehicle storage, maintenance, fuel/oil storage (contained), crane set-up; (iii) offices, worker break areas, employee parking, staging construction equipment; (iv) excavation/shoring for temporary utility trenches and/or adjacent structures, dewatering systems; and (v) fabrication yards and concrete washout. The Company must provide a laydown and staging plan showing the timing and sequence of its usage of the Temporary Construction Easement Areas at least 60 days prior to commencing construction. Cabrillo may provide substitute acreage on 60 days’ notice if it reasonably determines that it needs these areas for its own use. The Company may also temporarily excavate from and store soil in the areas adjacent to the Temporary Construction Easement Areas as reasonably necessary.

Priority

Except to the extent inconsistent with the Company’s specific rights under the Ground Lease, the operation, maintenance and use of the Power Station, as well as changes to the Power Station, will have priority over the construction, operation, maintenance, use and alteration of the Company’s improvements. Cabrillo will not be obligated to alter or shut down the Power Station in connection with the construction, operation, use, repair, removal, dismantling or demolition of any of the Company’s improvements, although Cabrillo will use reasonable efforts to accommodate the Company’s construction plans, schedules and routine maintenance.

Plant Alterations

After Substantial Completion, the Company will not obtain permits or commence construction for any alteration to its improvements without first delivering charts detailing all Submittal Items associated with the alterations for Cabrillo’s review and approval within 30 business days. The Company may not make any alterations to its improvements that will have a Material Adverse Effect on a Cabrillo Risk Factor. The Ground Lease does not contemplate any expansions of the Plant, and would require new consideration and contractual arrangements for any such expansions, except for expansions of the Plant within the Leased Premises and consistent with local land use laws that do not require additional connections to the Power Station.

Changes to the Power Station

Subject to the exceptions described below, Cabrillo generally reserves the right to alter or expand, change its methods for operation, or shut down the Power Station without reimbursing the Company for
any costs of accommodating these changes. Cabrillo will provide reasonable notice and keep the Company informed of changes to the Power Station that it reasonably believes will have a Material Adverse Effect on the Plant. If these changes involve relocating the Power Station’s cooling water discharge facilities, the Parties will modify the easements to allow the Company to relocate its intake/discharge facilities and electrical lines accordingly. Cabrillo will not use any portion of the Leased Premises for Power Station changes, but may use the easement areas, as long as the changes do not (i) require the Company to obtain any new or amended permit (unless Cabrillo pays to obtain the permit with no unreasonable delay to the Company) or (ii) require relocation of the Company’s sewer or product water pipeline easements within the North County Transit District railroad right of way. Cabrillo will give the Company advance notice of Power Station changes affecting the easement areas, and the Parties will attempt in good faith to agree to appropriate changes to the Ground Lease (provided that if agreement is not reached after 60 days, Cabrillo may nevertheless make the alteration).

Cabrillo will not be required to reimburse the Company for changes to the easement areas that are not voluntary (including changes made due to Force Majeure Events or to comply with applicable law) or do not have a Material Adverse Effect on the Plant. If Cabrillo makes a change to the easement areas for its own gain that has a Material Adverse Effect on the Plant, Cabrillo will reimburse the Company for the reasonable and verifiable out-of-pocket costs of relocating the easements. If the relocation causes the Plant to stop operating for more than 7 days, but less than 31 days, in an 18-month period, Cabrillo will reimburse the Company, in addition to relocation costs, for out-of-pocket Plant fixed operation and maintenance costs for the period starting after the first 7 days and ending when operations recommence or at the end of the 30th day. If the relocation causes the Plant to stop operating for more than 15 but less than 31 days in an 18-month period, Cabrillo will reimburse the Company, in addition to relocation and operation and maintenance costs, for verified scheduled debt service payments actually made for the period from the 15th to the end of the 30th day. If the relocation causes the Plant to stop operating for 31 or more days in an 18-month period, Cabrillo will reimburse the Company, in addition to relocation costs, for verified lost revenue under the water sales agreements for the period from the 31st day until the Plant recommences operations, but will not reimburse the Company for operation and maintenance or debt service costs during this period.

Operation of the Power Station’s Circulating Water System

Cabrillo will use reasonable efforts to notify the Company if Cabrillo’s operation of its once-through cooling system pumps (the “Pumps”) would result in a flow below the flow needed to allow operation of the Plant in compliance with the Company’s permits. As long as the Power Station is operating (and unless prevented by a Force Majeure Event or the shut down or reduction of daily average intake flow of the Power Station), Cabrillo will use reasonable efforts to operate the Pumps to reflect the level of flow needed for the Plant (provided that the Company must reimburse Cabrillo for the cost of running the Pumps in excess of Power Station requirements). Cabrillo will not be required to run the Pumps on the Company’s behalf if the Pumps are inoperable/inaccessible, if the Company is in breach of the Ground Lease, or if operating the Pumps will have a Material Adverse Effect on a Cabrillo Risk Factor.

Permanent Pump Shutdown

Cabrillo was required to and has provided at least 36 months’ notice before the Pumps are permanently shut down. Cabrillo may require the Company to relocate its connections to the Power Station’s cooling water discharge facilities at the end of such 36-month period. Unless and until Cabrillo requires the Company to do so, Cabrillo must either operate the Pumps on the Company’s behalf or allow
the Company to relocate its connections in order to construct and operate its own intake pumps and screens ("New Pumping Facilities"), in either case at the Company’s sole expense.

If Cabrillo elects to operate the Pumps for the Company, the Company will be responsible for all costs and the operation will only continue for so long as: (i) the Company is not in default under the Ground Lease, (ii) the Company indemnifies Cabrillo for all costs and liabilities arising from such operation, (iii) the Company obtains all necessary permits for the operation and (iv) operating the Pumps will not have a Material Adverse Effect on a Cabrillo Risk Factor. If Cabrillo requires the Company to relocate its connections or does not operate the Pumps for the Company, the Company has an easement to use Cabrillo’s Existing Seawater Facilities, and to construct New Pumping Facilities, and its current connection easement will be deemed deleted. In addition, in the event the Pumps are permanently shut down, the Company will reimburse Cabrillo for dredging the Outer Lagoon. If Cabrillo fails to dredge the Outer Lagoon, the Company may utilize its easement to perform such dredging. The Company will be responsible for the cost of maintaining the portion of the Existing Seawater Facilities it uses and for maintaining required permits and entitlements. Cabrillo may continue to use seawater from the Existing Seawater Facilities as long its use does not have a Material Adverse Effect on the Company’s use and provided that Cabrillo reimburses the Company for an equitable portion of the costs of maintaining the equipment and, if Cabrillo uses more than 5% of the seawater from the Existing Seawater Facilities, for an equitable portion of the cost of dredging the Outer Lagoon.

**Liens**

The Company will not permit any liens arising out of its use of the Leased Premises and easements to be recorded against its interest in the Ground Lease (except by mortgaging or otherwise encumbering its rights under the Ground Lease with Cabrillo’s approval), the Power Station or Cabrillo’s property, and will promptly remove any such liens at its own expense. The Company will remove any mechanic’s or materialman’s liens recorded against Cabrillo’s property or the Power Station by the earlier of 90 days after receiving actual notice of the lien, 30 days before the date the lien could lead to a foreclosure on the property, or 45 days after receiving written notice from Cabrillo. If the Company fails to remove the lien, it will be responsible for all related costs incurred by Cabrillo as additional rent.

**Insurance**

The Ground Lease contains comprehensive requirements regarding the insurance coverages that the Company is obligated to obtain and maintain. The Company is responsible for all premiums, deductibles or charges in relation to procuring certain insurance and will name Cabrillo as an additional insured on all policies. If Cabrillo wants to construct new improvements in the easement areas or perform work other than usual and customary maintenance in those areas, it will procure and maintain customary insurance coverage on commercially reasonable terms.

**Environmental Matters**

Cabrillo must disclose to the Company any environmental work done on its property and make available any environmental reports and site assessments. The Parties will share equally the costs of remediation for hazardous materials existing prior to the Original Effective Date, provided that either Party may terminate the Ground Lease if its share will be more than $5,000,000 (unless the other Party voluntarily contributes more than its share to reduce the other Party’s share below $5,000,000). Cabrillo will not be responsible for any delay caused by remediation.
In the Ground Lease, Cabrillo represents that, among other things, as of the Agreement Date, Cabrillo has no knowledge of: (i) pending or threatened actions relating to the Lease Premises or concerning hazardous materials or environmental laws with respect to the Leased Premises that would reasonably be expected to have a Material Adverse Effect on the Company’s intended use of the Leased Premises; (ii) requests for information, notices, complaints or claims by governmental bodies concerning any release of hazardous materials on the Leased Premises, nor liens imposed against the Leased Premises in connection with hazardous materials; and (iii) hazardous materials located on or under the Leased Premises that could reasonably be expected to have a Material Adverse Effect on the Company’s intended use of the Leased Premises (except for certain materials identified in the Ground Lease).

The Company may use hazardous materials on the Leased Premises and easement areas only as approved by Cabrillo in advance and in accordance with environmental law, and will be responsible for remediating any contamination it causes. If the Company does not commence and diligently pursue any such remediation within 60 days of Cabrillo’s approval of a remediation plan, Cabrillo may undertake remediation itself and recover its costs from the Company as additional rent. The Parties will immediately notify each other of hazardous material actions, claims or reports and will provide copies of relevant materials within 5 business days of sending/receiving them.

The Company will indemnify Cabrillo from damages arising from the Company’s contamination of the property, failure to comply with environmental law, or breach of covenant or representation with respect to its environmental obligations under the Ground Lease. Cabrillo will indemnify the Company against damages from contamination it causes after the Original Effective Date or breach of its representations regarding hazardous materials.

The Company will not disturb or permit disturbance of any wetland or other environmentally sensitive land or destroy, injure or move any species of endangered or threatened animal or place unless it does so in compliance with applicable law.

Title, Quiet Enjoyment

The Company acknowledges that its interest in the Leased Premises and easement areas is subject to the Permitted Exceptions and that it may need to obtain consents from third parties for its intended use of the property. Subject to these interests, Cabrillo covenants quiet enjoyment of the Leased Premises during the term of the Ground Lease. Cabrillo reserves the right to grant additional easements, rights of way, licenses, etc. to others as it deems reasonably necessary (provided that it cannot grant additional rights over the easement areas if these rights will have a Material Adverse Effect on the Company’s intended use of those areas), but will make reasonable efforts to obtain the additional grantees’ written agreement not to cause a Material Adverse Effect on the Company’s improvements and to name the Company as a third party beneficiary. The Company’s rights under the Ground Lease will, at Cabrillo’s option, be subordinated to any security interest subsequently placed on Cabrillo’s property, provided that Cabrillo will obtain non-disturbance rights for any interests placed on the Leased Premises or easement areas after the Agreement Date.

Other than having no knowledge of any unrecorded liens on the Leased Premises or easement areas, Cabrillo makes no warranties concerning its title to the property or the Company’s right to use the water and expressly disclaims any warranties regarding the condition of the property and its fitness for the Company’s intended use, compliance with the law, third party consents, etc. The Company acknowledges that certain title and permit matters as of the Original Effective Date may be inconsistent with its intended use, and that its use may be subject to limitations, including limitations in favor of SDG&E and the State Lands Commission. The improvements will be the Company’s property, except
for any improvements connected to the operation of the Power Station, which may, at Cabrillo’s option, become Cabrillo’s property upon termination of the Ground Lease.

Assignment

The Company must obtain Cabrillo’s consent (not to be unreasonably withheld) for any assignment other than assignments for financing or to an entity with extensive experience operating similar facilities and financial ability comparable to the Company’s (in Cabrillo’s sole and reasonable judgment). The direct transfer of more than 50% of the equity in the Company, or of a controlling interest in the Company, will constitute an assignment for purposes of the Ground Lease. The Company’s rights under the Ground Lease may also be assigned to the buyer at a foreclosure sale, by deed in lieu of foreclosure, to a subsidiary of a mortgagee subject to the Ground Lease, or to the Water Authority upon expiration of the Water Purchase Agreement. Cabrillo may freely assign its interest in its property (including the Leased Premises and easement areas).

Condemnation, Damage

In the event that a governmental body (other than the City of Carlsbad or the San Diego County Water Authority) condemns or acquires title to substantially all of the Leased Premises and easement areas or the Company’s improvements (such that the Company would not be able to continue operating its business on the remaining portions), the Company may terminate the Ground Lease on written notice to Cabrillo and the Company will only pay rent until the earlier of the Plant ceasing commercial operation or title vesting in the government body. Any sum awarded for the governmental body’s taking of the property will be split between the Parties according to whether it is attributable to that Party’s lost revenues, improvements to, or interest in the property and according to California law.

If all or part of the Company’s improvements are destroyed by a risk covered by insurance, or if the Company’s improvements are destroyed by a risk not covered by insurance but the cost to repair is 25% or less than the then-replacement value of the improvements, the Company will repair them to substantially the same condition they were in before the destruction. If all or part of the Company’s improvements are destroyed by a risk not covered by insurance and the cost of repair is more than 25% of their then-replacement value, or if the improvements are destroyed during the last 3 years of the term, then the Company may either repair the improvements or terminate the Ground Lease on 30 days’ written notice. If the risk causing the destruction is not covered by insurance and the Company chooses to repair the improvements, rent will be reduced while the improvements are repaired to reflect the extent to which the damage interferes with the Company’s use of the improvements.

Default by the Company and Remedies

The Ground Lease sets forth the following events of default with respect to the Company: (i) failure to pay rent when due; (ii) failure to comply with any material term of the Ground Lease; (iii) material breach of any warranty or representation under the Ground Lease; (iv) abandonment of the Leased Premises and easement areas; and (v) discovery that any financial statement given by the Company to Cabrillo was materially false.

Upon written notice from Cabrillo, the Company has 20 days (for a monetary breach) or 30 days, extended to 180 days as reasonably necessary (for a non-monetary breach), to cure such breach. Cabrillo may but is not obligated cure a non-monetary breach at the Company’s expense: (i) without notice, in an emergency; or (ii) if the Company does not immediately begin curing after notice of a breach which could reasonably be expected to have a Material Adverse Effect on a Cabrillo Risk Factor, places Cabrillo in
violation of any law, constitutes an imminent threat to life or property or threatens contamination. In addition to any rights available in law or equity, Cabrillo may (i) re-let the Leased Premises and easement areas at the Company’s expense and require the Company to remove its improvements (rent received from the re-letting will be applied to amounts owed by the Company); and (ii) terminate the Ground Lease and recover unpaid rent, including any unpaid rent for the balance of the term that the Company does not prove could have been reasonably avoided, and other costs.

Cabrillo Default and Remedies

Cabrillo will be in breach of the Ground Lease for violation of any material term. Upon written notice from the Company, Cabrillo has 20 days (for a monetary breach) or 30 days, extended to 180 days as reasonably necessary (for a non-monetary breach), to cure such breach. Thereafter, the Company will have all rights and remedies available in law or equity, including the right, but not the obligation, to cure the breach at Cabrillo’s expense upon 10 days’ written notice, provided that the Company waives the right to pursue actions seeking termination or reformation of the Ground Lease as a remedy. Specific performance will only be available if damages would not adequately compensate the Company for Cabrillo’s default.

Lender and Water Authority Protections

If Cabrillo notifies the Company of an event of default, it will also notify the Collateral Agent, as the Company’s mortgagee, and the Water Authority. The Water Authority will have the same rights under the Ground Lease as the Collateral Agent to cure defaults by the Company. Cabrillo will not terminate the Ground Lease for the Company’s default so long as the Collateral Agent pays any rent due within 50 days of notice and cures any non-monetary defaults within 60 days (to be extended if the Collateral Agent is diligently pursuing a cure not capable of being performed within 60 days). The Collateral Agent may step in to assume the Company’s rights and obligations under the Ground Lease after a breach by the Company upon notice to Cabrillo and payment of amounts owed to Cabrillo, and may step back out upon 30 days’ written notice. Within 90 days after the Ground Lease being rejected in bankruptcy, the Collateral Agent may request to enter into a new agreement with Cabrillo on the same terms as the Ground Lease. Cabrillo will not consent to assignment or amendment of the Ground Lease unless (i) the Collateral Agent has been given 30 days’ notice and has not given notice that the proposed assignment or amendment is not permitted under the financing documents, or (ii) the Company has confirmed in writing that the assignment or amendment is permitted under the financing documents.

Indemnification, Limitation of Liability and Release

The Company indemnifies Cabrillo from damages (except to the extent caused by Cabrillo) caused by the Company’s actions with respect to Cabrillo’s property, the acts of any person on the Leased Premises (except for persons acting in accordance with rights provided by Cabrillo), water used by the Plant, the Company’s failure to perform its obligations under the Ground Lease, or the failure of any of the Company’s representations or warranties. The Company has the right to assume the defense of such a claim with lawyers reasonably satisfactory to Cabrillo; provided that the Company must obtain Cabrillo’s consent (not to be unreasonably withheld) for any settlement. The Company will not be relieved of its indemnification obligations by virtue of its right to contest Permitted Exceptions, liens or laws, or by virtue of the fact that a Permitted Exception may be junior to the Ground Lease, the easements or the Company’s rights under the Ground Lease.

Cabrillo indemnifies the Company from damages (except to the extent caused by the Company) arising from death, personal injury or property loss caused by Cabrillo’s negligent activity or willful...
misconduct on the property or failure to perform its obligations under the Ground Lease. Cabrillo has the right to assume the defense of such a claim with lawyers reasonably satisfactory to the Company; provided that Cabrillo must obtain the Company’s consent (not to be unreasonably withheld) for any settlement. Cabrillo’s indemnification obligations do not apply to any hazardous materials on the property prior to the Original Effective Date or to environmental remediation activities for which Cabrillo and the Company share the costs equally pursuant to the Ground Lease.

Except for Cabrillo’s indemnification obligations, Cabrillo will have no liability except for damages to the Company’s improvements or injury to persons on the Leased Premises or easements areas caused by its negligence, willful misconduct or failure to perform its obligations under the Ground Lease. Neither party will be liable for special or consequential money damages. The Company releases Cabrillo from all liability (except for material breaches of express covenants and warranties in the Ground Lease) relating to Cabrillo’s property, title to, use of or quality of water, documentation furnished by Cabrillo, title matters as of the Original Effective Date and matters expressly disclaimed in the Ground Lease.

**Restoration Security**

As security for its obligation to restore the Leased Premises at the end of the term of the Ground Lease, the Company is obligated to provide a prepaid and irrevocable bond, irrevocable letter of credit, guaranty or cash collateral (if Cabrillo determines that such cash collateral will not be part of the Company’s bankruptcy estate) in an amount equal to the future cost (estimated as of December 31, 2015) of performing the Company’s obligation to restore the property at the end of the term or earlier termination of the Ground Lease. The Company will prepare a good faith estimate of these costs. If Cabrillo disagrees with the Company’s estimate, the parties will negotiate in good faith for 45 days and then submit the dispute to arbitration if necessary.

This security must be maintained until the earlier to occur of (i) 12 months after commercial operation, (ii) the Plant has produced at least 45 MGD for at least 90 days; or (iii) if the Plant does not reach commercial operation, until the Company performs all of its obligations with respect to termination of the Ground Lease. The security must be posted again before the 20th anniversary of the commercial operation date and maintained until the end of the term. Cabrillo may draw on the initial and subsequent restoration security if the Company defaults on its obligations under the Ground Lease.

**Force Majeure**

Either Party will be excused from obligations it is unable to perform due to a “Force Majeure Event,” which means any act of God or similar cause beyond the reasonable control of the Party, including strikes, riots, shortages or labor/materials, theft, fire, acts of public enemy, injunction, insurrection, court order, war, the effect of changes to the Power Station (if the Company is the claiming Party), changes in law after the Original Effective Date, or denial of, or delay in obtaining, one of the Company’s permits (in each case, where the Company is the claiming party). Force Majeure Events do not include matters which could reasonably have been overcome by due diligence or avoided and matters prior to construction commencement. The Party claiming the Force Majeure Event must provide written notice to the other Party within 10 days of the event, attempt in good faith to remedy its inability to perform, and give notice as soon as it is able to resume its obligations. Any suspension of obligations shall be of no greater scope and for no longer duration than reasonably required by the Force Majeure Event, capped at an aggregate of 36 months except for Force Majeure Events caused by changes to the Power Station, and will not extend the term of the Ground Lease. The Company must continue to pay rent during a Force Majeure Event.
SUMMARY OF CERTAIN PROVISIONS OF THE ELEVENTH AMENDMENT TO THE GROUND LEASE

The following summarizes the Eleventh Amendment to Second Amended and Restated Ground Lease and Easement Agreement (the “Eleventh Amendment”) by and between Company and Cabrillo, dated as of February 16, 2018.

Under the Eleventh Amendment the Company has acquired additional easements on the Power Plant Property for the purpose of constructing, operating and maintaining the Intake System Modifications. These include easements for constructing, operating and maintaining a system of intake screens and pipelines in the Lagoon and fish return system. The locations of certain existing easements have also been revised.

The fixed annual rent was increased to [$__________] until January 1, 2019, and thereafter through the last day of the Initial Term such rent will be [$__________] (inclusive of payments owed by the Company to Cabrillo related to an SDG&E easement). Rent is subject to upward adjustment based on the change in the consumer price index from August 2009. To the extent the Company no longer needs certain easements the Company will relinquish its rights to such easements and the rent will be reduced in accordance with values for each easement set forth in the Eleventh Amendment.

Cabrillo and the Company have agreed to negotiate to locate certain areas for the Company’s use during the construction of the Intake System Modifications. The Company shall pay Cabrillo $25,500 per acre annually for use of such areas during construction.

Upon a permanent shut down of the Pumps, the Company will be responsible for the dredging the Outer Lagoon.

Cabrillo’s obligation to operate the Pumps on the Company’s behalf expires on the earlier of (i) commercial operation of the interim portion of the Intake System Improvements and (ii) December 31, 2019. Cabrillo will operate the Pumps after December 31, 2019 (but in no event beyond December 31, 2021) only if Carlsbad has consented to such operation and the Company has agreed to hold Cabrillo harmless from all damages, losses and liabilities arising out of such operation, including any amounts payable by Cabrillo to Carlsbad in connection with the settlement agreement dated January 12, 2014 between Cabrillo, Carlsbad and certain other parties.

The Company shall not oppose Cabrillo’s redevelopment of the Power Plant for a use that does not involve the generation of electricity unless such redevelopment will have a Material Adverse Effect on the Company’s operation or maintenance of the Plant.
APPENDIX I

Summaries of the Plant Loan Agreement and the Plant Bonds Indenture
SUMMARY OF CERTAIN PROVISIONS OF THE
PLANT LOAN AGREEMENT

The following summarizes certain provisions of the Plant Loan Agreement dated December 24, 2012, as amended (the “Plant Loan Agreement”), by and between the California Pollution Control Financing Authority, a political subdivision and public instrumentality of the State of California (the “Issuer”), and Poseidon Resources (Channelside) LP, a limited partnership duly organized and existing under the laws of the State of Delaware (the “Company”)

REPRESENTATIONS AND WARRANTIES OF THE COMPANY; FINDINGS OF THE ISSUER

Representations and Warranties of the Company

The Company represents and warrants to the Issuer and the Plant Trustee that, as of the date of execution of the Plant Loan Agreement, the date of execution of the Collateral Trust Agreement and the Series 2012 Closing Date (such representations and warranties to remain operative and in full force and effect regardless of the issuance of the Series 2012 Plant Bonds or any investigations by or on behalf of the Issuer or the results thereof):

(a) The Company (i) is a limited partnership duly organized in the State of Delaware and is registered as a foreign corporation in the State of California and is in good standing under the laws of each such jurisdiction; (ii) has full limited partnership power and authority to enter into the Transaction Documents to which it is party, and to carry out and consummate all transactions contemplated by the Transaction Documents; and (iii) by proper limited partnership action has duly authorized the execution, delivery and performance of such Transaction Documents.

(b) The officers of the General Partner executing the Plant Loan Agreement and the other Transaction Documents to which the Company is party are, as of the date of such execution and as of the Series 2012 Closing Date, duly and properly in office and fully authorized to execute the same.

(c) The Transaction Documents to which it is party have been duly authorized by the Company, and duly executed and delivered by the General Partner on behalf of the Company.

(d) The Loan Agreement, when assigned to the Plant Trustee pursuant to the Plant Indenture, will constitute the legal, valid and binding agreement of the Company enforceable against the Company by the Plant Trustee in accordance with its terms for the benefit of the holders of the Plant Bonds, to the extent of its interests therein, and any rights of the Issuer and obligations of the Company not so assigned to the Plant Trustee constitute the legal, valid, and binding agreements of the Company enforceable against the Company by the Issuer in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors’ rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

(e) The execution and delivery by the General Partner on behalf of the Company of the Transaction Documents to which the Company is party, the consummation on the part of the Company of the transactions herein and therein contemplated and the compliance by the Company with the terms and conditions of the Plant Loan Agreement and thereof, will not (i) conflict with or constitute a violation or breach of or default under the Organizational Documents of the Company, Applicable Law, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Company is a party or by which it or its properties are otherwise subject or bound, or (ii) result in the creation or imposition of any Lien upon any of the property or assets of the Company (other than Permitted Encumbrances), which conflict, violation, breach, default or Lien would reasonably be expected to have a Material Adverse Effect.

(f) No consent or approval of the Plant Trustee or any holder of any Debt of the Company or any guarantor of indebtedness of or other provider of credit or liquidity to the Company, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority (except with respect to any state securities or “blue sky” laws, and except for Project-related Permits within the scope of subsection (g)) is
required to be obtained by the Company or, in the case of clause (b) below, the Partners, in connection with (a) the execution and delivery by the Company of the Financing Documents to which it is party, the consummation on its part of the transactions herein or therein contemplated, or compliance by the Company with the terms of the Plant Loan Agreement or thereof, (b) the grant by each of the Company and the Partners of the Liens granted by such Person pursuant to the Collateral Documents, or (c) the perfection or maintenance of the perfection or priority of the Liens created under the Collateral Documents, except, in the case of clauses (a), (b) and (c) above, for (i) filings and other recordations and actions necessary to perfect and maintain the perfection and priority of the Liens on the Collateral granted by each of the Company and the Partners in favor of the Collateral Agent, (ii) approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect, and (iii) in the case of clause (a) only, those approvals, consents, exemptions, authorizations, actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to result in a Material Adverse Effect.

(g) No Permit of any Governmental Authority is required by Applicable Law to be obtained by the Company in connection with the execution and delivery by the Company of the Project Contracts, or the performance of its obligations thereunder, or the ability of the Company to own, construct and operate the Plant, or to lease the Plant Site, in accordance with the Project Contracts, in each case, other than (i) such Permits as have been obtained and are in full force and effect, (ii) those Permits which are not required to be in place on or prior to the Series 2012 Closing Date and would not customarily be obtained in connection with the ownership, construction and/or operation of the Project given the stage of construction on or prior to the Series 2012 Closing Date and (iii) those Permits that have been disclosed to the Issuer in writing and the failure of which to obtain would not reasonably be expected to result in a Material Adverse Effect. All certificates, approvals, authorizations and other Permits of applicable local Governmental Authorities of the State of California and the United States federal government which are required by Applicable Law to be obtained by the Company prior to the commencement of the construction of the Plant and the Pipeline have been obtained and are in full force and effect or are expected by the Company to be obtained prior to the time required.

(h) The Plant Costs set forth in the Tax Agreement represent the Company’s estimate as of the date thereof, based on the provisions of the Project Contracts executed on or prior to such date and assumptions as to legal and factual matters material to such estimate which as of such date the Company believes to be reasonable and have been determined in accordance with commercially acceptable engineering/construction and accounting principles. The Plant consists of those facilities and equipment described in the Plant Loan Agreement.

(i) There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other Governmental Authority, pending, or to the knowledge of the Company, after reasonable investigation, threatened, against or affecting the Company or the assets, properties or operations of the Company, other than (i) those disclosed in the Plant Loan Agreement, (ii) routine or administrative proceedings before any Governmental Authority in connection with any pending application for a Permit (or the renewal or extension thereof, or the satisfaction of any condition subsequent set forth therein) necessary for the construction of the Plant or the Pipeline or the operation of the Plant which could not have a Material Adverse Effect, and (iii) those which would not reasonably be expected to have a Material Adverse Effect. The Company is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other Governmental Authority, which default would reasonably be expected to have a Material Adverse Effect. All tax returns (federal, state and local) required to be filed by or on behalf of the Company have been filed, and all taxes shown thereon to be due and payable, including interest and penalties, except such, if any, as are being contested by the Company in good faith by appropriate legal, administrative or other proceedings diligently conducted, have been paid or adequate reserves have been established with respect thereto in accordance with GAAP. The Company enjoys the peaceful and undisturbed possession of all of the “Leased Premises” as defined in the Ground Lease.

(j) Neither the Limited Offering Memorandum nor any written information, exhibit or report furnished after [December 14, 2012] to the Issuer or the Plant Trustee by the Company in connection therewith (excluding any financial projections and other financial forecasts and forward-looking information, and any information other than Company Information (as such term is used in the Bond Purchase Agreement)), as of their respective dates, contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.
(k) The Company is, and the Plant, if constructed in accordance with the plans and specifications therefor contained in the Plant EPC Contract will have been constructed and can be operated, in compliance with all Applicable Laws, except for any failure to comply which would not reasonably be expected to result in a Material Adverse Effect. At the Project Completion, the Plant will consist of land, buildings, equipment and facilities described in the Plant Loan Agreement.

(l) None of the Company, the Plant or the Plant Site is the subject of any ongoing investigation by any federal, state or local Governmental Authority evaluating whether any remedial action is needed to respond to any alleged violation of or condition regulated by applicable Environmental Laws or to respond to a release of any Hazardous Substances into the environment, except for (i) any such investigation in connection with any proceeding disclosed in the Plant Loan Agreement and (ii) any such investigation which would not reasonably be expected to have a Material Adverse Effect.

(m) The Company does not have any material contingent liability in connection with any release of any Hazardous Substances into the environment.

(n) (i) The Company is not in default under or with respect to any material term of any Financing Document to which it is a party, and (ii) no Default or Event of Loss has occurred and is continuing.

(o) The consolidated financial statements of the Company for the years ended [December 31, 2010 and 2011] are true, complete and correct in all material respects and fairly present in all material respects the financial condition of Company, as of the dates thereof and its results of operations for the periods covered thereby in accordance with GAAP, consistently applied throughout the periods covered thereby. As of the date of such financial statements, (i) no sale, transfer or other disposition by the Company of any material part of its business or property, (ii) no purchase or other acquisition by the Company of any business or property (including any Equity Interests of any other Person) material in relation to the financial condition of the Company and (iii) no material contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, had occurred with respect to or been incurred by the Company, in each case, which is not reflected in the foregoing financial statements or in the notes thereto or has not otherwise been disclosed in the offering document for the Series 2012 Plant Bonds.

(p) The Base Case Financial Projections of the Company for each fiscal year ending after the Series 2012 Closing Date until the final maturity date for the Series 2012 Plant Bonds, and the other financial forecasts and forward-looking information furnished by the Company in the offering document for the Series 2012 Plant Bonds or contained in the Project Construction Budget, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions are believed by the Company to be reasonable as of the Series 2012 Closing Date.

(q) The Company has (A) no Debt, other than Permitted Debt; and (B) no other material obligations or liabilities, direct or contingent, other than the Closing Date Project Payments and those obligations and liabilities incurred under the Transaction Documents to which it is a party.

(i) The Company owns or leases and (to the extent applicable) has good and valid, and marketable title to its Property and to the Collateral (other than after-acquired Property contemplated by the Collateral Documents) purported to be covered by Liens granted by the Company under the Collateral Documents, in each case free and clear of all Liens, other than Permitted Encumbrances. The Company has valid leasehold interests in, or easements or other limited property interests in, all real property necessary for the conduct of its business as currently conducted or proposed to be conducted in accordance with the Project Contracts, free and clear of all Liens, other than Permitted Encumbrances.

(ii) The provisions of the Collateral Documents are effective to create, in favor of the Collateral Agent, a legal, valid, enforceable and continuing Lien on and security interest in all of the Collateral purported to be covered thereby. Upon the due and proper recordation of the Deed of Trust in the recording offices specified therein, the Liens granted thereunder to the Collateral Agent will constitute valid first priority liens of record on all of the real property Collateral described in the Deed of Trust, subject to no other Liens except Permitted Encumbrances. Upon the due and proper filing of the applicable UCC financing statements and fulfilling other requirements of the UCC, as applicable, contemplated in the
Collateral Documents, the Liens granted thereunder to the Collateral Agent will constitute a first priority perfected security interest in (x) all of the personal property Collateral described in the Collateral Documents (other than the Deed of Trust) in which security interests may be perfected by filing under the UCC and (y) the Accounts, in each case subject to no other Liens except Permitted Encumbrances. The provisions of the Collateral Trust Agreement are sufficient to create a first priority, perfected security interest in the Account Collateral subject to the lien of the EPC Contractor in the Contractor Security Account.

(iii) Other than the security interest granted to the Collateral Agent pursuant to the Collateral Documents, and other than as contemplated by the Transaction Documents, the Company has not pledged, assigned, sold, granted a Lien on or security interest in, or otherwise conveyed any of the Collateral subject to Liens granted by the Company under the Collateral Documents, except for Permitted Encumbrances and Liens that have been terminated. The Company has not authorized the filing of and is not aware of any financing statements filed against it that include a description of collateral covering the Collateral subject to the Liens granted by the Company under the Collateral Documents other than any financing statements relating to the security interest granted to the Collateral Agent under the Collateral Documents or the other Financing Documents or that has been terminated. There are no judgment or tax lien filings against the Company.

(iv) Except for escrows and cash collateral arrangements required pursuant to the Project Contracts, no creditor of the Company, other than the Collateral Agent for the benefit of the Secured Parties, has in its possession any property that constitutes or evidences the Collateral subject to Liens granted by the Company under the Collateral Documents.

(v) The Company, or its Participating Affiliates have or will have title to or the right to acquire or use real property for the construction and operation of the Plant sufficient to carry out the purposes of the Plant Loan Agreement.

(r) All insurance required to be obtained by the Company pursuant to subsection (c) of the section captioned “General Affirmative Covenants” has been obtained and is in full force and effect, and all premiums due and payable on all such insurance have been paid.

(s) The General Partner has no Subsidiaries other than the Company. The Limited Partner has no Subsidiaries other than the Company and the General Partner. The Partners are the sole partners in the Company and have good and indefeasible title to their respective partnership interests in the Company free and clear of all Liens except those created under the Collateral Documents and other Permitted Encumbrances. The Company has no Subsidiaries.

(t) Neither the Company nor any ERISA Affiliate sponsors or maintains a Pension Plan.

(u) No labor dispute between the Company and any employee or employees of the Company exists that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

(v) To the knowledge of the Company, the Company owns, licenses or possesses the right to use, all of the United States and foreign trademarks, service marks, logos, trade names, domain names, copyrights, patents, patent rights, licenses, trade secrets, proprietary information, technology, software, know-how database rights, design rights and other intellectual property rights (collectively, “IP Rights”) that are reasonably necessary for the operation of its business as currently conducted, or proposed to be conducted in accordance with the Project Contracts, and, without conflict with the rights of any Person, except to the extent such conflicts, either individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. To the knowledge of the Company, no IP Rights, advertising, product, process, method, substance, part or other material used by the Company in the operation of its business as currently conducted, or proposed to be conducted in accordance with the Project Contracts, infringes upon any rights held by any Person and no Person infringes upon any rights of the Company except for such infringements, individually or in the aggregate, which would not reasonably be expected to result in a Material Adverse Effect. No claim or litigation regarding any of the IP Rights is pending or, to the
knowledge of the Company, threatened against it, which, either individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

(w) Except as described in the Plant Loan Agreement, the Company is not, directly or indirectly, a party to any transaction that is otherwise permitted under the Plant Loan Agreement with or for the benefit of an Affiliate (including guarantees and assumptions of obligations of an Affiliate) upon terms less favorable to the Company than would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate.

(x) Except as described in the Plant Loan Agreement, the Company does not have, nor has it instructed the Plant Trustee or the Collateral Agent to make, any investments except in accordance with the Plant Indenture and the Collateral Trust Agreement.

(y) All utility services necessary for the operation of the Plant, including, as necessary, fuel supply, water supply, storm and sanitary sewer, gas, electric and telephone services and facilities, are, or to the knowledge of the Company will be when needed, available on commercially reasonable terms.

(z) The Company has not entered into any material contracts or agreements other than the Transaction Documents to which it is party and contracts or agreements that have terminated.

(aa) The Company is not an “investment company”, as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

(bb) The Company has not conducted any business other than the business contemplated by the Transaction Documents.

(cc) The chief executive office or chief place of business (as such term is used in Article 9 of the Uniform Commercial Code as in effect in the State of California) of the Company is located at 5780 Fleet Street, Suite 140, Carlsbad, CA 92008.

(dd) All of the Collateral (other than the Accounts, the Equity Interests delivered to the Collateral Agent pursuant to the Pledge Agreement, investment property and general intangibles), including all such Collateral covered by the Deed of Trust, is located on the Company Real Property or at the address set forth in subsection (cc) above.

(ee) The Company and all Persons anticipated by the Company to be an owner or operator of the Plant or a portion thereof are engaged in operations within California that require financing pursuant to the Plant Loan Agreement and the Act to aid and assist in the providing of clean water in the State of California.

(ff) The Plant constitutes a “project” and the Company together with its Participating Affiliates is a “participating party,” as such terms are defined in the Act.

(gg) The Company is a “Small Business” as classified pursuant to Title 13 Code of Federal Regulations, Part 121, Subpart A (1994 Edition) or, together with any affiliates (as such term is used in 4 California Code of Regulations Section 8020(l)) employing no more than 500 employees, and is otherwise eligible for assistance from the Small Business Assistance Fund, as defined in the Act.

(hh) No disbursement to be paid or reimbursed from proceeds of the Series 2012 Plant Bonds shall have been previously paid or reimbursed from the proceeds of any other Local Governmental Obligations, whether issued by the Issuer or any other party.

(ii) No event has occurred and no condition exists which would constitute an Event of Default (as defined in the Plant Indenture) or which, with the passing of time or with the giving of notice or both, would become such an Event of Default.
no member, officer, or other official of the Water Authority has any financial, ownership or managerial interest in the Company, any affiliate of the Company, or any such interest to which the Company is a party relating to the Plant Loan Agreement, the Plant Indenture or in the transactions contemplated by the Plant Loan Agreement or the Plant Indenture.

Representations of the Issuer

(a) The Issuer is a public instrumentality and political subdivision of the State. Under the provisions of the Act, the Issuer has the power to enter into the transactions contemplated by the Plant Loan Agreement and the Plant Indenture (the “Issuer Documents”) and to carry out its obligations under the Plant Loan Agreement. By proper action, the Issuer has duly authorized the execution, delivery and the Issuer Documents and the performance of its obligations thereunder.

(b) The representations of the Issuer in the Tax Certificate are true and correct as of the date of the Plant Loan Agreement (subject to the qualifications set forth, and in reliance upon the sources of information described, in the Tax Certificate).

(c) The Issuer will issue the Series 2012 Plant Bonds under, and the Series 2012 Plant Bonds will be secured by, the Plant Indenture, pursuant to which the Issuer’s interest in the Plant Loan Agreement (except certain rights of the Issuer to payment for fees and expenses and its rights to indemnification, inspection, enforcement; and consent and receipt of notices, certificates and opinions) will be pledged to the Plant Trustee as security for payment of the principal of, premium, if any, and interest on the Series 2012 Plant Bonds and then to the Collateral Agent as security for the Senior Debt.

(d) The Issuer has not pledged and will not pledge its interest in the Plant Loan Agreement for any purpose other than as provided in the Plant Indenture.

(e) The Issuer is not in default under any of the provisions of the laws of the State of California, which default would affect its existence or its powers referred to in subsection (a) of this section captioned “Representations of the Issuer”.

Findings of the Issuer

(a) On October 25, 2011, the Issuer gave its preliminary approval for the financing of the Plant. On September 18, 2012, the Issuer further amended this preliminary approval for the financing of the Plant. On November 30, 2012, the Issuer adopted its resolution approving financing of the Plant. On November 8, 2012, a public hearing with respect to the Series 2012 Plant Bonds and the Plant was held in accordance with the provisions of the Code.

(b) (i) The Company is a “participating party” as such term is defined in the Act; (ii) the Plant is a “project” as such term is defined in the Act; (iii) the loan to be made under the Plant Loan Agreement with the proceeds of the Series 2012 Plant Bonds will promote the purposes of the Act by providing funds to finance the acquisition, construction, rehabilitation, renovation, improvement, installation and equipping of the Plant; (iv) said loan is in the public interest, serves the public purposes and meets the requirements of the Act; and (v) the portion of such loan allocable to the Plant Costs does not exceed the total cost thereof as determined by the Company and approved by the Issuer.

(c) No member of the Issuer, or any officer or employee of the Issuer who participated in the making of the Plant Loan Agreement, is financially interested (within the meaning of Government Code Section 1090) in the Company or in the Issuer Documents.
ISSUANCE OF BONDS; LOAN OF PROCEEDS

The Plant Bonds

The Issuer has authorized the issuance of the Series 2012 Plant Bonds pursuant to the Plant Indenture in the aggregate principal amount of $530,345,000.

Loan of Proceeds

The Issuer lends and advances to the Company, and the Company borrows and accepts from the Issuer a loan in the amount of the aggregate principal amount of the Series 2012 Plant Bonds, the net proceeds of which loan shall be equal to the net proceeds of the sale of the Series 2012 Plant Bonds, to be applied under the terms and conditions of the Plant Loan Agreement, the Plant Indenture and the Collateral Trust Agreement. The Company agrees to repay to the Issuer the principal amount of the Series 2012 Plant Bonds with interest as provided in the Plant Loan Agreement, and to execute and deliver the Collateral Documents to which it is a party, including the Security Agreement, to secure the Company’s obligations under the Plant Loan Agreement and under any Additional Plant Senior Debt, all in accordance in the provisions of the Financing Documents. The Company approves the Plant Indenture, the assignment thereunder to the Plant Trustee of the right, title and interest of the Issuer (with certain exceptions set forth therein) in the Plant Loan Agreement and the issuance by the Issuer of the Series 2012 Plant Bonds pursuant to the Plant Indenture.

REPAYMENT OF LOANS; ADDITIONAL PAYMENTS

Deposit of Revenues; Repayment of Loan

(a) On or before the Business Day prior to each Bond Payment Date (as hereinafter defined), until the principal of, premium, if any, and interest on, and purchase price of, the Series 2012 Plant Bonds (sometimes referred to in the Plant Loan Agreement as the “Plant Bonds”) shall have been fully paid or provision for such payment shall have been made as provided in the Plant Indenture, the Company covenants and agrees to pay to the Plant Trustee or cause to be paid pursuant to the Collateral Trust Agreement as a repayment on the loan made to the Company from Plant Bond proceeds pursuant to the section captioned “ISSUANCE OF BONDS; LOAN OF PROCEEDS – Loan of Proceeds”, a sum equal to the amount payable on such Bond Payment Date as principal of and premium, if any, and interest on, the Plant Bonds as provided in the Plant Indenture and the Collateral Trust Agreement. Such Plant Loan Repayments shall be made in federal funds or other funds immediately available at the Corporate Trust Office of the Plant Trustee. The term “Bond Payment Date” as used in this section captioned “Deposit of Revenues; Repayment of Loan” shall mean any date upon which any amounts payable with respect to the Series 2012 Plant Bonds shall become due, whether upon redemption (including without limitation sinking fund redemption), purchase, acceleration, maturity or otherwise.

Each payment made on any Bond Payment Date pursuant to this subsection (a) shall at all times be sufficient to pay the total amount of interest and principal (whether upon redemption (including without limitation sinking fund redemption), acceleration, maturity or otherwise) and purchase price and premium, if any, becoming due and payable on the Plant Bonds on such Bond Payment Date; provided, however, that:

(1) all amounts transferred to the Plant Trustee by the Collateral Agent from the Capitalized Interest Account, the Revenue Fund, the Debt Service Reserve Fund and any other Account or Fund in accordance with the Collateral Trust Agreement, which are designated by the Collateral Agent for deposit into the Plant Bond Fund, shall be credited against the Company’s obligations to pay installments of Plant Loan Repayments, including installments of principal, interest, purchase price or premium, due on the next succeeding Bond Payment Date(s); and

(2) subject to the provisions of the last sentence of this subsection (a), if at any time the amounts held by the Plant Trustee in the Plant Bond Fund are sufficient to pay all of the principal of and interest and premium, if any, on, the Plant Bonds as such payments become due, the Company shall be relieved of any obligation
to make any further payments under the provisions of this section captioned “Deposit of Revenues; Repayment of Loan”.

Notwithstanding the foregoing provisions of this subsection (a), so long as the Plant Loan Agreement shall remain in full force and effect, if on any date the amount held by the Plant Trustee in the Plant Bond Fund is insufficient to make any required payments of principal of (whether upon redemption (including without limitation sinking fund redemption), acceleration, maturity or otherwise) and interest and premium, if any, on, the Plant Bonds then due, the Company shall forthwith pay or cause the Collateral Agent to pay such deficiency as a Plant Loan Repayment under the Plant Loan Agreement.

(b) In consideration of the loan of the proceeds from the sale of the Plant Bonds to the Company pursuant to the section captioned “Loan of Proceeds”, the Company agrees that on each Business Day it shall deposit or cause to be deposited all of the Revenues with the Collateral Agent to be applied in accordance with the provisions of the Collateral Trust Agreement.

(c) The Company shall direct all parties that are obligated to provide any Revenues to the Company to transfer all Revenues directly by wire transfer of immediately available funds or by mail to the Collateral Agent for deposit in the Revenue Fund and otherwise as set forth in the Collateral Trust Agreement. The Company will deposit with the Collateral Agent any Revenues that it receives directly within 2 Business Days of receipt.

Additional Payments

In addition to the Plant Loan Repayments, the Company shall cause to be paid to the Issuer or to the Plant Trustee, as the case may be, “Additional Payments,” as follows:

(1) All taxes and assessments of any type or character charged to the Issuer or the Plant Trustee affecting the amount available to the Issuer or the Plant Trustee from payments to be received under the Plant Loan Agreement or in any way arising due to the transactions contemplated by the Plant Loan Agreement (including taxes and assessments assessed or levied by any Governmental Authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Plant Trustee and taxes based upon or measured by the net income of the Plant Trustee; provided, however, that the Company shall have the right to protest any such taxes or assessments and to require the Issuer or the Plant Trustee, at the Company’s expense, to protest and contest any such taxes or assessments levied upon them and that the Company shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Issuer or the Plant Trustee; and provided further that the Plant Trustee shall have no obligation to make available to the Company any proprietary or confidential tax or other information of the Plant Trustee by reason of or in connection with such protest or contest;

(2) The Company also agrees to pay (i) the annual fee of the Plant Trustee for its ordinary services rendered as trustee, and its ordinary expenses incurred under the Plant Indenture, as and when the same become due, (ii) the reasonable fees, charges and expenses (including reasonable legal fees and expenses) of the Plant Trustee, as bond registrar and paying agent, the reasonable fees of any other paying agent on the Plant Bonds as provided in the Plant Indenture, as and when the same become due, (iii) the reasonable fees, charges and expenses of the Plant Trustee for the necessary extraordinary services rendered by it and extraordinary expenses (including, but not limited to reasonable attorneys’ fees and expenses) incurred by it under the Plant Indenture, as and when the same become due, (iv) the cost of printing any Plant Bonds required to be furnished by the Issuer at the expense of the Issuer, (v) the cost of printing and typesetting any preliminary official statement, official statement or other offering circular used in connection with the sale or remarketing of any Plant Bonds and any amendment or supplement thereto and (vi) the Issuer’s Administrative Fee either at the Series 2012 Closing Date or from time to time thereafter, as set forth in the Tax Certificate. The Plant Trustee’s compensation shall not be limited by any provision of law regarding the compensation of a Trustee of an express trust;

(3) The reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Collateral Agent, the Issuer or the Plant Trustee to prepare audits, financial statements,
reports, opinions or provide such other services required for the performance by the Collateral Agent, the Issuer or the Plant Trustee of its respective responsibilities under the Financing Documents; and

(4) Any rebate obligation owing pursuant to the section captioned “PARTICULAR COVENANTS – Tax Covenants” and the Plant Indenture.

Such Additional Payments may be made from Revenues pursuant to the Collateral Trust Agreement. In the event the Company should fail to make any of the payments required by this section captioned “Additional Payments”, such payments shall continue as obligations of the Company until such amounts shall have been fully paid. The Company agrees to pay such amounts, together with interest thereon, following a delinquency of 30 days until such amount and all interest thereon have been paid in full. Interest thereon shall be at the rate of four percent (4%) per annum or, if four percent (4%) is greater than the rate then permitted by law, at the maximum rate so permitted.

Security for Company’s Obligations

(a) In consideration of the issuance of the Plant Bonds and the loan of the proceeds thereof to the Company under the Plant Loan Agreement and to secure the payment of Plant Loan Repayments and the performance of the other obligations of the Company under the Plant Loan Agreement, the Company has entered into the Collateral Trust Agreement and the other Collateral Documents to which it is a party in which the Company pledges and grants a security interest to the Collateral Agent in the Collateral identified therein.

(b) The Company shall cause to be filed Uniform Commercial Code financing statements and shall execute and deliver such other documents as may be necessary or reasonably requested by the Collateral Agent in order to perfect or maintain the perfection of such security interest in the Collateral. The Company shall file or cause to be filed any financing statements and amendments as may be required to continue the perfection of such security interest in the Collateral. The Company covenants that it will not change its name or entity structure unless (i) it gives the Plant Trustee, the Collateral Agent and a Senior Debt Majority at least thirty (30) days advance written notice of such change and (ii) before such change occurs, it takes all actions as may be directed by the Collateral Agent or a Senior Debt Majority or as are otherwise necessary or advisable to maintain and continue the first priority perfected security interest of the Collateral Agent in the Collateral.

(c) The Company covenants and agrees that the Deed of Trust shall be subject only to (i) conditions, covenants and restrictions of record set forth as exceptions to the ALTA title insurance policy on the Plant, the Plant Site and the other Company Real Property identified therein delivered by the Company to the Collateral Agent simultaneously with the issuance of the Series 2012 Plant Bonds, and (ii) other Permitted Encumbrances.

(d) [Reserved.]

(e) Subject to the Collateral Trust Agreement, in order to further secure the Company’s obligations under the Plant Loan Agreement, the Company has entered into the Collateral Documents in which it has granted to the Collateral Agent a Lien on all of the Company’s right, title and interest, whether now existing or hereafter arising, in and to the Project Contracts; provided, however, that nothing in this subsection (e) or in the Collateral Documents shall (i) impair, diminish or otherwise affect the Company’s obligations under the Project Contracts and the related Consents or (ii) unless a Loan Default Event shall have occurred and be continuing under the Plant Loan Agreement, impair, diminish or otherwise affect (except with respect to the Company’s covenants regarding amendments to or substitutions for Project Contracts and the related Consents, which are set forth in the Collateral Trust Agreement and except as provided in the next succeeding sentence) the Company’s ability to exercise its rights under, or require the performance of the other parties to, the Project Contracts or the Consents. The Company also agrees to assign all of its right, title and interest in and to any Additional Project Contracts to the Collateral Agent.

Obligations of the Company Unconditional; Net Contract

The obligations of the Company to make the Plant Loan Repayments required under the Plant Loan Agreement and to perform and observe the other payment obligations on its part contained in the Plant Loan
Agreement shall be absolute and unconditional, and shall not be abated, rebated, set off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any Plant Bonds remain Outstanding, regardless of any contingency, act of God, event or cause whatsoever, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Company’s facilities, commercial frustration of purpose, any change in the laws of the United States of America or of the State of California or any political subdivision of either or in the rules or regulations of any Governmental Authority, or any failure of the Issuer, the Plant Trustee or the Collateral Agent to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Plant Loan Agreement, the Plant Indenture or the Collateral Trust Agreement. The Plant Loan Agreement shall be deemed and construed to be a “net contract” and the Company shall pay absolutely the Plant Loan Repayments required under the Plant Loan Agreement, regardless of any rights of setoff, recoupment, abatement or counterclaim that the Company might otherwise have against the Issuer or the Plant Trustee or any other party or parties.

Prepayment

The Company shall have the right at any time or from time to time to prepay all or any part of the Plant Loan Repayments (in amounts corresponding to the redemption price of the Series 2012 Plant Bonds) to the same extent as Series 2012 Plant Bonds may be redeemed under the Plant Indenture and the Issuer agrees that the Issuer and the Plant Trustee shall accept such prepayments when the same are tendered by or on behalf of the Company. All such prepayments (and the additional payment of any amount necessary to pay the applicable premiums, if any, payable upon the redemption of Series 2012 Plant Bonds) shall be deposited upon receipt in the Plant Bond Fund and, as specified in a request of the Company, (i) credited against Plant Loan Repayments and used to pay the principal of or interest on Series 2012 Plant Bonds, or (ii) used for the redemption of Outstanding Series 2012 Plant Bonds and credited against the Plant Loan Repayments which would be required, but for such redemption, to pay principal of or interest on such Series 2012 Plant Bonds, in each case as specified in such Request of the Company and in the manner and subject to the terms and conditions set forth in the Plant Indenture. The Company also shall have the right to surrender Series 2012 Plant Bonds acquired by the Company in any manner whatsoever to the Plant Trustee, for cancellation, and such Series 2012 Plant Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired. Notwithstanding any such prepayment or surrender of Series 2012 Plant Bonds, as long as any Series 2012 Plant Bonds remain Outstanding, the Company shall not be relieved of its obligations under the Plant Loan Agreement.

THE PROJECT

Acquisition, Installation and Construction of the Plant

The Company shall proceed with commercially reasonable diligence with the acquisition, installation and construction of the Plant and the Pipeline in accordance with the applicable Project Contracts. Subject to the terms and restrictions of the Ground Lease and the other Project Contracts conveying to the Company interests in the Company Real Property, the O&M Agreement and the Plant EPC Contract, the Company grants to the Issuer all rights of access to the Plant reasonably necessary for the Issuer to carry out its obligations and to enforce its rights under the Plant Loan Agreement. It is expressly understood and agreed that the Issuer shall not be under any liability of any kind or character whatsoever for the payment of any Plant Costs and that all such costs shall be paid by the Company from proceeds of the Series 2012 Plant Bonds and from other funds received by the Company. Subject to the Plant EPC Contract and any applicable Additional Project Contracts, the acquisition, installation and construction of the Plant and any modification thereof or other improvement of the Plant shall be substantially in accordance with all applicable zoning, planning and building regulations, and the Company shall obtain or cause to be obtained in due course all Permits which are required to be obtained by or on behalf of the Company pursuant to Applicable Law for such acquisition, installation, construction, modification or improvement, and for operation of the Plant, other than Permits which, if not so obtained, would not reasonably be expected to have a Material Adverse Effect.
Application of Proceeds of the Series 2012 Plant Bonds

(a) The Company will authorize and direct the Plant Trustee, in accordance with the Plant Indenture, to transfer moneys on deposit in the Series 2012 Plant Bond Holding Fund (as defined in the Plant Indenture) to the Series 2012 Costs of Issuance Account therein, and to disburse the balance of moneys on deposit in the Series 2012 Plant Bond Holding Fund to the Collateral Agent for application in accordance with the Collateral Trust Agreement. The Company will authorize and direct the Collateral Agent to disburse moneys on deposit in the Construction Account to or on behalf of the Company only for Plant Costs (not including Costs of Issuance) and Poseidon Pipeline Costs except as specifically provided in the Collateral Trust Agreement and only as permitted by the Tax Agreement.

(b) The Company shall authorize and direct the Plant Trustee, in accordance with the Plant Indenture, to disburse the moneys in the Series 2012 Costs of Issuance Fund to pay Costs of Issuance or to reimburse the Company therefor. Each of the payments referred to in this subsection (b) shall be made upon receipt by the Plant Trustee of a written requisition in the form prescribed by the Plant Indenture, signed by an Authorized Representative of the Company.

Establishment of Completion Date; Obligation of Company to Complete

(a) Completion will be achieved when:

(i) the Company has delivered a certificate to the Collateral Agent (with copies to the Issuer and the Plant Trustee), executed by an Authorized Representative of the Company, in which he or she certifies, on behalf of the Company, that the following criteria have been satisfied:

(A) “Project Completion” has occurred under and as defined in the Plant EPC Contract and the “Project Completion” has occurred under the Water Purchase Agreement;

(B) the acquisition, equipping and construction of the Plant has been completed substantially in accordance with the plans, specifications and work orders therefor (taking into account all change orders and other modifications thereto permitted under the Plant Loan Agreement), in each case, as provided under the Plant EPC Contract, and all labor, services, materials and supplies used in the permitting, acquisition, equipping and construction of the Plant have been paid or provided for; and

(C) the Plant has been connected to the upgraded SDG&E power substation as provided under the SDG&E Contracts and any other facilities required for the commercial operation of the Plant in accordance with the Water Purchase Agreement have been acquired, constructed and installed and all costs and expenses incurred in connection therewith have been paid or provided for in accordance with the applicable Project Contracts relating to such other facilities.

The certificate delivered by the Company pursuant to this subsection (a)(i) shall also set forth a final description of the Plant and the total Plant Costs and Poseidon Pipeline Costs incurred; and

(ii) the Independent Engineer has delivered a certificate to the Collateral Agent (with copies to the Company, the Issuer and the Plant Trustee) executed by an authorized representative of the Independent Engineer, in which he or she certifies, on behalf of the Independent Engineer, that the criteria set forth in clauses (A) through (C) in subsection (a)(i) above have been satisfied.

(iii) In addition upon Completion, an Authorized Representative of the Company, on behalf of the Company, shall provide a Final Project Account Disbursement Certificate to the Plant Trustee and the Issuer.
The Issuer makes no express or implied warranty that the moneys deposited in the Construction Account, the Capitalized Interest Account, the Poseidon Project Account and the Contractor Security Account available for payment of Plant Costs and Poseidon Pipeline Costs under the provisions of the Plant Loan Agreement and the Collateral Trust Agreement will be sufficient to pay all the amounts which may be incurred for such purposes. The Company agrees that it will not be entitled to any reimbursement of any amounts deposited by the Company into the Poseidon Project Account pursuant to the Collateral Trust Agreement from the Issuer, from the Plant Trustee or from the Owners of any of the Series 2012 Plant Bonds, nor shall it be entitled to any diminution of the amounts of Plant Loan Repayments payable under the section captioned “REPAYMENT OF LOANS; ADDITIONAL PAYMENTS – Deposit of Revenues; Repayment of Loan” as a result of any such deposit.

(c) The Company further agrees to proceed with commercially reasonable diligence to achieve Completion.

PARTICULAR COVENANTS

General Affirmative Covenants

The Company covenants and agrees that it will at all times, unless a Senior Debt Majority shall otherwise approve:

(a) if the Company undertakes a Capital Project pursuant to the Collateral Trust Agreement, pay all costs of such Capital Project that exceed amounts deposited to the applicable account of the Plant Restoration Fund; provided that the Company may abandon any Capital Project it has commenced to undertake if it delivers to the Collateral Agent a certificate executed by an Authorized Representative of the Company (such certification to be confirmed by the Independent Engineer) stating that the failure to complete such Capital Project would not reasonably be expected to subject the Plant to any permanent, material adverse change from the condition of the Plant immediately prior to the commencement of the Capital Project or otherwise have a Material Adverse Effect.

(b) [Reserved];

(c) deposit any Revenues that may be received directly by the Company with the Collateral Agent;

(d) timely invoice the Water Authority for water delivered to the Water Authority in accordance with the Water Purchase Agreement and use commercially reasonable efforts to cause the timely payment of rates, fees and charges required to be paid to the Company under the Project Contracts;

(e)

(1) obtain and maintain insurance required by the Project Contracts as and when required; and maintain or cause to be maintained such insurance with respect to the Plant, in such amounts and with such deductibles and on such other terms as shall be consistent with the Plant Loan Agreement, unless such coverage is no longer obtainable in the marketplace on terms which, in the opinion of an Independent Insurance Consultant set forth in its annual report to be delivered to the Collateral Agent, a Senior Debt Majority and the Company, are commercially reasonable for companies of similar size, type, operation and location and as otherwise required by any other Financing Documents providing for or evidencing Additional Plant Senior Debt;

(2) also maintain, if applicable, worker’s compensation coverage as required by the laws of the State; and

(3) within 30 days after the Commercial Operation Date, the Company shall send a notice to the Collateral Agent stating the annual renewal date for all insurance policies carried; and at least 30 days before the annual renewal date contained in such notice, the Company shall provide to the Independent Insurance Consultant summaries or other evidence of its insurance coverage, and deliver to a Senior Debt
Majority, the Collateral Agent and the Plant Trustee a certificate (on which such Persons may conclusively rely) stating that all insurance required by this subsection (e) is in full force and effect;

(f) prior to Completion, use commercially reasonable efforts to provide to a Senior Debt Majority, the Plant Trustee and the Collateral Agent, as soon as available, audited annual financial statements of the EPC Guarantor and IDE, together with an explanation of any changes in the basis of preparation, prepared in accordance with relevant GAAP; provided, however, that upon the request of any such Person that is not a public company, a Senior Debt Majority, Trustee and Collateral Agent shall enter into such non-disclosure or confidentiality agreement with respect to such counterparty’s financial statements to be delivered under this subsection (f), on usual and customary terms for similar agreements, as reasonably requested by the counterparty;

(g) provide promptly, and in any event within 10 Business Days (unless a different requirement for the timing of delivery is expressly provided below), to the Collateral Agent and a Senior Debt Majority:

(1) promptly after becoming aware thereof, notice of any deposit that the Company anticipates that it will be required to make to the Poseidon Project Account pursuant to the Collateral Trust Agreement;

(2) copies of all written notices received or given by the Company under the Project Contracts of any condition or event which would reasonably be expected to result in a Material Adverse Effect;

(3) promptly after becoming aware thereof, notice of any written communication received by the Company from any Governmental Authority giving notice that the Company, the Plant, the Plant EPC Contractor or the Pipeline EPC Contractor has failed in any material respect to comply with Applicable Law;

(4) notice if the Company becomes aware that there may be a Hazardous Substance on the Plant Site or migrating from the Plant Site, in each case in violation of applicable Environmental Laws;

(5) after becoming aware thereof, notice of the occurrence of any Material Adverse Effect;

(6) after becoming aware thereof, notice of any disputes, litigation, arbitrations, investigations and similar proceedings which would reasonably be expected to have a Material Adverse Effect;

(7) after becoming aware thereof, notice of any Event of Loss or claim against any insurer of the Company, where the actual or estimated amount of a loss or claim exceeds $1,000,000, net of deductible;

(8) notice of the occurrence of any Uncontrollable Circumstance or discovery of any latent defects or other issues that, in each case, would reasonably be expected to have a Material Adverse Effect;

(9) copies of any material written notice received from a Rating Agency;

(10) notice of the commencement by any Governmental Authority of condemnation or similar proceedings involving the Company or the Plant;

(11) copies of any written notices received by the Company, or of which it obtains knowledge, of (i) any ERISA Events relating to the Company, or (ii) the imposition of any Liens (other than Permitted Encumbrances) on the Collateral;

(12) promptly after becoming aware thereof, notice of any Default;
(13) within two Business Days of becoming aware of it, notice of the Company’s failure to comply with any of its material obligations under any Project Contract or the IP Sublicense if such noncompliance would reasonably be expected to have a Material Adverse Effect.

(h) use commercially reasonable efforts to maintain and protect its IP Rights, subject to the provisions of the Project Contracts, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect;

(i) promptly following the breach of any negative covenant or material affirmative covenant of the Company under the Plant Loan Agreement, to provide appropriate personnel of the Company satisfactory to the Collateral Agent and Senior Debt Majority for a meeting (whether conducted over the telephone or otherwise) with such Persons at a mutually acceptable time and place to discuss the Company’s breach of covenant and its plan to rectify such breach within the allotted grace period;

(j) semi-annually, to deliver compliance certificates by an officer of the Company and a calculation of the Debt Service Coverage Ratio to the Collateral Agent in accordance with the Collateral Trust Agreement;

(k) maintain ongoing rate surveillance agreements with at least one Rating Agency;

(l) acquire and preserve all such property, rights and interests as are necessary for the performance of its obligations under the Principal Project Contracts, except for any failure to acquire or preserve that would not reasonably be expected to have a Material Adverse Effect;

(m) at all times take such actions as are commercially reasonable to remain as a pass-through entity for tax purposes, unless a Senior Debt Majority consents otherwise;

(n) If the Company delivers a notice to a Senior Debt Majority and the Collateral Agent pursuant to clause (13) of subsection (g) above and the Company determines, with the concurrence of the Independent Engineer, that such default is curable but is not capable of being cured within the usual cure period for such default and if and for so long as such Project Contract permits an extension to the usual cure period, the Company shall deliver to a Senior Debt Majority and the Independent Engineer a proposed plan to remedy the default within the applicable extension period. Any plan proposed pursuant to this subsection (n)(1) shall include a schedule for its implementation. Within 30 days after receipt of any such proposed plan, the Independent Engineer shall give notice to the Company stating that such plan is approved or that the plan is not approved and, in the latter case, giving the reason therefor. If such notice is not delivered within such 30-day period, any such plan will be deemed to have been approved. If a plan delivered pursuant to this subsection (n)(1) is not approved, or if an approved plan is thereafter required to be amended, the Company shall use all commercially reasonable efforts to work with the Independent Engineer in good faith to develop a plan, or an amended plan, that is acceptable to both of them. After any such plan is approved, the Company shall proceed with due diligence to implement it within the applicable extension period. Until any such plan is fully implemented, the Company shall provide weekly progress reports to the Independent Engineer.

(2) The Company shall deliver notice to a Senior Debt Majority of an Operator Event of Default as described in and pursuant to the O&M Agreement within five days after becoming aware of it. Within 30 days after the delivery of such notice, the Company shall deliver a proposed plan to improve Plant performance so as to prevent Project Company Remedial Breach as defined in the Water Purchase Agreement.

(o) The Company shall deliver notice to a Senior Debt Majority of a material default by a counterparty under a Principal Project Contract that would reasonably be expected to have a Material Adverse Effect within two Business Days after the Company learns of such default.
(p) The Company agrees that throughout the term of the Plant Loan Agreement it, or any successor or assignee as permitted by the section captioned “Maintenance of Existence of the Company; Consolidation, Merger, Sale or Transfer of Assets Under Certain Conditions”, will be qualified to do business in the State of California.

**General Negative Covenants**

The Company covenants and agrees that it shall not, unless a Senior Debt Majority shall otherwise approve:

(a) amend or modify its Organizational Documents except where such amendment or modification would not reasonably be expected to have a Material Adverse Effect;

(b) enter into any Additional Project Contract or amend, modify or terminate any Principal Project Contract unless any such action is taken in accordance with the applicable provisions of the Collateral Trust Agreement;

(c) open or maintain bank accounts other than (i) the Funds and the Accounts, and (ii) any accounts established to hold cash collateral with respect to any letter of credit, bond or similar arrangement in connection with any permit or any Project Contract, and (iii) any account maintained by the Company as a deposit account (within the meaning of 9-102(a)(29) of the UCC), provided that the balance thereof shall not at any time exceed $50,000, and the Collateral Agent shall have a perfected security interest in such account for the benefit of the Secured Parties;

(d) enter into any Guarantee of the obligations of any other Person, except for contingent liabilities relating to (i) the acquisition of goods, supplies or merchandise in the normal course of business or normal trade credit, (ii) the endorsement of negotiable instruments received in the normal course of its business, and (iii) contingent liabilities incurred with respect to any Permit or Project Contract;

(e) incur, grant or permit to exist any Liens on or with respect to any of its Property, other than Permitted Encumbrances;

(f) make investments in the securities of any other Person, other than Eligible Investments;

(g) purchase, lease or acquire assets other than assets required for the construction, operation and maintenance, repair or modification of the Plant (or any Capital Project permitted under the Plant Loan Agreement and the Collateral Trust Agreement), or for the performance of its obligations under the WA Pipeline Agreement, in each case in accordance with the Project Contracts and generally accepted prudent industry practice for facilities comparable to the Plant (or if pursuant to the WA Pipeline Agreement, the Pipeline), or as otherwise permitted under the Plant Loan Agreement or the Collateral Trust Agreement;

(h) prior to the second anniversary of the Commercial Operation Date, (i) issue or agree to issue or transfer or agree to transfer any Equity Interests in the Company to any Person other than the Persons that were the Partners on the Series 2012 Closing Date, (ii) permit the General Partner to issue or agree to issue or transfer or agree to transfer any Equity Interests in the General Partner to any Person that was not the Limited Partner on the Series 2012 Closing Date or (iii) permit the Limited Partner to issue or agree to issue or transfer or agree to transfer any Equity Interests in the Limited Partner to any Person that was not a member or an Affiliate of a member of the Limited Partner on the Series 2012 Closing Date, if, in any of the foregoing cases, such issuance would result in a change of Control of the Company, provided that the issuance of or agreement to issue or the transfer of or agreement to transfer up to 50% of the Equity Interests to an Affiliate of any member of the Limited Partner or to any fund or entity under the control of such member or its Affiliates shall not be a change of Control;

(i) change its Fiscal Year; or

(j) undertake a Capital Project for the construction, installation and operation of one or more modifications or enhancements to any part of the Plant in connection with a new desalination project located on, or adjacent to, the Plant Site (“Separate Project Modification”).
General Financial Covenants

The Company covenants and agrees that it will at all times, unless a Senior Debt Majority shall otherwise approve:

(a) not give any direction with respect to the Funds and Accounts established under the Collateral Trust Agreement that would cause the application of moneys on deposit therein to be in conflict with the provisions of the Collateral Trust Agreement;

(b) not revise the Financial Model, the Base Case Financial Projections or the Current Case Financial Projections except as contemplated in the Collateral Trust Agreement;

(c) not grant any credit, pay any fee or give any indemnity to any other Person except for any Guarantee permitted under subsection (d) of the section captioned “General Negative Covenants” or pursuant to the terms of the Project Contracts or otherwise in the ordinary course of business; and

(d) not enter into any agreement whereby the Company’s income or profits are shared with any third party except pursuant to the terms of the Project Contracts.

Additional Debt

The Company may incur Additional Plant Senior Debt and subordinated Debt only pursuant to the provisions of the Collateral Trust Agreement.

Maintenance of Existence of the Company; Consolidation, Merger, Sale or Transfer of Assets Under Certain Conditions

The Company covenants and agrees that it will maintain its existence as a Delaware limited partnership, and will not dissolve or liquidate, or sell or otherwise dispose of all or substantially all of its assets, or consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; except in accordance with the section captioned “Limitation on Disposition of Assets”, or unless in each case it receives the prior written consent of a Senior Debt Majority and the Issuer.

Revenue Covenant

The Company shall, to the extent such action is within its power and control, operate the Plant, or cause the Plant to be operated, as a revenue-producing facility.

Financial Statements; Notices

The Company further covenants and agrees to furnish to a Senior Debt Majority and the Plant Trustee, within one hundred twenty (120) days after the end of each Fiscal Year, copies of the complete financial statements of the Company, together with (1) the report and opinion of an Independent Accountant stating that the financial statements have been prepared in accordance with GAAP and that such Independent Accountant’s examination of the Company’s records was performed in accordance with generally accepted auditing standards, and (2) a Certificate of an Authorized Representative of the Company stating that no event which constitutes a Loan Default Event has occurred and is continuing as of the end of such Fiscal Year, or specifying the nature of any such Loan Default Event that has occurred and is continuing and the actions taken and proposed to be taken by the Company to cure such default.

Tax Covenants

The Company covenants and agrees that it will at all times do and perform all acts and things permitted by Applicable Law and the Plant Loan Agreement and necessary in order to assure that interest paid on any Tax Exempt Series of Plant Bonds will be excluded from gross income for federal income tax purposes, and will take no
action that would result in such interest not being so excluded and will take any action necessary to preserve and defend such exclusion. Without limiting the generality of the foregoing, the Company agrees to comply with the provisions of the Tax Agreement. This covenant shall survive payment in full or defeasance of the Tax Exempt Plant Bonds.

The Company acknowledges that it has read the sections regarding the Rebate Fund and Arbitrage Covenants of the Plant Indenture and that it will comply with the requirements of those sections as if they were set forth in full in the Plant Loan Agreement. The Company shall calculate, or cause to be calculated, its rebate liability at such times as are required by Section 148(f) of the Code and any temporary, proposed or final Regulations as may be applicable to the Bonds from time to time. The Company shall provide to the Plant Trustee a copy of each calculation of rebate liability prepared by or on behalf of the Company, which documentation shall be made available to the Issuer upon request.

Limitation on Disposition of Assets

(a) The Company covenants and agrees not to sell, lease or otherwise dispose of any of its Property, in any Fiscal Year with an aggregate net book value in excess of $2,500,000 (Escalated), except that such limitation shall not apply to any sale, lease or other disposition of (i) product water pursuant to the terms of the Project Contracts, (ii) cash deposited in any Account or Fund established under the Collateral Trust Agreement which is disbursed in accordance with the provisions thereof, (iii) other Property in the ordinary course of business on commercial terms (unless prohibited by the Project Contracts), (iv) obsolete, worn out or replaced Property not used or useful in its business and (v) easements, licenses, rights-of-way, assignments and other rights or privileges in the nature of easements, undivided ownership interests and leasehold estates over, in or with respect to the Plant or the Company Real Property as required pursuant to any Project Contract.

(b) In addition to the limitations contained in subsection (a), the Company shall not sell, transfer, lease or otherwise dispose of, or permit the sale, transfer, lease or disposal of the Plant or, in any Fiscal Year, any portion of the Plant with an aggregate net book value in excess of $2,500,000 (Escalated) other than (i) equipment that has reached the end of its useful life and (ii) transfers described in subsection (a)(v), unless such sale, transfer, lease or disposal also complies with one of the following subsections of this paragraph:

(i) The Company may sell, transfer, lease or otherwise dispose (including operating arrangements) of any portion of the Plant to a Participating Affiliate if, the purchaser, transferee, lessee, operator or other recipient, as the case may be, has covenanted in a written instrument for the benefit of the Issuer and the Company to comply with the instructions of the Company issued for the purpose of assuring that the Plant be operated in conformance with the Plant Loan Agreement, the Act, the Tax Certificate and federal tax law; provided that nothing in the foregoing shall diminish the Company’s obligation to cause the Plant to be operated in conformance with the Plant Loan Agreement, the Act, the Tax Certificate and federal tax law, including without limitation, the operation of the sold, transferred, disposed or leased portion of the Plant. Any lease pursuant to the foregoing shall not permit sublease or assignment by the lessee unless such sublease or assignment would otherwise satisfy the requirements of this subsection.

(ii) The Company may sell, transfer or otherwise dispose of (including operating arrangements) any portion of the Plant to a Person if, the purchaser, transferee, lessee, operator or other recipient, as the case may be, has covenanted in a written instrument for the benefit of the Issuer and the Company to comply with the instructions of the Company issued for the purpose of assuring that the Plant be operated in conformance with the Plant Loan Agreement, the Act, the Tax Certificate and federal tax law; provided that nothing in the foregoing shall diminish the Company’s obligation to cause the Plant to be operated in conformance with the Plant Loan Agreement, the Act, the Tax Certificate and federal tax law, including without limitation, the operation of the sold, transferred, disposed or leased portion of the Plant. Any lease pursuant to the foregoing shall not permit sublease or assignment by the lessee unless such sublease or assignment would otherwise satisfy the requirements of this subsection.

(iii) The Company may sell, transfer, lease or otherwise dispose of any portion of the Plant to a Person if,

(A) the purchaser, transferee, lessee, operator or other recipient, as the case may be, has covenanted in a written instrument for the benefit of the Issuer and the Company to comply
with the instructions of the Company issued for the purpose of assuring that the Plant be completed and operated in conformance with the Plant Loan Agreement, the Act, the Tax Certificate and federal tax law; provided that nothing in the foregoing shall diminish the Company’s obligation to cause the Plant to be completed and operated in conformance with the Plant Loan Agreement, the Act, the Tax Certificate and federal tax law;

(B) (1) the credit rating on the Series 2012 Plant Bonds, as determined by any Rating Agency then rating the Series 2012 Plant Bonds, shall be no lower than the rating level of the Series 2012 Plant Bonds immediately prior to the effective date of such sale, transfer, lease, disposition (or operating arrangements) or (2) if the foregoing clause (1) is not satisfied, any reduction in rating occurs concurrently with a mandatory tender for purchase of all the Series 2012 Plant Bonds; and

(C) the Issuer shall have received a certificate of good standing of the purchaser, transferee, lessee or operator, as the case may be, from the California Secretary of State and Franchise Tax Board, a copy of the document evidencing such sale, transfer, lease, disposition or a Favorable Opinion of Bond Counsel with respect to such sale, transfer, lease, disposition (or operating arrangements) and an Opinion of Counsel to the effect that the surviving, resulting, or transferee Person is a “participating party” as defined in the Act.

(c) Within 10 days after the consummation of a transaction described in subsection (a) above, the Company shall provide the Issuer and the Plant Trustee with (i) counterpart copies of the documents constituting the transaction, and (ii) a certificate of the Company stating that such transaction complies with the provisions of this section captioned “Limitation on Disposition of Assets”. The Company shall give the Issuer at least 30 days’ written notice prior to the effective date of any merger or other transaction described above, together with drafts of the documents of assumption and such other instruments (other than good standing certificates) as would be required to be delivered in connection therewith. The Company agrees to provide such other information as the Issuer may reasonably request in order to assure compliance with this section captioned “Limitation on Disposition of Assets”.

(d) Notwithstanding any other provisions of this section captioned “Limitation on Disposition of Assets”, the Company need not comply with any of the provisions of this section captioned “Limitation on Disposition of Assets” if, at the time of such transaction described in subsection (a) above, the Series 2012 Plant Bonds will be defeased as provided in the Plant Indenture or in the case of a sale of less than all of the assets acquired or constructed with proceeds of the Series 2012 Plant Bonds, the Series 2012 Plant Bonds will be defeased or retired in an amount proportional to the percentage of the original cost of such assets to the original net proceeds of the Series 2012 Plant Bonds. The Company shall provide to the Issuer a certificate of the Company setting forth the calculations evidencing that the amount of Series 2012 Plant Bonds defeased or retired is proportional to the percentage of the original cost of such assets to the original net proceeds of the Series 2012 Plant Bonds.

Continuing Disclosure

The Company covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of the Plant Loan Agreement, failure of the Company to comply with the Continuing Disclosure Agreement or this section captioned “Continuing Disclosure” shall not be considered a Loan Default Event; however, the Plant Trustee, at the written request of the Owners of at least twenty-five percent (25%) of the aggregate principal amount in Outstanding Series 2012 Plant Bonds, shall (but only to the extent indemnified to its satisfaction from any cost, expense or liability arising from or related thereto), or any Owner or Beneficial Owner may, take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Company to comply with its obligations under this section captioned “Continuing Disclosure”. The Company acknowledges and agrees that the Issuer will have no liability with respect to these obligations.

Limited Business Company

(a) The Company covenants that it will remain a sole purpose entity existing solely for the purpose of financing, acquiring, developing, constructing, leasing, managing, rehabilitating and operating a reverse osmosis
seawater desalination plant and associated pipelines and other equipment and facilities as contemplated by the Project Contracts, and conducting or performing any ancillary or related activity in furtherance of the construction and operation of the Plant and the construction of the Pipeline, including (i) issuing debt or borrowing funds to finance the Plant or to perform its obligations under the Project Contracts, (ii) performing its obligations in accordance with the Project Contracts and (iii) jointly owning, using or operating certain common facilities and equipment with another Person in connection with a Separate Project Modification. The Company covenants that it will continue to be engaged solely in the business specified in the previous sentence and shall not change the nature of its business or expand its business beyond the business contemplated in the Transaction Documents.

(b) Except as permitted under the Transaction Documents and except (i) to cure any ambiguity or (ii) to convert or supplement any provision in a manner consistent with the intent of the Company’s Limited Partnership Agreement and the Transaction Documents, the Company shall not and it shall not permit the General Partner or the Limited Partner to amend, alter, change or repeal the Company’s Limited Partnership Agreement without the prior written consent of the Collateral Agent.

(c) The Company covenants that it shall not (a) incur, create, or assume any indebtedness, obligations or liabilities, secured or unsecured, direct or contingent, other than those permitted under the Transaction Documents.

(d) The Company covenants that it shall at all times have an Independent Director. The Company shall not take any action which requires the consent of the Independent Director unless at the time of such action there shall be an Independent Director then serving. On any matter which requires the consent of the Independent Director, the Independent Director shall consider only the interests of the Company, including its creditors. No Independent Director of the Corporation may be removed or replaced unless the Company provides the Collateral Agent with not less than three (3) Business Days’ prior written notice of (i) any proposed removal of an Independent Director, together with a statement as to the reasons for such removal, and (ii) the identity of the proposed replacement Independent Director, together with a certification that such replacement satisfies the requirements set forth in the Company’s Limited Partnership Agreement for an Independent Director. No resignation or removal of an Independent Director shall be effective until a successor Independent Director is appointed and has accepted his or her appointment. No Independent Director may be removed other than for Cause. “Cause” means, with respect to an Independent Director, (i) acts or omissions by such Independent Director that constitute willful disregard of such Independent Director’s duties, (ii) that such Independent Director has engaged in or has been charged with, or has been convicted of, fraud or other acts constituting a crime under any law applicable to such Independent Director, (iii) that such Independent Director is unable to perform his or her duties as Independent Director due to death, disability or incapacity, or (iv) that such Independent Director no longer meets the definition of Independent Director.

(e) The Company covenants that it shall not, without the unanimous consent of the entire Board of Directors of the General Partner and the Independent Director of the Company institute proceedings to have the Company be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company or file a voluntary petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, or make any assignment for the benefit of creditors of the company, or admit in writing the Company’s inability to pay its debts generally as they become due, or, to the fullest extent permitted by law, dissolve or liquidate the Company.

(f) The Company represents and warrants that since its formation and at all times thereafter, the Company has complied with the following provisions, and covenants that it shall (and the General Partner shall cause the Partnership to):

(i) maintain separate books and records and bank accounts;

(ii) at all times hold itself out to the public and all other Persons as a legal entity separate from the General Partner and any other Person;
(iii) not commingle its assets with assets of any other Person;

(iv) conduct its business in its own name and strictly comply with all organizational formalities to maintain its separate existence;

(v) pay its own liabilities and expenses only out of its own funds (to the extent of such funds);

(vi) maintain an arms-length relationship with its Affiliates and the partners and will only enter into any transaction or contract or agreement with any Affiliate upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with unrelated third parties;

(vii) pay from its own funds (to the extent of such funds) the salaries of its own employees, and maintain a sufficient number of employees in light of its contemplated business operations;

(viii) not guarantee or become obligated for the debts of any other entity or hold out its credit or assets as being available to satisfy the obligations of others;

(ix) allocate fairly and reasonably any overhead for shared office space;

(x) use separate stationery, invoices and checks;

(xi) not pledge its assets for the benefit of any other Person;

(xii) correct any known misunderstanding regarding its separate identity;

(xiii) intend to maintain adequate capital in light of its contemplated business purpose, transactions and liabilities;

(xiv) not make or permit to remain outstanding any loan or advance to, and avoid acquiring any obligations or securities of the General Partner or any Limited Partner;

(xv) maintain its assets in such a manner that is not costly or difficult to segregate, ascertain or identify its individual assets from those of any other person or entity;

(xvi) maintain accurate financial statements, accounting records and other company documents, separate from each other and from those of any of the Affiliates, or any other person or entity, provided however the Company may be part of a consolidated financial statement which acknowledges that the Company is a separate entity and indicates that the Company’s assets are not available to any other person’s creditors;

(xvii) file its own tax returns, if any, as may be required under applicable law, to the extent (A) not part of a consolidated group filing a consolidated return or returns or (B) not treated as a division for tax purposes of another taxpayer, and pay from its own funds (to the extent of such funds) any taxes so required to be paid under applicable law; and

(xviii) cause the agents and all other representatives of the Company to act at all times with respect to the Company consistently and in furtherance of the foregoing and in the best interests of the Company.
Zoning

The Company shall not take any action to initiate any change with respect to the zoning of the Plant Site, and shall vigorously contest any action by Carlsbad to rezone the Plant Site, if such change or rezoning is inconsistent with operating the Plant.

Pay Officers or Directors

The Company shall not pay any compensation or make any distribution of income or other assets to any of its officers or directors other than as reasonable compensation to such Persons in their capacities as employees, contractors or suppliers of the Company or the reimbursement of ordinary and reasonable out-of-pocket expenses and indemnification of officers, directors and employees as permitted by the section captioned “Transactions with Affiliates”; provided, however, the Company may pay its directors a reasonable fee for their services to the Company, as provided in its Organizational Documents.

Maintenance of the Plant

The Company shall maintain, preserve and keep the Plant in good repair, working order and condition and, if all or a portion of the Plant is damaged destroyed or condemned, shall diligently repair, replace, rebuild or restore the Plant (except to the extent that the Company may elect not to rebuild, restore or repair the Plant pursuant to the Collateral Trust Agreement), all in accordance with generally accepted prudent industry practices for facilities comparable to the Plant; provided that, if all or any of the Plant shall be destroyed or damaged by an Event of Loss or taken by an Event of Eminent Domain, the Net Capital Proceeds derived from such event shall be applied in accordance with the terms of the Collateral Trust Agreement.

Net Capital Proceeds

Except as otherwise permitted under the Collateral Trust Agreement, the Company shall deposit all Net Capital Proceeds into the Plant Restoration Fund.

Budgets

Adjustment of Project Construction Budget. The Company shall submit the Project Construction Budget (together with a certificate of an Authorized Representative of the Company to the effect that the budget was prepared in good faith and based on reasonable assumptions) to the Collateral Agent on the Series 2012 Closing Date. The Project Construction Budget may be amended to reflect the costs of a Change in Project Scope or an increase in the Plant Costs or Poseidon Pipeline Costs to be incurred by the Company (other than payments under the Plant EPC Contract or the Pipeline EPC Contract or payments approved in accordance with the Collateral Trust Agreement) over the amounts provided in the then current Project Construction Budget only if the Available Construction Funds (including the remaining Construction Contingency Amount to the extent permitted by the Collateral Trust Agreement) equal or exceed the Estimated Cost to Complete after giving effect to such amendment. Any amendment to the Project Construction Budget to reflect a change or cost increase specified in this subsection captioned “Adjustment of Project Construction Budget” shall be reviewed and approved by the Independent Engineer.

Review and Adjustment of Operating Budgets. The Company shall submit its initial operating budget for the period from the Commercial Operation Date through the next June 30, and for the following Budget Year (such part-year operating budget and each subsequent annual operating budget, the “Operating Budget”) (together with a certificate of an officer of the Company that the budget was prepared in good faith and based on reasonable assumptions) for the review and approval of the Independent Engineer prior to the Commercial Operation Date. No less than 15 days in advance of each twelve-month period ending June 30 (a “Budget Year”) the Company shall also adopt an Operating Budget for the succeeding Budget Year, which Operating Budget shall be subject to the prior review (and, in the event that (i) such Operating Budget reflects O&M Costs (after adjustment for escalation contemplated by the Project Contracts) in excess of 110% of the O&M Costs reflected in the current Operating Budget or (ii) any line item in such Operating Budget reflects particular O&M Costs (after adjustment for escalation

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contemplated by the Project Contracts) in excess of 120% of such particular O&M Costs in the current Operating Budget, approval) of the Independent Engineer. Any amendments to the Operating Budget shall be subject to review (and if required, approval) in accordance with the standards and procedures set forth in the preceding sentence for the adoption of Operating Budgets. The Company shall operate or cause the operation of the Plant substantially in accordance with the applicable annual Operating Budget as amended from time to time.

**Filing of Approved Budgets.** The Company shall file or cause to be filed with the Collateral Agent the approved Operating Budget prior to the commencement of the applicable Budget Year.

**Reports**

The Company shall deliver to the Collateral Agent, a Senior Debt Majority, the Plant Trustee, and the Independent Engineer on the last Business Day of each month until the Commercial Operation Date, a report of an Authorized Representative of Company (such report, a “Construction Report”) setting forth in reasonable detail: (i) the estimated date on which the Commercial Operation Date will be achieved; (ii) if the Commercial Operation Date is not anticipated to be achieved prior to the Guaranteed Completion Date (as defined in the Plant EPC Contract), the reasons therefor; (iii) the status of construction of the Plant; and (iv) the amount of Plant Costs and Poseidon Pipeline Costs incurred to date and during the most recent monthly period, and in the event of a material variance, the reasons therefor.

The Company shall deliver to the Collateral Agent, a Senior Debt Majority, the Plant Trustee and the Independent Engineer copies of all progress reports delivered to the Water Authority pursuant to the Pipeline DBA.

Following the Commercial Operation Date, as soon as practicable but no later than 45 days after the close of each quarterly period of its Fiscal Year, the Company shall deliver to the Collateral Agent and a Senior Debt Majority a quarterly summary operating report which shall include (i) a six-month and year-to-date numerical and narrative assessment of (A) the variance analysis of the Plant’s compliance with each material category in the applicable Operating Budget, (B) all Revenues received and all O&M Costs paid during such period and all cash balances, distributions to the Partners, Debt Service payments and Contracted Shortfall Payments made during such period, (C) casualty losses with respect to the Plant with a value in excess of $250,000 (Escalated) for any one casualty or loss, or an aggregate of $500,000 (Escalated) in any Fiscal Year of the Company, (D) replacement of equipment not contemplated by the then current Operating Budget of value in excess of $500,000 (Escalated) and (E) material disputes with contractors, materialmen, suppliers or others and any related claims against the Company.

The Company shall provide to the Plant Trustee, the Issuer, the Collateral Agent or the Independent Engineer promptly upon reasonable request such information concerning the Plant as such Person reasonably requests.

**Obligations**

The Company shall pay all of its obligations as and when due and payable, including trade payables in the ordinary course of business and taxes and tax claims, except (a) such obligations as may be contested in good faith by the Company or as to which a bona fide dispute may exist and against which adequate reserves are reflected in the Company’s financial statements to the extent required by GAAP and (b) any obligation, if not paid when due, would not have a Material Adverse Effect.

**Books, Records, Access**

The Company shall maintain adequate books, accounts and records with respect to the Company and the Plant and the construction of the Pipeline and prepare all financial statements required under the Plant Loan Agreement in conformity with GAAP and in material compliance with the regulations of any Governmental Authority having jurisdiction thereof, and, subject to the terms and restrictions of the Project Contracts, permit employees or agents of Trustee, the Issuer, the Collateral Agent and the Independent Engineer at any reasonable time during Company’s normal business hours and upon reasonable prior notice to Company, without undue disturbance to the Company’s operations and at all times in reasonable compliance with the Company’s health,
safety, and environmental policies (assuming that the Company has provided adequate training to such person), to inspect all of the Company’s properties including the Plant Site, to examine or audit all of the Company’s books, accounts and records and make copies and memoranda thereof.

The Company shall, subject to the terms and restrictions of the Ground Lease and the other Project Contracts conveying to the Company its interests in the Company Real Property, the O&M Agreement, the Plant EPC Contract and the Pipeline EPC Contract, upon reasonable notice from the Independent Engineer provide the Independent Engineer with reasonable access to the Plant Site at all times during the Company’s normal business hours, and access to and copies of such of the Plant’s engineering drawings and civil and electrical designs and interconnection facilities and project manuals so as to enable the Independent Engineer to deliver such certificates and written reports to the Plant Trustee, the Collateral Agent and a Senior Debt Majority as such Persons may request, including with regard to (a) the adequacy of the civil engineering and electrical designs of the Plant; (b) the compliance of said designs with all applicable standards and codes; (c) the projected life of selected components of the Plant; and (d) all required pre-operational, performance and other such tests with respect to the Plant as a whole.

Preservation of Rights; Further Assurances

The Company shall use all commercially reasonable efforts (i) to preserve, protect and defend its material rights under each and every Project Contract, including prosecution of suits to enforce any material rights of the Company thereunder and enforcement of any material claims with respect thereto, and (ii) to defend any material action, claim (other than claims with respect to Permitted Encumbrances) or other proceeding commenced or levied against it, except in each case where the failure to preserve, protect or defend would not reasonably be expected to have a Material Adverse Effect. The Company shall provide regular reports of such efforts to a Senior Debt Majority and the Plant Trustee.

From time to time as reasonably requested by the Plant Trustee or the Collateral Agent, the Company shall execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents (including any memorandum of lease or other agreement, financing statement, continuation statement, fixture filing, certificate of title or estoppel certificate) relating to the obligations of the Company under the Plant Loan Agreement stating the interest and charges then due and any known defaults, and take such other steps as may be necessary or reasonably advisable to render fully valid and enforceable under all applicable laws the rights, Liens and priorities of the Collateral Agent with respect to all Collateral and any security from time to time furnished under the Plant Loan Agreement and the other Financing Documents or intended to be so furnished, in each case in such form, together with such legal opinions as may reasonably be requested by the Collateral Agent and at such times as shall be reasonably satisfactory to Collateral Agent, and pay all reasonable fees and expenses of the Collateral Agent (including reasonable attorneys’ fees) incident to compliance with this section captioned “Preservation of Rights; Further Assurances”.

If the Company shall at any time acquire any real property or leasehold, easement or other interest in real property not covered by the Deed of Trust, promptly upon such acquisition, the Company shall execute, deliver and record a supplement to the Deed of Trust, reasonably satisfactory in form and substance to the Collateral Agent, subjecting such real property or leasehold, easement or other interests to the Lien and security interest created by the Deed of Trust.

Taxes, Other Government Charges and Utility Charges

The Company shall pay, or cause to be paid, as and when due and prior to delinquency, all taxes, assessments and governmental charges of any kind that may at any time be lawfully assessed or levied against or with respect to the Company or the Plant, all utility and other charges incurred in the construction, operation, maintenance, use, occupancy and upkeep of the Plant, and all assessments and charges lawfully made by any Governmental Authority for public improvements that may be secured by a Lien on the Plant. Notwithstanding the immediately preceding sentence, the Company may contest in good faith any such taxes, assessments and other charges and, in such event, may permit the taxes, assessments or other charges so contested to remain unpaid during any period, including appeals, when the Company is in good faith contesting the same, so long as, with respect to any such dispute or disputes involving taxes, assessments or other charges in amounts greater in the aggregate than $750,000 (Escalated) (a) reasonable reserves in accordance with GAAP have been established in an amount...
sufficient to pay any such taxes, assessments or other charges, accrued interest thereon, potential penalties, additions to tax or other costs relating thereto, or other adequate provision for the payment thereof shall have been made; (b) enforcement of the contested tax, assessment or other charge is effectively stayed for the entire duration of such contest; and (c) any tax, assessment or other charge determined to be due, together with any interest, additions to tax or penalties thereon, is paid when due after resolution of such contest by final non-appealable judgment.

Compliance With Laws; Permits

At its expense, the Company shall (a) comply, or cause compliance, with Applicable Law; (b) procure, maintain and comply with, or cause to be procured, maintained and complied with, all Permits required under Applicable Law for any use of the Plant, or any part thereof, then being made (except, in the case of both the foregoing clause (a) and this clause (b), for any failure to comply, or procure and maintain, that would not reasonably be expected to have a Material Adverse Effect); and (c) in the case of a change of name or corporate reorganization involving the Company, take such actions, including the filing of appropriate notices with all Governmental Authorities that have issued applicable Permits, to maintain in full force and effect each applicable Permit, as may be required by Applicable Law. Notwithstanding the immediately preceding sentence, the Company may, at its expense, contest by appropriate proceedings conducted in good faith the validity or application of Applicable Law or any Permit and, in such event, may fail to comply with such provision of Applicable Law or any Permit or to procure or maintain any Permit so contested during any period, including appeals, when the Company is in good faith contesting the same, so long as, with respect to any such dispute or disputes, enforcement of the contested Applicable Law or Permit against the Company or the Plant shall have been effectively stayed for the entire duration of such contest.

Debt

The Company shall not incur, create, assume or permit to exist any Debt except Permitted Debt.

Distributions

The Company shall not, directly or indirectly, (a) make or declare any distribution (in cash, property or obligation) on, or make any other payment on account of, any interest in the Company or (b) make any Restricted Payment, unless otherwise permitted under the section captioned “Transactions with Affiliates” or the Collateral Trust Agreement.

Transactions With Affiliates

Except for (a) any noncompetition or confidentiality agreement entered into by the Company with any of its officers or directors, and typical indemnifications for officers and directors of the Company and of its General Partner for the performance of their duties as officers and directors in the ordinary course of business (b) those transactions otherwise expressly permitted or contemplated by the Plant Loan Agreement and the other Financing Documents, (c) any transaction permitted pursuant to subsection (j) of the section captioned “General Negative Covenants”, (d) arms-length transactions in the ordinary course of business not to exceed in the aggregate $500,000 (Escalated) in any calendar year, (e) those transactions in place on the Series 2012 Closing Date, (f) payments for administrative or management services and overhead in any Fiscal Year in the amounts set forth therefor in the Operating Budget (or if prior to the Commercial Operation Date, the Project Construction Budget) for such year not to exceed three percent of the Operating Budget for any Budget Year after the Commercial Operation Date (or $2,500,000 prior to the Commercial Operation Date), and (g) agreements for reasonable and customary indemnification and advancement of expenses with (i) any officer, director or employee of the Company, or (ii) any officer or director of any Partner, or (iii) any officer or director of Orion Water Partners LLC or any other Affiliate of the Company for so long as any entity described in clause (iii) is formed for the purpose of, and such entity’s assets consist solely of, a direct or indirect investment in the Company, the Company shall not directly or indirectly enter into any transaction or series of transactions with or for the benefit of an Affiliate.
Partnerships

The Company shall not become a general or limited partner in any partnership, a joint venturer in any joint venture or a member in any limited liability company. The Company shall not form or acquire any Subsidiaries.

Compliance With Transaction Documents

The Company shall (i) perform and observe all of its covenants and obligations contained in each of the Financing Documents and (ii) perform and observe all its covenants, and use reasonable commercial efforts to enforce its rights under, each of the Project Contracts, except to the extent that any failure to perform, observe or enforce such covenants or obligations in a Project Contract would not reasonably be expected to have a Material Adverse Effect. The Company shall take all reasonable and necessary action (to the extent within its control and permitted by the Transaction Documents) to prevent the termination or cancellation of any Project Contract in accordance with the terms thereof or otherwise, except to the extent that the cancellation or termination of such Project Contract by the Company would be permitted in accordance with the terms of the Collateral Trust Agreement or otherwise would not reasonably expected to have a Material Adverse Effect.

Use of Plant Site

The Company shall not use, or permit to be used, the Plant Site for any purpose other than for the construction, operation and maintenance of the Plant and performance of the Project Contracts, including any Capital Project (including a Separate Project Modification) undertaken in accordance with the Collateral Trust Agreement, and the conduct of its business in accordance with the section captioned “Limited Business Company” and as contemplated by the Transaction Documents, without the prior written consent of a Senior Debt Majority.

Assignment

Except as contemplated by the Financing Documents, the Company shall not assign its rights under the Plant Loan Agreement or under any other Transaction Document to any Person.

Abandonment of Plant

The Company shall not abandon the operation of the Plant for a continuous period of more than 90 days, except when such interruption is caused by any Uncontrollable Circumstance, provided that neither (i) the scheduled or unscheduled maintenance of the Plant, (ii) the scheduled or unscheduled repairs to the Plant, nor (iii) a forced outage or scheduled outage of the Plant shall constitute abandonment of the Plant.

Environmental Matters

The Company shall not release, emit or discharge into the environment any Hazardous Substances in violation of applicable Environmental Laws or engage in any other action or omission in violation of any applicable Environmental Laws or other Applicable Law or applicable Permits that would reasonably be expected to have a Material Adverse Effect.

Cooperation With Collateral Agent

The Company shall cooperate with the Collateral Agent in sharing information required to calculate, ascertain or apply Revenues pursuant to the Collateral Trust Agreement.

Notice and Certificates to Trustee

The Company agrees to provide the Issuer, the Plant Trustee and the Remarketing Agent with the following:
(i) On or before June 15 and December 15 of each year during which any of the Series 2012 Plant Bonds are Outstanding, commencing June 15, 2013, a Certificate of the Company that all payments required under the Plant Loan Agreement have been made;

(ii) Within 120 days of the end of its fiscal year, a Certificate of the Company that it has complied with the requirements to make reports, including the reports concerning financial statements pursuant to the section captioned “Financial Statements; Notices”;

(iii) Promptly upon knowledge of an Event of Default, a written notice of such Event of Default, such notice to include a description of the nature of such event and what steps are being taken to remedy such Event of Default; and

(iv) On or before December 15 of each year during which any of the Series 2012 Plant Bonds are Outstanding, (i) a written disclosure of any significant change known to the Company which would adversely impact the Plant Trustee’s ability to perform its duties under the Plant Indenture, or of any conflicts which may result because of other business dealings between the Plant Trustee and the Company, and (ii) a representation of the Company that all certificates, approvals, permits and authorizations described in Section 2.1(g) that are necessary for the construction, as applicable, use or operation of the Plant continue in full force and effect, provided that with respect to any such certificate, approval, permit or authorization that must issue without discretion on the part of the issuer thereof, the Company need only disclose the absence of such certificate, approval, permit or authorization and the Company’s plan to acquire it.

Refund off Small Business Assistance Fund Contributions

The Company agrees to return to the Issuer amounts provided from its Small Business Assistance Fund upon the events and in the amounts set forth in the Plant Loan Agreement.

Changes to the Plant

The Company shall not make any changes to the Plant or to the operation thereof which would affect the qualification of the Plant under the Act or impair the exemption from federal income taxation of the interest on the Tax Exempt Series.

Right of Access to the Plant

The Company agrees that, during the term of the Plant Loan Agreement, the Issuer, the Plant Trustee and the duly authorized agents of any of them will have the right at all reasonable times during normal business hours to enter upon the site of the Plant to examine and inspect the Plant in conformance with industry practice; provided that reasonable notice shall be given to the Company prior to such examination or inspection and, except in cases of emergency, risk of personal injury or death, catastrophic property loss, or imminent risk of other property damage, any examination or inspection which would materially impair the performance of the Plant will be limited to scheduled maintenance periods as determined by the Water Authority in order to minimize impacts on Plant operations. The rights of access reserved to the Issuer and the Plant Trustee may be exercised only after such agent has executed release of liability and secrecy agreements if requested by the Company in the form then currently used by the Company, and nothing in this section captioned “Right of Access to the Plant” or in any other provision of the Plant Loan Agreement shall be construed to entitle the Issuer or the Plant Trustee to any information or inspection involving the confidential trade or proprietary knowledge, expertise or know-how of the Company.

NONLIABILITY OF ISSUER; EXPENSES, INDEMNIFICATION

Nonliability of Issuer

The Issuer shall not be obligated to pay the principal of, premium, if any, or interest on the Plant Bonds, except from Revenues and the amounts in the Accounts held by the Plant Trustee under the Plant Indenture and the amounts in the Accounts held by the Collateral Agent under the Collateral Trust Agreement which are pledged to
such payment. Neither the faith and credit nor the taxing power of the State or of any political subdivision thereof shall be pledged to the payment of the principal of, premium, if any or interest on the Plant Bonds. The issuance of the Plant Bonds shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The Issuer has no taxing power. Neither the members of the Issuer nor any official thereof nor any person executing the Plant Bonds shall be liable personally on the Plant Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

The Company acknowledges that the Issuer’s sole source of moneys to repay the Plant Bonds will be provided by the payments made by the Company pursuant to the Plant Loan Agreement, together with other Revenues and amounts in the Accounts held by the Plant Trustee under the Plant Indenture and the amounts in the Accounts held by the Collateral Agent under the Collateral Trust Agreement which are pledged to such payment, and agrees that if the payments made under the Plant Loan Agreement shall ever prove insufficient to pay all principal of, and premium, if any, and interest on the Plant Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Plant Trustee, the Company shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, premium or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Plant Trustee, the Company, the Issuer, or any third party.

Expenses

The Company covenants and agrees to pay the Issuer and the Plant Trustee all reasonable costs, expenses and charges, including fees and disbursements of attorneys, accountants, employees, consultants and other experts, incurred or paid by them, incurred in good faith in connection with the Plant Loan Agreement, any Plant Bonds or the Plant Indenture.

Indemnification

The Company releases the Issuer and the Plant Trustee from, and covenants and agrees that neither the Issuer nor the Plant Trustee, shall be liable for, and covenants and agrees to indemnify and hold harmless the Issuer, the Plant Trustee and their members, directors, officers, employees and agents from and against, any and all losses, claims, damages, liabilities or expenses (including without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments), of every conceivable kind, character and nature whatsoever (including, without limitation, federal and state securities laws) arising out of, resulting from or in any way connected with: (1) the Plant, or the conditions, occupancy, use, possession, conduct or management, or work done in or about the Plant or the Pipeline by or for the Company, or from the ownership, title to, planning, design, installation or construction of the Plant or the Pipeline or any part thereof; (2) the issuance, sale or resale, of the Plant Bonds or the Pipeline Bonds, or any certifications, covenants or representations made in connection therewith, the execution and delivery of the Plant Loan Agreement, the Plant Indenture or the Tax Certificate or any amendment thereto and the carrying out of any of the transactions contemplated by the Plant Bonds, the Pipeline Bonds, the Plant Loan Agreement and the Tax Agreement; (3) the Plant Trustee’s acceptance or administration of the trusts under the Plant Indenture, or the exercise or performance of any of its powers or duties under the Plant Indenture; (4) the Issuer’s acceptance of its responsibilities under the Plant Loan Agreement and under the Tax Agreement and the Plant Indenture; (5) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact required to be stated or necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, in the Limited Offering Memorandum (as defined in the Bond Purchase Agreement) other than information that is not Company Information (as defined in the Bond Purchase Agreement); (6) any violation of any Environmental Regulations or the release of any Hazardous Substance from, on or near the Plant or any other facilities of the Company; (7) the defeasance or redemption, in whole or in part, of the Plant Bonds; or (8) any declaration of taxability of interest on the Plant Bonds, or allegations that interest on the Plant Bonds is taxable or any regulatory audit or inquiry regarding whether interest in the Plant Bonds is taxable; provided that with respect to indemnification of the Issuer and its members, officers, employees and agents, such indemnity shall not be required for damages that result from gross negligence or willful misconduct on the part of the party seeking such release or indemnity and with respect to any other indemnified party, such indemnity shall not be required for damages that result from the negligence or willful misconduct on the part of the party seeking such indemnity. The Company further covenants and agrees, to the extent permitted by law, to pay or
to reimburse the Issuer, the Plant Trustee, and their respective members, officers, employees, consultants and agents for any and all costs, reasonable attorneys’ fees and expenses, liabilities or other expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, expenses or actions, except to the extent that the same arise out of the gross negligence or willful misconduct of the party claiming such payment or reimbursement. The provisions of this section captioned “Indemnification” shall survive the discharge of the Plant Indenture, the Plant Loan Agreement, the Tax Agreement, the retirement of the Plant Bonds and the Pipeline Bonds and with respect to the Plant Trustee, the resignation and removal of the Plant Trustee.

The Company shall indemnify, hold harmless and, at the option of the Plant Trustee, defend the Plant Trustee against any and all liability arising out of, or alleged to arise out of, the Plant Trustee’s agreement to indemnify, hold harmless and, at the option of the State Lands Commission of the State of California (the “Lands Commission”), defend the Lands Commission, its officers, agents, and employees against any and all liability arising out of, or alleged to arise out of, a failure by Trustee to inform prospective purchasers of the Company’s interest in Lease No. PRC 8727.1, dated August 14, 2007, among the Lands Commission, Cabrillo Power I, LLC and the Company, as amended, that they must be approved by the Lands Commission (absent the Plant Trustee’s gross negligence or willful misconduct).

**LOAN DEFAULT EVENTS AND REMEDIES**

**Loan Default Events**

The following events shall be “Loan Default Events”:

(a) If the Company shall fail to pay any Plant Loan Repayment when due and payable in accordance with the section captioned “REPAYMENT OF LOANS; ADDITIONAL PAYMENTS – Deposit of Revenues; Repayment of Loan”;

(b) An Event of Default under and as defined in the Plant Indenture occurs as a result of the Company’s failure to make any Contracted Shortfall Payment when due;

(c) If any representation or warranty made by the Company in the Plant Loan Agreement or in any document, instrument or certificate furnished to the Plant Trustee, the Issuer or the Collateral Agent in connection with the issuance of any Series of Plant Bonds shall at any time prove to have been incorrect in any material respect as of the time made and the Company fails to bring itself into material compliance with such representation as of a date within the 30-day period after written notice thereof from the Collateral Agent or a Senior Debt Majority; provided that, if the Company fails to bring itself into such compliance within such 30-day period, it will not be a Loan Default Event if the failure is correctable without a Material Adverse Effect, and corrective action is instituted by the Company within such period and diligently pursued until completion and, provided further, that any such failure is cured within 90 days of receipt of notice of such failure (unless the Company is diligently pursuing such cure and a Senior Debt Majority (in its sole discretion) has consented to the extension of such cure period);

(d) The Company fails to comply with its obligations under the Collateral Trust Agreement;

(e) The Company fails to comply with its obligations under subsection (n) of the section captioned “General Affirmative Covenants”;

(f) (i) If the Company shall fail to observe or perform any other covenant, condition, agreement or provision in the Plant Loan Agreement or any other Financing Document on its part to be observed or performed for a period of 60 days after written notice specifying such failure or breach and requesting that it be remedied, has been given to the Company by the Issuer, the Collateral Agent or the Plant Trustee; except that, if such failure can be remedied but not within such 60 day period and the Company has commenced action to remedy such failure within such 60 day period, such failure shall not become a Loan Default Event until 180 days after such notice (or with respect to a Permit the applicable time period in subsection (q) of this section captioned “Loan Default Events” so long as the Company shall diligently proceed to remedy same), or (ii) if any Financing Document (other than a
Collateral Document) shall cease to be in full force and effect or be terminated except upon fulfillment of all obligations of the Company thereunder;

(g) If the Company files a petition in voluntary bankruptcy, for the composition of its affairs or for its corporate reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself or for the whole or any substantial part of its facilities;

(h) If a court of competent jurisdiction shall enter an order, judgment or decree declaring the Company an insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the Company or of the whole or any substantial part of its facilities, or approving a petition filed against the Company seeking reorganization of the Company under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within 90 days from the date of the entry thereof;

(i) If, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Company or of the whole or any substantial part of its facilities, and such custody or control shall not be terminated within 90 days from the date of assumption of such custody or control;

(j) A final judgment or judgments shall be entered against Company in the aggregate amount of $2,000,000 (Escalated) or more individually and in the aggregate (other than (i) a judgment which is fully covered by insurance or discharged within 30 days after its entry, or (ii) a judgment, the execution of which is effectively stayed within 30 days after its entry but only for 30 days after the date on which such stay is terminated or expires);

(k) The Company shall default for a period beyond any applicable grace period (i) in the payment of any principal, interest or other amount due under any agreement (other than the Financing Documents) involving the borrowing of money or the advance of credit and the outstanding amount or amounts payable under all such defaulted agreements equals or exceeds $2,000,000 (Escalated) in the aggregate;

(l) An ERISA Event shall occur and, as a result of such event, the Company shall incur a liability to a Pension Plan, a Multiemployer Plan or PBGC (or any combination of the foregoing) which could reasonably be expected to result in a Material Adverse Effect;

(m) (i) Except as provided in subsection (ii) below, the Company shall be in breach of, or default under, any Project Contract and any applicable cure period thereunder shall have expired with respect to such breach or default, if such breach or default could reasonably be expected to have a Material Adverse Effect; provided that such breach or default shall not be a Loan Default Event if such breach or default can be remedied and the Company has commenced action to remedy such breach or default, for so long as the Company shall diligently proceed to remedy the same and the other party to such Project Contract shall not have exercised any right to terminate or suspend performance thereunder, or (ii) the Company shall be in breach or default of its obligations to achieve the Commercial Operation Date under the Water Purchase Agreement;

(n) If any Principal Project Contract ceases to be valid and binding and in full force and effect (other than by reason of the termination of such Principal Project Contract at the end of the stated term thereof or upon the full and complete performance by each party thereto of all obligations thereunder, or the termination of the O&M Agreement by the Company, a termination of an EPC Contract after the Commercial Operation Date or any other termination or cancellation of such Principal Project Contract permitted under the Collateral Trust Agreement), or any counterparty thereto denies that it has any liability or obligation under any Principal Project Contract and such counterparty ceases performance thereunder; provided that such cessation of performance shall cease to be a Loan Default Event if, within 90 days from any such occurrence such counterparty resumes performance under the affected Principal Project Contract;

(o) The Company fails to comply with its obligations under Section 6.30, provided that any abandonment or cessation as described therein shall not constitute a Loan Default Event during the pendency of a
good faith dispute with respect to the Plant; and provided further that any such abandonment or cessation that is caused by an Uncontrollable Circumstance shall not constitute a Loan Default Event so long as (i) such Uncontrollable Circumstance is reasonably susceptible to being cured by the Company and, (ii) if such abandonment or cessation due to an Uncontrollable Circumstance continues for more than 120 consecutive days, the Company shall have demonstrated that amounts on deposit in the Capitalized Interest Account, together with delay damages under the Plant EPC Contract and the proceeds of delay in start-up and business interruption insurance and other sources, will be sufficient to make Plant Loan Repayments when due and payable;

(p) If (i) any of the Collateral Documents, once executed and delivered, shall, in any material respect fail to provide the Collateral Agent with the Liens, security interest, rights, titles, interest, remedies, powers or privileges intended to be created thereby or cease to be in full force and effect with respect to the Collateral, or the validity thereof or the applicability thereof to Secured Obligations purported to be secured or guaranteed thereby or any material part thereof, shall be disaffirmed by or on behalf of the Company or the Partners; or (ii) there shall occur an Event of Default (however defined) under any of the Collateral Documents, which Event of Default shall not have been cured within thirty (30) days after its occurrence; or

(q) Any applicable Permit shall be materially modified, revoked or cancelled by the issuing agency or other Governmental Authority having jurisdiction; provided that such modification, revocation or cancellation could reasonably be expected to have a Material Adverse Effect after taking into account any available proceeds from business interruption insurance or other sources; and provided further, that such modification, revocation or cancellation shall not be a Loan Default Event so long as it shall have been effectively stayed during the period in which the Company is contesting it in accordance with the section captioned “PARTICULAR COVENANTS – Compliance with Laws; Permits”.

Remedies on Default

If a Loan Default Event shall occur, then, and in each and every such case during the continuance of such Loan Default Event, Collateral Agent, as assignee of the Issuer and the Plant Trustee may take any one or more of the following remedial steps:

(a) The Collateral Agent or the Issuer, may, if the Plant Bonds have been accelerated pursuant to Section 902 of the Plant Indenture and upon notice in writing to the Company, declare all installments of Plant Loan Repayments payable for the remainder of the term of the Plant Loan Agreement to be immediately due and payable, subject in all respects to the provisions of the Plant Indenture, whereupon the same shall be immediately due and payable, anything in the Plant Loan Agreement to the contrary notwithstanding. “All installments” as used in this subsection shall mean an amount equal to the entire principal amount of the then Outstanding Plant Bonds, together with any applicable redemption premiums and all interest accrued or to accrue on and prior to the next redemption date or dates on which the Plant Bonds can be redeemed after giving notice to the Owners thereof as required by the Plant Indenture (less moneys available for such purpose then held by the Plant Trustee) plus any other payments due or to become due under the Plant Loan Agreement, including, without limitation, any unpaid fees and expenses of the Plant Trustee (including reasonable attorneys’ fees) which are then due or will become due prior to the time that the Plant Bonds are paid in full and the trust established by the Plant Indenture is terminated; provided, however, that if acceleration of the Plant Bonds has been rescinded and annulled pursuant to the Plant Indenture, acceleration of the Plant Loan Repayments required under the Plant Loan Agreement shall similarly be rescinded and annulled and the Loan Default Event occasioning such acceleration shall automatically be deemed to be waived; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

(b) The Collateral Agent (in its sole discretion), as assignee of the Issuer, may take whatever action, at law or in equity, as may appear necessary or desirable to collect the Plant Loan Repayments then due and thereafter to become due under the Plant Loan Agreement or to enforce the performance and observance of any obligation, covenant, agreement or provision contained in the Plant Loan Agreement to be observed or performed by the Company, including instituting foreclosure proceedings under the Deed of Trust in accordance with the Plant Indenture and taking any action to realize proceeds from the sale of any Collateral.

Remedies Not Exclusive; No Waiver of Rights; Collateral Agent
(a) No remedy in the Plant Loan Agreement conferred upon or reserved to the Issuer or the Plant Trustee, as assignee of the Issuer, is intended to be exclusive of any other available remedy or remedies, but each and every such remedy, to the extent permitted by law, shall be cumulative and shall be in addition to every other remedy given under the Plant Loan Agreement or now or hereafter existing at law or in equity or otherwise. In order to entitle the Plant Trustee to exercise any remedy, to the extent permitted by law, reserved to it contained in the Plant Loan Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in the Plant Loan Agreement. Any rights and remedies as are given to the Issuer under the Plant Loan Agreement shall also extend to the Plant Trustee, as assignee of the Issuer, and the Plant Trustee, in its sole discretion, may exercise any rights and will be charged with the obligations of the Issuer under the Plant Loan Agreement, and the Plant Trustee and, subject to subsection (c) below, the Owners of the Plant Bonds shall be deemed third party beneficiaries of all covenants and conditions contained in the Plant Loan Agreement.

(b) No delay in exercising or omitting to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

(c) Notwithstanding anything to the contrary in the section captioned “Remedies on Default” and this section captioned “Remedies Not Exclusive; No Waiver of Rights; Collateral Agent”, the Issuer acknowledges and agrees that, in the Collateral Trust Agreement, the Plant Trustee has (i) granted to a Senior Debt Majority the sole right to direct the exercise of remedies under the Plant Loan Agreement and the Plant Indenture, (ii) granted to the Collateral Agent the sole right to enforce such remedies, including an acceleration of the Plant Bonds and (iii) agreed that it will not pursue any remedy under the Plant Loan Agreement or the Plant Indenture with respect to an Event of Default.

Expenses on Default

In the event the Company should default under any of the provisions of the Plant Loan Agreement and the Issuer, the Plant Trustee or the Collateral Agent should employ attorneys or incur other expenses for the collection of the payments due under the Plant Loan Agreement, the Company agrees that it will on demand therefor pay to the Issuer, the Plant Trustee or the Collateral Agent the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Issuer or the Plant Trustee.

MISCELLANEOUS

Further Assurances

The Company agrees that it will execute and deliver any and all such further agreements, instruments or other assurances as may be reasonably necessary or requested by the Issuer or the Plant Trustee to carry out the intention or to facilitate the performance of the Plant Loan Agreement.

Amendment of Plant Indenture

The Issuer covenants that, except as may be necessary to protect the Tax Exempt status of any Tax Exempt Plant Bonds, it will take no action to amend or supplement the Plant Indenture or any supplement thereto in any manner that would adversely affect the interests of the Company without obtaining the prior written consent of the Company to such amendment or supplement.

Notices

All notices, certificates or other communications shall be deemed sufficiently given upon actual receipt thereof when the same have been mailed by first class mail or by overnight mail, postage prepaid, addressed to the Issuer, the Company, the Plant Trustee, or the Rating Agencies, as the case may be, at the addresses set forth in, or changed pursuant to the Plant Indenture. A duplicate copy of each notice, certificate or other communication given under the Plant Loan Agreement by either the Issuer or the Company to the other shall also be given to the Plant Trustee. Unless otherwise requested by the Issuer, the Plant Trustee, the Company, any notice required to be given
under the Plant Loan Agreement in writing may be given by any form of Electronic notice capable of making a written record. Each such party shall file with the Plant Trustee information appropriate to receiving such form of Electronic notice. The Issuer, the Company and the Plant Trustee may, by notice given under the Plant Loan Agreement, designate any different addresses to which subsequent notices, certificates or other communications shall be sent.

Waiver of Personal Liability

No member, officer, agent or employee of the Issuer or any director, officer, shareholder, agent or employee of the Company shall be individually or personally liable for the payment of any principal of (or redemption price) or interest on the Bonds or any sum under the Plant Loan Agreement or under the Plant Indenture be subject to any personal liability or accountability by reason of the execution and delivery of the Plant Loan Agreement; but nothing contained in the Plant Loan Agreement shall relieve any such member, director, officer, shareholder, agent or employee from the performance of any official duty provided by law or by the Plant Loan Agreement.

Governing Law; Venue

The Plant Loan Agreement shall be construed in accordance with and governed by the Constitution and laws of the State applicable to contracts made and performed in the State. The Plant Loan Agreement shall be enforceable in the State, and any action arising out of the Plant Loan Agreement shall be filed and maintained in the Sacramento County Superior Court, Sacramento, California, unless the Issuer waives this requirement.

Binding Effect

The Plant Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer and the Company and its respective successors and assigns, subject, however, to the limitations contained in the Plant Loan Agreement.

Severability of Invalid Provisions

If any one or more of the provisions contained in the Plant Loan Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in the Plant Loan Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of the Plant Loan Agreement, and the Plant Loan Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Issuer and the Company each declares that it would have entered into the Plant Loan Agreement and each and every other section, paragraph, sentence, clause or phrase of the Plant Loan Agreement irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of the Plant Loan Agreement may be held illegal, invalid or unenforceable.

Agreement Represents Complete Agreement; Amendments

The Plant Loan Agreement represents the entire contract between the parties with respect to the matters in the Plant Loan Agreement. The Plant Loan Agreement may not be effectively amended, waived, changed, modified, altered or terminated except by the written agreement of the Company and the Issuer and the concurring written consent of the Plant Trustee, given in accordance with the provisions of the Plant Indenture.

Execution of Counterparts

The Plant Loan Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be original and all of which shall together constitute but one and the same instrument.

Term of Loan Agreement
Except as otherwise provided in the Plant Loan Agreement, the Plant Loan Agreement shall remain in full force and effect from the date of execution until no Plant Bonds remain Outstanding under the Plant Indenture.

**Liability of Issuer Limited to Revenues**

Notwithstanding anything in the Plant Loan Agreement or in the Series 2012 Plant Bonds contained, the Issuer shall not be required to advance any moneys derived from any source other than the Revenues and other assets pledged under the Plant Indenture for any of the purposes mentioned in the Plant Indenture, whether for the payment of the principal or interest on the Series 2012 Plant Bonds or for any other purpose of the Plant Indenture. **NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF OR ANY LOCAL AGENCY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE SERIES 2012 PLANT BONDS.** The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with the Plant Loan Agreement, the Series 2012 Plant Bonds or the Plant Indenture, except only to the extent amounts are received for the payment thereof from the Company under the Plant Loan Agreement.

The Company acknowledges that the Issuer’s sole source of moneys to repay the Series 2012 Plant Bonds will be provided by the payments made by the Company to the Plant Trustee pursuant to the Plant Loan Agreement, together with investment income on certain funds and accounts held by the Plant Trustee under the Plant Indenture, and agrees that if the payments to be made under the Plant Loan Agreement shall ever prove insufficient to pay all principal (or redemption price) and interest on the Series 2012 Plant Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Plant Trustee, the Company shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or redemption price) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Plant Trustee, the Company, the Issuer or any third party, subject to any right of reimbursement from the Plant Trustee, the Issuer or any such third party, as the case may be, therefor.

**Survival of Fee Obligation; No Prevailing Party**

The right of the Issuer and the Plant Trustee, to receive any fees or to be reimbursed for any expenses incurred pursuant to the Plant Loan Agreement, and the right of the Issuer and the Plant Trustee to be protected from any liability as provided in the Plant Loan Agreement, shall survive the retirement of the Plant Bonds and the termination of the Plant Loan Agreement. Nothing in the Plant Loan Agreement shall be construed to provide for the award of attorneys’ fees and costs to the Issuer or the Company for the enforcement of the Plant Loan Agreement, as described in Section 1717 of the California Civil Code. Nothing in this section captioned “Survival of Fee Obligation; No Prevailing Party” affects the rights of the Plant Trustee as provided in the Plant Loan Agreement.
SUMMARY OF CERTAIN PROVISIONS OF THE
PLANT INDENTURE

The following summarizes certain provisions of the Plant Trust Indenture dated December 24, 2012, as amended (the “Plant Indenture”), by and between the California Pollution Control Financing Authority, a political subdivision and public instrumentality of the State of California (the “Issuer”) and MUFG Union Bank, N.A., as trustee (the “Plant Trustee”).

THE PLANT BONDS

Authorization of Plant Bonds

Plant Bonds may be issued in Series from time to time under the Plant Indenture in an unlimited amount under the conditions set forth in the Plant Indenture.

Authorization and Issuance of Plant Bonds

The Issuer shall issue the Plant Bonds following the execution of the Plant Indenture and the Plant Trustee shall, at the Issuer’s written request, authenticate such Plant Bonds and deliver them as specified in such request. The Series 2012 Plant Bonds shall be issued in the original aggregate amount of $530,345,000 and shall be designated “Water Furnishing Revenue Bonds, Series 2012 (Poseidon Resources (Channelside) LP Desalination Project)” and shall be number separately from R-1 upwards. The Series 2012 Plant Bonds shall be issued as Term Bonds in substantially the form set forth in the Plant Indenture, in Authorized Denominations only and dated their Issue Date. The Series 2012 Plant Bonds shall bear interest at the annual rate or rates and mature on the final maturity date or dates as are set forth in the Plant Indenture and shall be subject to redemption as provided in the Plant Indenture.

Each Series of any Additional Plant Bonds shall rank equally and on a parity with the Plant Bonds of any other Series and shall be equally and ratably secured under the Plant Indenture with the Plant Bonds and any other Additional Plant Bonds, without preference, priority or distinction, and shall be co-equal as to the lien of the Plant Indenture regardless of the time of delivery thereof. Nothing in this section captioned “Authorization and Issuance of Plant Bonds” shall require (i) that any Additional Plant Bonds bear interest at the same rate, have the same or an earlier or later Stated Maturity, or be subject to redemption prior to Stated Maturity on the same basis as Outstanding Plant Bonds; (ii) that any revenue bonds or other obligations (referred to in this sentence as “related bonds”) which may be issued by the Issuer must be issued as Additional Plant Bonds under the Plant Indenture; (iii) that the Plant Bonds must rank equally and on a parity with any such related bonds not issued as Additional Plant Bonds; or (iv) that the Plant Bonds must be secured by a pledge of the revenues derived from any enlargements, improvements or expansions financed with the proceeds of related bonds. The Issuer shall not incur any indebtedness or issue any bonds or other obligations of any sort (other than the Plant Bonds) secured by a pledge of the Trust Estate.

Determination of Rate Periods and Interest Rates

In the manner provided in the Plant Indenture, the term of the Plant Bonds will be divided into consecutive Rate Periods during which Plant Bonds of a Tax Exempt Series shall bear interest at the Daily Rate, the Weekly Rate, the Flexible Rate or the Term Rate, and Plant Bonds of a Taxable Series shall bear interest at the Taxable Rate. The Plant Bonds shall bear interest at the rate or rates per annum established from time to time in accordance with the provisions of the Plant Indenture.

Ownership, Transfer, Exchange and Registration of Plant Bonds

The Plant Trustee is constituted and appointed the Registrar and transfer agent for the Plant Bonds and the Plant Trustee shall keep books for the registration and for the transfer of the Plant Bonds as provided in the Plant Indenture. If the Plant Bonds are not in the book-entry registration system, the Issuer shall prepare and deliver to the Plant Trustee, and the Plant Trustee shall keep custody of, a supply of unauthenticated Plant Bonds duly executed by the Issuer, as provided in the section captioned “Execution of Plant Bonds” for use in the transfer and exchange of
Plant Bonds. The Plant Trustee is authorized and directed to complete such forms of Plant Bonds as to principal amounts and Registered Owners, in accordance with the provisions hereof, in effecting transfers and exchanges of Plant Bonds as provided in the Plant Indenture.

Upon surrender for transfer of any Plant Bond at the Payment Office of the Plant Trustee duly endorsed for transfer or accompanied by a written instrument or instruments of transfer in form satisfactory to the Plant Trustee duly executed by the registered Owner or such Owner’s attorney duly authorized in writing, at the Issuer’s written request, the Plant Trustee shall date and execute the certificate of authentication on and deliver in the name of the transferee or transferees a new Plant Bond or Plant Bonds duly executed by the Issuer of Authorized Denominations and for a like aggregate principal amount.

Any Plant Bond or Plant Bonds may be exchanged at the Payment Office of the Plant Trustee for a new Plant Bond or Plant Bonds of like Series and aggregate principal amount of other Authorized Denominations. Upon surrender of any Plant Bond or Plant Bonds for exchange, at the Issuer’s written request, the Plant Trustee shall date and execute the certificate of authentication on and deliver a new Plant Bond or Plant Bonds duly executed by the Issuer which the Owner making the exchange is entitled to receive.

Except in connection with the remarketing of Plant Bonds or the Conversion of any of the Plant Bonds of a Taxable Series to Plant Bonds of a Tax Exempt Series, the Plant Trustee shall not be required to transfer or exchange any Plant Bond after the mailing of notice calling such Plant Bond or portion thereof for redemption, nor during the period of ten days next preceding the mailing of such notice of redemption with respect to the Plant Bonds.

The Person in whose name any Plant Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of, premium, if any, or interest on any Plant Bond shall be made only to or upon the written order of the Registered Owner thereof or such owner’s legal representative, but such registration may be changed as hereinafter provided. All such payments shall be valid and effective to satisfy and discharge the liability upon such Plant Bond to the extent of the sum or sums so paid.

The Issuer and the Plant Trustee shall require the payment by the Owner requesting exchange or transfer (other than an exchange upon a partial redemption of a Plant Bond) of any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, but otherwise no charge shall be made to the Owner for such exchange or transfer.

The Series 2012 Bonds are subject to certain transfer restrictions as provided in the section captioned “Restrictions on Transfer of the Series 2012 Bonds”.

Execution of Plant Bonds

THE PLANT BONDS SHALL NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OR ANY POLITICAL SUBDIVISION OR ANY LOCAL AGENCY THEREOF OTHER THAN THE LIMITED OBLIGATION OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE, OR A PLEDGE OF THE FAITH AND CREDIT OF THE STATE OR ANY POLITICAL SUBDIVISION OR ANY LOCAL AGENCY THEREOF, BUT SHALL BE PAYABLE SOLELY FROM THE FUNDS PROVIDED THEREFOR IN THIS INDENTURE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY LOCAL AGENCY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON, THE PLANT BONDS; AND NO REGISTERED OWNER OR BENEFICIAL OWNER OF ANY PLANT BOND SHALL HAVE ANY RIGHT TO DEMAND PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON, THE PLANT BONDS BY THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY LOCAL AGENCY, OUT OF ANY FUNDS TO BE RAISED BY TAXATION OR APPROPRIATION. THE ISSUANCE OF THE PLANT BONDS SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY LOCAL AGENCY TO LEVY OR TO PLEDGE ANY FORM OF TAXATION THEREOF OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT. THE ISSUER HAS NO TAXING POWERS.
Refunding Plant Bonds

The Issuer may issue, and expressly reserves the right to issue, to the extent permitted by law and the Plant Indenture, refunding bonds under another indenture to refund all or any principal amount of the Plant Bonds; provided, however, that the net proceeds of any such bonds used to refund all or any principal amount of the Plant Bonds shall be paid directly to the Plant Trustee for the Owners and shall not come into the possession or control of the Company.

[Use of Certain Moneys in the Plant Bond Fund Upon Refunding]

In the event that refunding bonds shall be issued by the Issuer to pay the principal of or premium, if any, on all or any portion of the Plant Bonds, the net proceeds of the refunding bonds remaining after payment of expenses incident to the refunding shall be deposited by the Issuer into the Plant Bond Fund as provided in the section captioned “Plant Bond Fund”. All moneys remaining in the Plant Bond Fund on the date of the refunding to be used to pay interest on the Plant Bonds to be refunded shall be held, as collateral for the payment of the Plant Bonds to be refunded, by the Plant Trustee, in trust for and on behalf of the Owners of the Plant Bonds to be refunded, together with the portion of the proceeds of the sale of the refunding bonds so deposited and any investments or reinvestments of such proceeds, in one or more separate subaccounts in the Plant Bond Fund irrevocably in trust for the respective Owners of Plant Bonds to be refunded, and upon defeasance of the Plant Bonds to be refunded as provided in the Plant Indenture shall be held, invested and used as provided in the Plant Indenture. Investment income or profit on any such investments or reinvestments shall remain in the Plant Bond Fund.

Additional Plant Bonds

(a) The Issuer may, but shall not be required to, issue one or more series of Additional Plant Bonds from time to time but only for the purposes and subject to the conditions as are set forth in the Collateral Trust Agreement with respect to the Company’s incurrence of Additional Plant Senior Debt.

(b) Subject to the additional limitations set forth in subsections (c) and (d) below, the Plant Trustee shall authenticate and deliver such Additional Plant Bonds at the request of the Issuer, but only upon delivery to the Plant Trustee of the following:

(i) A supplemental indenture executed by the Issuer and the Plant Trustee creating such Additional Plant Bonds and specifying the terms and the disposition of the proceeds thereof;

(ii) A supplement to the Plant Loan Agreement executed by the Issuer and the Company whereby the Company acknowledges the issuance of such Additional Plant Bonds and agrees to make payments that are sufficient to provide for the payment of the principal and premium, if any, and interest on, such Additional Plant Bonds;

(iii) The written consent of the Water Authority to the extent required under the Water Purchase Agreement;

(iv) An Opinion or Opinions of Counsel to the effect that:

   (A) the Additional Plant Bonds have been duly issued for a permitted purpose under this section captioned “Additional Plant Bonds”;

   (B) all consents or approvals required to be obtained from any Governmental Authority for the issuance of the Additional Plant Bonds have been obtained;

   (C) the issuance of the Additional Plant Bonds and execution and delivery of related documents will not constitute a breach or default on the part of the Issuer or the Company under their respective organizational documents or under any Applicable Law or any agreements to which the Issuer or the Company is a party or to which its properties are subject, including the Plant Loan Agreement;
(D) all documents delivered by the Issuer and the Company in connection with the issuance of the Additional Plant Bonds have been duly and validly authorized, executed and delivered and such execution and delivery and all other actions taken by the Issuer and the Company in connection with the issuance of the Additional Plant Bonds have been duly authorized by all necessary corporate actions and the supplemental indenture and the Additional Plant Bonds constitute valid and legally binding obligations of the Issuer, enforceable in accordance with their terms; and

(E) all conditions set forth in the Collateral Trust Agreement with respect to the Company’s incurrence of Additional Plant Senior Debt have been satisfied; and

(v) In the case of any Refunding Plant Bonds:

(A) executed counterparts of such documents as are necessary or appropriate for the purposes of the refunding, including, if appropriate, an escrow agreement providing for the deposit and application of funds for the refunding and irrevocable instructions with respect to any required redemption of refunded Plant Bonds;

(B) Certified Resolutions of the Issuer and the Company authorizing the refunding and the taking of all necessary actions in connection therewith; and

(C) unless all refunded Plant Bonds are to be redeemed or otherwise retired on the date of settlement for the Additional Plant Bonds, such schedules, verified as to mathematical accuracy by an Independent Public Accountant, as are necessary to demonstrate the adequacy of funds deposited for the refunding and the income thereon for the purpose of paying, when due, the principal and premium, if any, of and interest on the refunded Plant Bonds.

Book-Entry Registration of Plant Bonds

Unless otherwise specified in a supplemental indenture, the Plant Bonds shall be initially issued in the name of Cede & Co., as nominee for DTC, as Registered Owner of the Plant Bonds, and held in the custody of DTC. The owners of beneficial interest in the Plant Bonds (the “Beneficial Owners”) will not receive physical delivery of Plant Bond certificates except as provided in the Plant Indenture. For so long as DTC shall continue to serve as securities depository for the Plant Bonds as provided in the Plant Indenture, all transfers of beneficial Ownership interest will be made by book-entry-only, and no investor or other party purchasing, selling or otherwise transferring beneficial Ownership of Plant Bonds is to receive, hold or deliver any Plant Bond certificate. The Issuer, the Plant Trustee, the Company and the Remarketing Agent shall have no responsibility or liability for transfers of beneficial Ownership interests in the Plant Bonds.

Restrictions on Transfer of the Series 2012 Bonds

The Series 2012 Bonds will bear a legend to the following effect:

THIS BOND IS SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO A QUALIFIED INSTITUTIONAL BUYER AS DEFINED UNDER RULE 144A UNDER THE SECURITIES ACT OF 1933. THE PURCHASER HEREOF AGREES TO PROVIDE NOTICE TO ANY PROPOSED TRANSFEREE OF A BENEFICIAL OWNERSHIP INTEREST IN THE PURCHASED BONDS OF THE RESTRICTION ON TRANSFERS.

EACH TRANSFEREE OF THIS BOND, BY ITS PURCHASE HEREOF, IS DEEMED TO HAVE REPRESENTED THAT SUCH TRANSFEREE IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT AND WILL ONLY TRANSFER, RESELL, REOFFER, PLEDGE OR OTHERWISE TRANSFER THIS BOND TO A SUBSEQUENT TRANSFEREE WHO IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT OF 1933.
A TRANSFER OF THIS BOND TO ANY PERSON OTHER THAN A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT WILL BE VOID AND THE PURPORTED TRANSFEROR WILL REMAIN THE OWNER OF RECORD.

CUSIP Numbers

The Issuer in issuing the Bonds may use “CUSIP” numbers (if then generally in use), and, if so, the Plant Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to the Holders of Bonds; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Bonds or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Bonds, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Plant Trustee in writing of any change in the “CUSIP” numbers.

REDEMPTION OF PLANT BONDS BEFORE MATURITY

Mandatory Redemption

The Plant Bonds are subject to mandatory redemption in whole, or as provided in part, at any time, at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any, to the redemption date, not more than twelve months after the occurrence of any of the following events:

(i) an Event of Loss shall have occurred in which all or substantially all of the Plant was been damaged or destroyed, and the Company shall have delivered written notice to the Issuer, the Plant Trustee and the Collateral Agent in accordance with the Collateral Trust Agreement of its determination that it will not rebuild, repair or restore the Plant;

(ii) an Event of Eminent Domain shall have occurred with respect of all or substantially all of the Plant and the Company shall have delivered written notice to the Issuer, the Plant Trustee and the Collateral Agent in accordance with the Collateral Trust Agreement of its determination that such Event of Eminent Domain has rendered continued operation of the Plant uneconomic;

(iii) legal curtailment of the Company’s use and occupancy of all or substantially all of the Plant shall have occurred for any reason and the Company shall have delivered written notice to the Issuer, the Plant Trustee and the Collateral Agent in accordance with the Collateral Trust Agreement of its determination that such curtailment has rendered continued operation of the Plant uneconomic;

(iv) payment to the Company of performance liquidated damages under the Plant EPC Contract shall have been made and the Company shall have delivered written notice to the Issuer, the Plant Trustee and the Collateral Agent in accordance with the Collateral Trust Agreement of its determination that it is not practical or desirable to apply such damages to undertake a Capital Project to mitigate the consequences of the performance deficiencies; or

(v) the Water Authority exercises its option to purchase the Plant pursuant to the Water Purchase Agreement.

The Series 2012 Plant Bonds shall be redeemed as provided in this section captioned “Mandatory Redemption” in whole, except:

(A) in the case of a redemption under subparagraph (iv) above, the Plant Bonds shall be redeemed in part to the extent of the amounts deposited into the Prepayment Fund pursuant to the Collateral Trust Agreement;

(B) in the case of subparagraph (vi) above, the affected Tax Exempt Series of Plant Bonds shall be redeemed in part, if, in the opinion of Bond Counsel delivered to the Plant Trustee, the redemption of a specified portion of the outstanding Plant Bonds of such Tax Exempt Series would have the result that interest payable on
such Plant Bonds remaining outstanding after such redemption would be Tax Exempt. Any such partial redemption in the case of subparagraph (vi) shall be made in such amount and in such manner as Bond Counsel in such opinion shall have determined is necessary to accomplish such result.

Selection of Plant Bonds for Redemption

If less than all of the Plant Bonds of a Series are called for redemption, the particular Plant Bonds of such Series or portions thereof to be redeemed shall be selected on a pro rata basis in Authorized Denominations or such other method as the Plant Trustee in its sole discretion shall deem appropriate; provided that with respect to Plant Bonds subject to redemption which are in the Flexible Rate Period or the Taxable Rate Period the Plant Trustee shall select Plant Bonds with a Purchase Date corresponding to the proposed redemption date and shall thereafter select Plant Bonds having the next chronological Purchase Dates subsequent to the proposed redemption date, selecting Plant Bonds by lot with respect to any Purchase Date if not all Plant Bonds having such Purchase Date are subject to redemption; and provided, further, that the aggregate amount of Plant Bonds remaining outstanding following such redemption shall be in an Authorized Denomination; and provided further that, if the Plant Bonds are then held through a book-entry-only system, selection shall be in accordance with the procedures of such system. The Plant Trustee shall promptly notify the Company in writing of the Plant Bonds or portions thereof selected for redemption, provided, however, that in connection with any redemption of a Series of Plant Bonds, the Issuer, at the written direction of the Company, or the Plant Trustee, as the case may be, shall first select for redemption any such Plant Bonds held by the Plant Trustee for the account of the Company or held of record by the Company and that if, as indicated in a certificate of an Authorized Representative of the Company delivered to the Plant Trustee, the Company shall have offered to purchase all such Plant Bonds then outstanding and less than all such Plant Bonds shall have been tendered to the Company for such purchase, the Issuer, at the written direction of the Company, or the Plant Trustee, shall select for redemption all such Plant Bonds which have not been so tendered. If the Owner of any such Plant Bond shall fail to present such Plant Bond to the Plant Trustee for payment and exchange as aforesaid, such Plant Bond shall, nevertheless, become due and payable, and interest shall cease to accrue, on the date fixed for redemption to the extent of the principal amount called for redemption (and to that extent only).

PAYMENT; FURTHER ASSURANCES

Payment of Principal or Redemption Price of and Interest on Plant Bonds

The Plant Bonds shall not constitute a debt or liability of the State or any political subdivision or any local agency thereof other than the limited obligation of the Issuer payable solely from the Trust Estate, or a pledge of the faith and credit of the State or any political subdivision or any local agency thereof, but shall be payable solely from the funds provided therefor in the Plant Indenture. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof or any local agency is pledged to the payment of the principal of, premium, if any, or interest on, the Plant Bonds; and no Registered Owner or Beneficial Owner of any Plant Bond shall have any right to demand payment of the principal of, premium, if any, or interest on, the Plant Bonds by the Issuer, the State or any political subdivision thereof or any local agency, out of any funds to be raised by taxation or appropriation. The issuance of the Plant Bonds shall not directly or indirectly or contingently obligate the State or any political subdivision thereof or any local agency to levy or to pledge any form of taxation therefor to make any appropriation for their payment.

Notwithstanding anything contained in the Plant Indenture, the Issuer shall not be required to advance any moneys derived from any source of income of any governmental body or political subdivision of the State or the Issuer or any local agency other than the Trust Estate, for any of the purposes in the Plant Indenture mentioned, whether for the payment of the principal of or interest on the Plant Bonds or for any other purpose of the Plant Indenture. The Plant Bonds are not general obligations of the Issuer, and are payable from and secured only by the Trust Estate.

Right to Payments Under Plant Loan Agreement

The Plant Trustee covenants that it will defend the Issuer’s right to the payment of amounts due from the Borrower under the Plant Loan Agreement to the Plant Trustee for the benefit of the Bondholders against the claims and demands of all Persons whomsoever. The Issuer covenants and agrees that, except as in the Plant Indenture and
Further Assurances

The Issuer will make, execute and deliver any and all such further indentures, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of the Plant Indenture and for the better assuring and confirming unto the Holders of the Plant Bonds of the rights and benefits provided in the Plant Indenture.

Rights Under Plant Loan Agreement

The Plant Loan Agreement, a duly executed counterpart of which has been filed with the Plant Trustee, sets forth the covenants and obligations of the Issuer and the Company, and reference is made to the same for a detailed statement of said covenants and obligations of the Company thereunder, and the Issuer agrees that the Plant Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer under and pursuant to the Plant Loan Agreement for and on behalf of the Bondholders, whether or not the Issuer is in default under the Plant Indenture. Nothing contained in the Plant Indenture shall be construed to prevent the Issuer from enforcing directly any and all of its Retained Rights under the Plant Loan Agreement.

Limitation of Liability to the Trust Estate

The Company shall be solely responsible for the payment of the Plant Bonds as and to the extent provided in the Plant Loan Agreement. Neither the State nor the Issuer shall be obligated to pay the Plant Bonds or the interest thereon except from the Trust Estate, for the Issuer’s obligation to make payments, and neither the faith and credit nor the taxing power of the State or of any political subdivision or any local agency thereof shall be pledged to the payment of the principal of, premium, if any, or the interest on the Plant Bonds. The issuance of the Plant Bonds shall not directly or indirectly or contingently obligate the State or any political subdivision or any local agency thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The Issuer has no taxing powers.

Collateral Trust Agreement

The Issuer directs the Plant Trustee to enter into the Collateral Trust Agreement and diligently perform all of its duties and enforce all of its rights thereunder as Plant Trustee and Secured Party. The Plant Trustee accepts such direction.

ACCOUNTS; APPLICATION OF PROCEEDS

Application of Original Proceeds of Series 2012 Plant Bonds

Proceeds received from the issuance and sale of the Series 2012 Plant Bonds shall, on the Closing Date, be initially deposited by the Plant Trustee in the “Series 2012 Poseidon Resources (Channelside) LP Desalination Project Holding Fund” (the “Series 2012 Plant Bond Holding Fund”) which the Plant Trustee shall establish in the Plant Indenture. Any amounts not needed to fund Costs of Issuance of the Series 2012 Plant Bonds (as described below) shall promptly be transferred to the Collateral Agent and applied pursuant to the Collateral Trust Agreement.

The Plant Trustee shall establish “Series 2012 Poseidon Resources (Channelside) LP Desalination Project Costs of Issuance Account” (the “Series 2012 Costs of Issuance Account”) within the Series 2012 Plant Bond Holding Fund. The moneys in the Series 2012 Costs of Issuance Account and the accounts therein shall be held by the Plant Trustee in trust and applied to the payment of Costs of Issuance of the Plant Bonds, upon a requisition filed with the Plant Trustee in the form attached to the Plant Indenture, signed by an Authorized Representative of the Company. Each such requisition shall be sufficient evidence to the Plant Trustee of the facts stated therein and the
Plant Trustee shall have no duty to confirm the accuracy of such facts. All payments from the Series 2012 Costs of Issuance Account shall be reflected in the Plant Trustee’s regular accounting statements. Any amounts remaining in the Series 2012 Costs of Issuance Account six months following the Issue Date shall be transferred to the Collateral Agent for deposit to the Construction Account.

Proceeds received from the issuance and sale of any Additional Plant Bonds shall be deposited and disbursed by the Plant Trustee as set forth in the supplemental indenture relating to such Additional Plant Bonds.

**Plant Bond Fund**

*Creation of the Plant Bond Fund.* There is created by the Issuer and ordered established with the Plant Trustee a trust fund in the name of the Issuer to be designated “Revenue Bonds (Poseidon Resources (Channelside) LP Desalination Project) Plant Bond Fund” (the “Plant Bond Fund”) which shall be used to pay the principal of and premium, if any, and the interest on the Plant Bonds. There shall be established within the Plant Bond Fund a separate account for the Series 2012 Plant Bonds and for the bonds of any additional Series from time to time authorized, authenticated and delivered under the Plant Indenture, such separate account to bear the designation of the Series. Each such account shall bear the designation of the Tax Exempt Series to which such account relates.

*Payments into the Plant Bond Fund.* There shall be deposited into the respective accounts of Plant Bond Fund from time to time the following:

(i) all accrued interest, if any, paid by the Beneficial Owners of the Plant Bonds;

(ii) all Plant Loan Repayments;

(iii) all amounts received from the Collateral Agent under the Collateral Trust Agreement other than amounts representing the Plant Trustee’s fees and expenses, which amounts shall be for the Plant Trustee’s own account; and

(iv) all other moneys received by the Plant Trustee under and pursuant to the provisions of the section captioned “Use of Certain Moneys in the Plant Fund Upon Refunding” or by any of the provisions of the Plant Loan Agreement, when accompanied by directions from the Person depositing such moneys that such moneys are to be paid into the Plant Bond Fund.

*Use of Moneys in the Plant Bond Fund and Certain Other Moneys.* Except as provided in the section captioned “Repayment to the Company from the Plant Bond Fund”, moneys in the Plant Bond Fund shall be used solely for the payment of the principal of and premium, if any, and interest on the Plant Bonds as the same shall become due and payable at maturity, upon redemption or otherwise.

**Rebate Fund**

(a) **General.** There is created and established with the Plant Trustee the special Fund of the Issuer designated as its “Revenue Bonds (Poseidon Resources (Channelside) LP Desalination Project) Rebate Fund” (the “Rebate Fund”). There shall be established within the Rebate Fund a separate account for the Series 2012 Plant Bonds and for each other Tax Exempt Series from time to time authorized, authenticated and delivered under the Plant Indenture, such separate account to bear the designation of the Series.

(b) **Deposits.** The Plant Trustee shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Plant Trustee by the Collateral Agent following the Plant Trustee’s request therefor in accordance with the Collateral Trust Agreement after the Plant Trustee’s receipt of a rebate certificate from the Company in accordance with the Plant Loan Agreement.

(c) **Disbursements.**

(i) Within five days after each receipt or transfer of funds to the Rebate Fund, the Plant Trustee shall withdraw from the Rebate Fund and pay to the United States of America the balance of the Rebate Fund.
(ii) Within five days after the receipt from the Company of any amount pursuant to the Tax Agreement, the Plant Trustee shall withdraw such amount from the Rebate Fund and pay such amount to the United States of America as instructed in writing by the Company.

(iii) All payments to the United States of America pursuant to this subsection (c) shall be made by the Plant Trustee for the account and in the name of the Issuer and shall be paid by check posted by registered United States Mail (return receipt requested), addressed to the appropriate Internal Revenue Service Center accompanied by the relevant Internal Revenue Service Form 8038-T (or such other applicable successor information return specified by the Internal Revenue Service) described in the Tax Agreement.

**Purchase Fund**

There shall be established with and maintained by the Tender Agent a separate trust fund to be designated “Poseidon Project Purchase Fund” (the “Purchase Fund”). The Tender Agent shall further establish within the Purchase Fund a separate trust account to be referred to in the Plant Indenture as the “Remarketing Account”, a separate trust account to be referred to in the Plant Indenture as the “Liquidity Facility Purchase Account” and a separate trust account to be referred to in the Plant Indenture as the “Company Purchase Account”.

**Remarketing Account.** Upon receipt of the proceeds of a remarketing of the Plant Bonds on a Tender Date pursuant to the Plant Indenture, the Tender Agent shall deposit such proceeds in the Remarketing Account of the Purchase Fund for application to the Tender Price of such Plant Bonds in accordance with the Plant Indenture and, if the Tender Agent is not a paying agent with respect to the Plant Bonds, shall transmit such proceeds to the Plant Trustee for such application. Notwithstanding the foregoing, upon receipt of the proceeds of a remarketing of Plant Bonds, the Tender Agent shall immediately pay such proceeds to the Liquidity Facility Provider.

**Liquidity Facility Purchase Account.** Upon receipt from the Liquidity Facility Provider of the immediately available funds transferred to the Tender Agent pursuant to the Plant Indenture, the Tender Agent shall deposit such money in the Liquidity Facility Purchase Account of the Purchase Fund for application to the Tender Price of the Plant Bonds required to be purchased on a Tender Date in accordance with the Plant Indenture to the extent that the money on deposit in the Remarketing Account of the Purchase Fund shall not be sufficient. Any amounts deposited in the Liquidity Facility Purchase Account and not needed with respect to any Tender Date for the payment of the Tender Price for any Plant Bonds shall be immediately returned to the Liquidity Facility Provider.

**Company Purchase Account.** Upon receipt from the Company under the Plant Indenture of any funds for the purchase of tendered Plant Bonds, the Tender Agent shall deposit such money, if any, in the Company Purchase Account of the Purchase Fund for application to the Tender Price of the Plant Bonds required to be purchased on a Tender Date in accordance with the Plant Indenture to the extent that the money on deposit in the Remarketing Account and the Liquidity Facility Purchase Account of the Purchase Fund shall not be sufficient. Any amounts deposited in the Company Purchase Account and not needed with respect to any Tender Date for the payment of the Tender Price for any Plant Bonds shall be immediately returned to the Company.

**Separate and Uninvested Funds.** All amounts held in the Purchase Fund (and the accounts established therein) by the Tender Agent shall be held uninvested and separate and apart from all other funds and accounts established under the Trust Indenture.

**Arbitrage Covenants**

(a) The Issuer and the Company covenant and agree that neither will take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of the interest payable on the Tax Exempt Series under section 103 of the Code. Without limiting the generality of the foregoing, the Issuer and the Company each covenants and agrees that it will each comply with the requirements of the Tax Certificate.
(b) The Plant Trustee agrees to comply with all written Rebate Instructions of the Company given pursuant to the Tax Certificate; provided, however, that the Company shall be responsible for such Rebate Instructions complying with the Tax Certificate. The Plant Trustee conclusively shall be deemed to have complied with the provisions of this subsection (b) if it follows the Rebate Instructions and directions of the Company and shall not be required to take any action under this subsection (b) in the absence of such directions from the Company. The Plant Trustee shall not be liable for any consequences resulting from its failure to act if no Rebate Instructions from the Company (or in the absence of Company Rebate Instructions, instructions from the Issuer) are delivered to it.

(c) Notwithstanding any provision of this section captioned “Arbitrage Covenants”, if the Company shall provide to the Plant Trustee, and the Issuer an opinion of Bond Counsel that any action required under the section captioned “Rebate Fund” or this section captioned “Arbitrage Covenants” is no longer required, or that some further action is required to maintain the Tax exempt status of interest on the Tax Exempt Series, the Plant Trustee and the Issuer may rely conclusively on such opinion in complying with the requirements of this section captioned “Arbitrage Covenants”, and the covenants contained in the Plant Indenture shall be deemed to be modified to that extent.

Information Reporting

The Issuer, with the cooperation of the Company, shall file with the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Tax Exempt Series are issued, an information statement concerning the Tax Exempt Series, all under and in accordance with section 149(e) of the Code.

INVESTMENT OF MONEYS

Investment of Plant Bond Fund, and Rebate Fund Moneys

The Plant Trustee shall invest and reinvest any moneys held as part of the Plant Bond Fund and the Rebate Fund at the written direction of an Authorized Representative of the Company, as to specific investments, only in Eligible Investments. In making any such investments, the Plant Trustee may rely on directions delivered to it pursuant to this section captioned “Investment of Plant Bond Fund, and Rebate Fund Moneys”, and the Plant Trustee shall be relieved of all liability with respect to making such investments in accordance with such directions. Any such investments shall be held by or under the control of the Plant Trustee and shall be deemed at all times a part of the Fund for which they were made. The interest accruing thereon, any profit realized from such investments and any loss resulting from such investments shall be credited or charged to such Fund in which the investment is held.

Investments

The Plant Trustee may make any and all investments permitted by the provisions of the section captioned “Investment of Plant Bond Fund, and Rebate Fund Moneys” through its own bond department. As and when any amount invested pursuant to the Plant Indenture in the Plant Bond Fund may be needed for disbursement, the Plant Trustee may cause a sufficient amount of such investments in the Plant Bond Fund to be sold and reduced to cash to the credit of such Funds.

The Issuer covenants for the benefit of the Owners from time to time of the Plant Bonds of each Tax Exempt Series, if any, that it will not act so as to cause the proceeds of the Tax Exempt Series, any moneys derived, directly or indirectly, from the use or investment thereof and any other moneys on deposit in any Fund or account maintained in respect of the Tax Exempt Series (whether such moneys were derived from the proceeds of the sale of the Tax Exempt Series or from other sources) to be used in a manner that would cause the Plant Bonds to be treated as “arbitrage bonds” within the meaning of section 148(a) of the Code.

The Company has covenanted in the Plant Loan Agreement it will at all times do and perform all acts and things permitted by law and the Plant Loan Agreement which are necessary or desirable in order to assure that
interest paid on any Tax Exempt Plant Bonds will be excluded from gross income for federal income tax purposes and will take no action that would result in such interest not being so excluded.

DEFEASANCE

Defeasance

If the Issuer shall pay or cause to be paid, or there shall be otherwise paid or provision for payment made to or for the Owners of the Plant Bonds of the principal, premium, if any, and interest due or to become due thereon at the times and in the manner stipulated therein, and if the Issuer shall keep, perform and observe all of the covenants and promises in the Plant Bonds and in the Plant Indenture expressed as to be kept, performed and observed by it or on its part, and shall pay or cause to be paid to the Plant Trustee all sums of money due or to become due according to the provisions hereof, then the Plant Indenture and the lien, rights and interests created by the Plant Indenture shall cease, determine and become null and void (except as to any surviving rights of payment, registration, transfer or exchange of Plant Bonds provided in the Plant Indenture), whereupon the Plant Trustee upon Written Request of the Issuer shall cancel and discharge the Plant Indenture, and, at the Company’s expense, execute and deliver to the Issuer such instruments in writing as shall be requested by the Issuer and requisite to discharge the Plant Indenture, and release, assign and deliver unto the Issuer any and all of the estate, right, title and interest in and to any and all rights assigned or pledged to the Plant Trustee or otherwise subject to the Plant Indenture, except amounts in the Plant Bond Fund required to be paid to the Company under the section captioned “Repayment to the Company from the Plant Bond Fund” and except moneys or securities held by the Plant Trustee for the payment of the principal of and premium, if any, and interest on, and purchase prices of, the Plant Bonds.

Any Plant Bond or Authorized Denomination thereof shall be deemed to be paid within the meaning of the Plant Indenture when (a) payment of the principal of and premium, if any, on such Plant Bond or Authorized Denomination thereof, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided in the Plant Indenture) either (i) shall have been made or caused to be made in accordance with the terms thereof, (ii) shall have been provided for by depositing sufficient moneys for such payment with the Plant Trustee and the due date of such principal, interest and premium, if any, has occurred, or (iii) in the case of a Plant Bond which bears interest at a Flexible Rate, a Taxable Rate or a Term Rate, shall have been provided for by irrevocably depositing with the Plant Trustee in trust and irrevocably setting aside exclusively for such payment on such due date (which due date shall be in the case of a Plant Bond bearing interest at a Flexible Rate or a Taxable Rate no later than the Interest Payment Date for the then current Flexible Segment or Taxable Rate Segment for such Plant Bond and in the case of a Plant Bond bearing interest at a Term Rate no later than the last Interest Payment Date for the then current Term Rate Period for such Plant Bond) (1) moneys sufficient to make such payment and/or (2) non-callable Defeasance Obligations maturing as to principal and interest in such amount and at such time as will insure the availability of sufficient moneys to make such payment, and (b) all necessary and proper fees, compensation and expenses of the Plant Trustee due under the Plant Indenture or under the Plant Loan Agreement shall have been paid or the payment thereof provided for to the satisfaction of the Plant Trustee. At such times as a Plant Bond or Authorized Denomination thereof shall be deemed to be paid under the Plant Indenture, as aforesaid, such Plant Bond or Authorized Denomination thereof shall no longer be secured by or entitled to the benefits of the Plant Indenture (other than the sections captioned “Ownership, Transfer, Exchange and Registration of Plant Bonds” and “Mutilated, Destroyed, Lost or Stolen Plant bonds” in the case of a deposit under subsection (a)(iii) above), except for the purposes of any such payment from such moneys or Defeasance Obligations. In determining the sufficiency of the moneys and Defeasance Obligations deposited pursuant to this paragraph, the Plant Trustee shall receive a verification report, at the Company’s expense, prepared by a firm of nationally recognized independent certified public accountants or other qualified firm reasonably acceptable to the Issuer, the Company and the Plant Trustee.

Notwithstanding the foregoing, in the case of a Plant Bond or Authorized Denomination thereof which is to be redeemed prior to the Stated Maturity thereof, no deposit under subsection (a)(iii) of the immediately preceding paragraph shall be deemed a payment of such Plant Bond or Authorized Denomination thereof as aforesaid until: (a) proper notice of redemption of such Plant Bond or Authorized Denomination thereof shall have been previously given in accordance with the Plant Indenture, or in the event said Plant Bond or Authorized Denomination thereof is not to be redeemed within the next succeeding 60 days, until the Company shall have given the Plant Trustee on behalf of the Issuer, in form satisfactory to the Plant Trustee, irrevocable instructions to notify, as soon as
practicable, the Owner or Authorized Denomination thereof in accordance with the Plant Indenture, that the deposit required by subsection (a)(iii) above has been made with the Plant Trustee and that said Plant Bond or Authorized Denomination thereof is deemed to have been paid in accordance with the Plant Indenture and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of and the applicable premium if any, on said Plant Bond or Authorized Denomination thereof, plus interest thereon to the due date thereof, or (b) the maturity of such Plant Bond or Authorized Denomination thereof.

In the event that the principal and/or interest due on any Insured Plant Bonds shall be paid by the Bond Insurer pursuant to a Bond Insurance Policy, such Plant Bonds shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, and the assignment and pledge of the trust estate and all covenants, agreements and other obligations of the Issuer to the registered owners shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such registered owners including, without limitation, any rights that such owners may have in respect of securities law violations arising from the offer and sale of such Plant Bonds.

Notwithstanding any provision of the Plant Indenture which may be contrary, all moneys or Defeasance Obligations set aside and held in trust pursuant to the provisions of the Plant Indenture for the payment of Plant Bonds or Authorized Denominations thereof (including interest and premium thereon, if any) shall be applied to and used solely for the payment of the particular Plant Bonds or Authorized Denominations thereof (including interest and premium thereon, if any) with respect to which such moneys and Defeasance Obligations have been so set aside in trust.

Anything in the Plant Indenture to the contrary notwithstanding, if moneys or Defeasance Obligations have been deposited or set aside with the Plant Trustee pursuant to the Plant Indenture for the payment of Plant Bonds or Authorized Denominations thereof and the interest and premium, if any, thereon and such Plant Bonds or Authorized Denominations thereof and the interest and premium, if any, thereon shall not have in fact been actually paid in full, no amendment to the provisions of the Plant Indenture shall be made without the consent of the Owner of each of the Plant Bonds affected thereby.

**DEFAULT PROVISIONS AND REMEDIES OF BOND TRUSTEE AND OWNERS**

**Defaults; Events of Default**

The occurrence of any of the following events is declared to be an Event of Default under the Plant Indenture:

(a) Failure to make payment of any installment of interest upon any Plant Bond after such payment has become due and payable;

(b) Failure to make payment of the principal of and premium, if any, on any Plant Bond at the Stated Maturity thereof or upon the unconditional redemption thereof;

(c) Failure to make payment of the purchase price of Plant Bonds due pursuant to the Plant Indenture when the same shall have become due and payable;

(d) The occurrence of a Loan Default Event; and

(e) For the avoidance of doubt, payment in full of any installment of interest upon any Plant Bond after such payment has become due and payable or the principal of or premium, if any, on any Plant Bond at the Stated Maturity thereof or upon redemption thereof from any source of funds available therefor, including without limitation from amounts on deposit in the Debt Service Reserve Fund, shall not constitute an event of default under sections captioned “Defaults; Events of Default” or “Acceleration”.

**Acceleration**
Upon the occurrence and continuance of an Event of Default under the section captioned “Defaults; Events of Default”, the Plant Trustee may, and upon the written request of the Owners of not less than a majority in aggregate principal amount of Plant Bonds then Outstanding shall, by notice in writing delivered to the Company, with copies to the Issuer, Bond Insurer and the Remarking Agent, declare the principal of all Plant Bonds then Outstanding and the interest accrued thereon to the date of such declaration immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. Upon the acceleration of the Plant Loan Repayments under the Plant Loan Agreement, the principal of all Plant Bonds then Outstanding and the interest accrued thereon to the date of such acceleration shall automatically, and without any declaration on the part of the Plant Trustee, become and be immediately due and payable. The above provisions are subject to waiver, rescission and annulment as provided in the section captioned “Waivers of Events of Default”.

Remedies; Rights of Owners

Upon the occurrence and continuation of an Event of Default the Plant Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding, including the appointment of a receiver, to enforce the payment of the principal of and premium, if any, and interest on the Plant Bonds then Outstanding and to enforce and compel the performance of the duties and obligations of the Issuer as set forth in the Plant Indenture.

If an Event of Default shall have occurred and be continuing and if requested so to do by the Owners of not less than a majority in aggregate principal amount of Plant Bonds then Outstanding and indemnified as provided in the Plant Indenture, the Plant Trustee shall be obliged to exercise such one or more of the rights and powers conferred by sections captioned “Remedies; Rights of Owners” and “Rights of Owners to Direct Proceedings” as the Plant Trustee being advised by Counsel shall deem most expedient in the interests of the Owners.

No remedy by the terms of the Plant Indenture conferred upon or reserved to the Plant Trustee (or to the Owners) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Plant Trustee or to the Owners under the Plant Indenture or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient.

No waiver of any Event of Default under the Plant Indenture, whether by the Plant Trustee or by the Owners, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Right of Owners to Direct Proceedings

Anything in the Plant Indenture to the contrary notwithstanding, the Owners of not less than a majority in aggregate principal amount of Plant Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed by the Owners of not less than a majority in aggregate principal amount of Plant Bonds then Outstanding and delivered to the Plant Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Plant Indenture, or for the appointment of a receiver or any other proceedings under the Plant Indenture; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of the Plant Indenture and could not involve the Plant Trustee in personal liability.

Application of Moneys

All moneys received by the Plant Trustee pursuant to the Collateral Trust Agreement shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses and indemnities owed to the Plant Trustee and its Counsel, be deposited in the Plant Bond Fund and all such moneys in the Plant Bond Fund shall be applied as follows:
(a) Unless the principal of all the Plant Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST – To the payment to the Persons entitled thereto of all interest then due on the Plant Bonds (other than interest due on Plant Bonds for the payment of which moneys are held pursuant to the provisions of the Plant Indenture), and, if the amount available shall not be sufficient to pay said amount in full, then to the payment ratably, according to the amounts due, to the Persons entitled thereto, without any discrimination or privilege;

SECOND – To the payment to the Persons entitled thereto of the unpaid principal of and premium, if any, on any of the Plant Bonds which shall have become due (other than Plant Bonds matured or called for redemption for the payment of which moneys are held pursuant to the provisions of the Plant Indenture), and, if the amount available shall not be sufficient to pay in full such unpaid principal and premium, then to the payment ratably to the Persons entitled thereto without any discrimination or privilege; and

THIRD – To the payment to the Persons entitled thereto of interest on overdue principal of and premium, if any, on any Plant Bonds without preference or priority as between principal or premium or interest one over the others, or of any Plant Bond over any other Plant Bond, and if the amount available shall not be sufficient to pay such amounts in full, then ratably, without any discrimination or privilege.

(b) If the principal of all the Plant Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and premium if any, and interest then due and unpaid upon the Plant Bonds (other than Plant Bonds matured or called for redemption or interest due on Plant Bonds for the payment of which moneys are held pursuant to the provisions of the Plant Indenture), without preference or priority of principal, premium or interest one over the others, or of any installment of interest over any other installment of interest, or of any Plant Bond over any other Plant Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or privilege.

(c) If the principal of all the Plant Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of the Plant Indenture then, subject to the provisions of subsection (b) in the event that the principal of all the Plant Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (a).

Whenever moneys are to be applied pursuant to the provisions of this section captioned “Application of Moneys”, such moneys shall be applied at such times, and from time to time, as the Plant Trustee shall determine. Whenever the Plant Trustee shall apply such moneys, it shall fix the date upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Plant Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

In the event the Plant Trustee incurs expenses or renders services in any proceedings which result from the occurrence or continuance of an Event of Default, or from the occurrence of any event which, by virtue of the passage of time, would become such Event of Default, the expenses so incurred and compensation for services so rendered are intended to constitute expenses of administration under the United States Bankruptcy Code or equivalent law.

Whenever all principal of and premium, if any, and interest on all Plant Bonds have been paid under the provisions of this section captioned “Application of Moneys” and all expenses and charges of the Plant Trustee have been paid, any balance remaining in the Plant Bond Fund shall be paid to the Company as provided in the section captioned “Repayment to the Company from the Plant Bond Fund”.

Remedies Vested in Plant Trustee

All rights of action (including the right to file proofs of claims) under the Plant Indenture or under any of the Plant Bonds may be enforced by the Plant Trustee without the possession of any of the Plant Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Plant Trustee shall be brought in its name as Plant Trustee without the necessity of joining as plaintiffs or defendants.
any Owners of the Plant Bonds, and any recovery of judgment shall be for the equal and ratable benefit of the Owners of the Outstanding Plant Bonds. No provision of the Plant Indenture empowers the Plant Trustee to authorize or consent to or accept or adopt on behalf of any Owners of the Plant Bonds any plan of reorganization, arrangement, adjustment or composition affecting any of the Plant Bonds or the rights of any Owner thereof, or to authorize the Plant Trustee to vote in respect of the claim of any Owner in any bankruptcy, insolvency or reorganization proceeding described in the Plant Loan Agreement.

Rights and Remedies of Owners

No Owner or Beneficial Owner of any Plant Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Plant Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy under the Plant Indenture, unless (i) a default has occurred of which the Plant Trustee is deemed to have notice or has been notified as provided in the Plant Indenture, (ii) such default shall have become an Event of Default and be continuing, the Owners of not less than a majority in aggregate principal amount of Plant Bonds then Outstanding shall have made written request to the Plant Trustee, either to proceed to exercise the powers granted in the Plant Indenture or to institute such action, suit or proceeding in its own name, and shall have offered to the Plant Trustee indemnity as provided in the Plant Indenture, and (iii) the Plant Trustee shall for 60 days after such notice, request and offer of indemnity, fail or refuse to exercise the powers granted in the Plant Indenture, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are declared in every case at the sole option of the Plant Trustee to be conditions precedent to the execution of the powers and trusts of the Plant Indenture, and to any action or cause of action for the enforcement of the Plant Indenture, or for the appointment of a receiver or for any other remedy under the Plant Indenture. No one or more Owners of the Plant Bonds shall have any right in any manner whatsoever to enforce any right under the Plant Indenture except in the manner provided in the Plant Indenture, and all proceedings at law or in equity shall be instituted, had and maintained in the manner provided in the Plant Indenture and for the equal and ratable benefit of the Owners of all Plant Bonds then Outstanding. Nothing in the Plant Indenture shall, however, affect or impair the right of any Owner to enforce the payment of the principal of and premium, if any, and interest on any Plant Bond at and after the maturity thereof.

Waivers of Events of Default

Subject to the next paragraph, the Plant Trustee may waive any Event of Default under the Plant Indenture and rescind its consequences and shall do so upon the written request of the Owners of not less than a majority in aggregate principal amount of Plant Bonds then Outstanding; provided, however, that there shall not be waived any Event of Default in the payment of the principal of, or premium, if any, on any outstanding Plant Bonds when due (whether at Stated Maturity or by redemption), or any Event of Default in the payment when due of the interest on any such Plant Bonds, unless prior to such waiver and rescission, all arrears of principal of and interest upon such Plant Bonds, and interest on overdue principal at the rate borne by the Plant Bonds on the date on which such principal became due and payable, and all arrears of premium, if any, when due, together with the reasonable expenses of the Plant Trustee and of the Owners of such Plant Bonds, including reasonable attorneys’ fees paid or incurred, shall have been paid or provided for; provided further, there shall not be waived any Event of Default in the payment when due of any purchase price of Plant Bonds pursuant to the Plant Indenture unless prior to such waiver and rescission, all arrears of purchase price on such Plant Bonds, together with reasonable expenses of the Plant Trustee and of the Owners of such Plant Bonds, including reasonable attorneys’ fees paid or incurred, shall have been paid or provision therefor made. In the case of any such waiver and rescission, or in case any proceeding taken by the Plant Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Plant Trustee, the Company, the Collateral Agent and the Owners shall be restored to their former positions and rights under the Plant Indenture, respectively, but no such waiver and rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

The provisions of the sections captioned “Defaults; Events of Default” and “Acceleration” are subject to the conditions that if, after the principal of all Plant Bonds then Outstanding shall have been accelerated, all arrears of principal of and interest upon such Plant Bonds, and the premium, if any, on all Plant Bonds then Outstanding which shall have become due and payable otherwise than by acceleration, and all other sums payable under the Plant Indenture, except the principal of, and interest on, the Plant Bonds which by such declaration shall have become due and payable, shall have been paid by or on behalf of the Issuer, together with the reasonable expenses of the Plant
Trustee and of the Owners of such Plant Bonds, including reasonable attorneys’ fees paid or incurred, and if all other Events of Default, other than any arising as a result of such acceleration, have been cured or waived, then and in every such case, the Plant Trustee shall annul such declaration of acceleration of Stated Maturity and its consequences, which waiver and annulment shall be binding upon all Owners. No such waiver, rescission and annulment shall extend to or affect any subsequent default or impair any right or remedy consequent thereon. In the case of any such annulment, the Company, the Issuer, the Plant Trustee, the Collateral Agent and the Owners shall be restored to their former positions and rights under the Plant Indenture.

The provisions of the sections captioned “Defaults; Events of Default” and “Acceleration” are subject to the further conditions that in the event that an acceleration of the Plant Loan Repayments under the Plant Loan Agreement shall have been annulled in accordance with the Plant Loan Agreement, then such annulment shall, without any action on the part of the Plant Trustee, (i) automatically annul the corresponding acceleration of the Company’s obligations under the section captioned “Acceleration” and its consequences and (ii) constitute a waiver of any Event of Default upon which such acceleration was based. In the event of such annulment, the Company, the Issuer, the Plant Trustee and the Owners shall be restored to their former positions and rights under the Plant Indenture.

All waivers and annulments under the Plant Indenture shall be confirmed by the Plant Trustee in writing and a copy thereof shall be delivered to the Issuer, the Company and the Remarketing Agent.

Collateral Agent; Senior Debt Majority

The Plant Trustee has granted to the Collateral Agent all of the Plant Trustee’s rights under this section captioned “DEFAULT PROVISIONS AND REMEDIES OF BOND TRUSTEE AND OWNERS” pursuant to the Collateral Trust Agreement, which rights the Collateral Agent can exercise only at the direction of a Senior Debt Majority. Accordingly and notwithstanding the foregoing provisions of this section to the contrary, (a) the Plant Trustee will not have any right to take any action under this section captioned “DEFAULT PROVISIONS AND REMEDIES OF BOND TRUSTEE AND OWNERS” and (b) the Owners will not have any right to take any action, or direct the Plant Trustee to take any action, under this section for so long as the Collateral Trust Agreement is in effect.

THE BOND TRUSTEE

Acceptance of the Trusts by Plant Trustee

The Plant Trustee accepts the trusts imposed upon it by the Plant Indenture and agrees to perform said trusts, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into the Plant Indenture against the Plant Trustee:

(a) The Plant Trustee may execute any of the trusts or powers of the Plant Indenture and perform any of its duties by or through attorneys, agents, custodians, receivers or employees and shall be entitled to advice of Counsel concerning all matters of trusts hereof and the duties under the Plant Indenture, and may in all cases pay, and be reimbursed by the Company for, such reasonable compensation to all such attorneys, agents and receivers as may reasonably be employed in connection with the trusts hereof. The Plant Trustee may act and conclusively rely upon the opinion or advice of Counsel. The Plant Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice of Counsel. Except during the existence of a default or Event of Default, the Plant Trustee undertakes to perform such duties and only such duties as are specifically set forth in the Plant Indenture and the other Financing Documents to which it is a party. If a default or Event of Default exists, then the Plant Trustee shall exercise the rights and powers vested in it by the Financing Documents and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person’s own affairs.

(b) Except for its certificate of authentication on the Plant Bonds and the other information the Plant Trustee is required to set forth on the Plant Bonds, the Plant Trustee shall not be responsible for any information in any offering memorandum or other disclosure material distributed with respect to the Plant Bonds, any recital in the Plant Indenture or in the Plant Bonds, or the validity, priority, recording, or rerecording, filing, or refiling of the Plant Indenture or any financing statement, amendments to the Plant Indenture, or continuation statements, or for reviewing any annual reports, financial statements or audits, or for insuring the Plant or collecting any insurance
moneys, or for the validity of the execution by the Issuer of the Plant Indenture or for any supplements to the Plant Indenture or instruments of further assurance, or for the sufficiency of the security for the Plant Bonds issued under the Plant Indenture or intended to be secured by the Plant Indenture, for the value or title of the Plant or as to the maintenance of the security of the Plant Indenture. The Plant Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Company under the Plant Loan Agreement, except as hereinafter set forth, but the Plant Trustee may require of the Issuer or the Company full information and advice as to the performance of the covenants, conditions and agreements aforesaid. Except as otherwise provided in the sections captioned “Acceleration” and “Remedies; Rights of Owners”, the Plant Trustee shall have no obligation to perform any of the rights or obligations of the Issuer under the Plant Loan Agreement. The Plant Trustee shall not be liable for participating in any act directed by the Issuer or the Company that might cause the Plant Bonds of any Series to be “arbitrage bonds” within the meaning of section 148(a) of the Code. The Plant Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with the section captioned “INVESTMENT OF MONEYS” including any loss suffered in connection with the sale of any investment pursuant to section captioned “INVESTMENT OF MONEYS”.

(c) The Plant Trustee shall not be accountable for the use of any Plant Bonds authenticated or delivered under the Plant Indenture or of the proceeds thereof. The Plant Trustee may become the Owner of Plant Bonds and otherwise transact banking and trustee business with the Company with the same rights which it would have if it were not Plant Trustee.

(d) The Plant Trustee shall be protected in acting in good faith upon any notice, request, resolution, consent, certificate, affidavit, letter, telegram or other paper or document, or oral communication or direction, believed to be genuine and correct and to have been signed or sent or given by the proper person or persons. Any action taken by the Plant Trustee pursuant to the Plant Indenture upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Owner of any Plant Bond shall be conclusive and binding upon all future Owners of the same Plant Bond and upon Plant Bonds issued in exchange therefor or upon transfer or in place thereof.

(e) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Plant Trustee shall be entitled to request and rely upon a certificate signed on behalf of the Issuer by an Authorized Representative of the Issuer as sufficient evidence of the facts therein contained, and prior to the occurrence of a default of which the Plant Trustee has been notified as provided in subsection (g) of this section captioned “Acceptance of the Trusts by Plant Trustee”, or subsequent to the waiver, rescission or annulment of a default as provided in the section captioned “DEFAULT PROVISIONS AND REMEDIES OF BOND TRUSTEE AND OWNERS”, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Plant Trustee may accept a certificate signed on behalf of the Issuer by the Secretary or an Assistant Secretary of the Issuer to the effect that a resolution in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

(f) The permissive right of the Plant Trustee to do things enumerated in the Plant Indenture shall not be construed as a duty and neither the Plant Trustee, its agents nor its affiliates shall be liable for any act or omission made in connection with the Plant Indenture or the other Financing Documents except in the case of their own negligence or willful misconduct. In furtherance, and not in limitation, of the Plant Trustee’s rights, duties and protections under the Plant Indenture, and unless otherwise specifically provided in the Plant Indenture, the Plant Trustee shall (subject to the terms hereof and of the other Financing Documents) grant such consents, make such requests and determinations and take or refrain from taking such actions as are permitted (but not expressly required) to be granted, made or taken by the Plant Trustee under the Financing Documents, as the Owners of a majority in aggregate principal amount of the Plant Bonds Outstanding shall direct in writing. In no event shall the Plant Trustee be liable under or in connection with the Plant Indenture for indirect, special, incidental, consequential or punitive losses or damages of any kind whatsoever, including lost profits, whether or not foreseeable, even if the Plant Trustee has been advised of the possibility thereof and regardless of the form of action in which such damages are sought. NEITHER THE BOND TRUSTEE NOR ITS AGENTS SHALL BE LIABLE TO ANY PERSON FOR ANY DELAY IN OR FAILURE OF THE PAYMENT UNDER ANY OF THE TRUST ESTATE OR FOR ANY
NONPERFORMANCE OR DEFAULT ON THE PART OF ANY PARTY (OTHER THAN THE BOND TRUSTEE AND ITS AGENTS) UNDER THE FINANCING DOCUMENTS. THE BOND TRUSTEE MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE EXISTENCE, SUFFICIENCY, TITLE, VALUE, CONDITION OR COLLECTABILITY OF THE TRUST ESTATE OR THE VALIDITY, SUFFICIENCY, PERFECTION, PRIORITY OR ENFORCEABILITY OF ANY INTEREST THEREIN OR IN ANY AMOUNTS OR INVESTMENTS STANDING FROM TIME TO TIME TO THE CREDIT OF ANY OF THE TRANSACTION ACCOUNTS (OR IN OR WITH RESPECT TO ANY EARNINGS THEREON) OR IN RESPECT OF ANY OF THE FINANCING DOCUMENTS, WHETHER IMPLIED OR BY REASON OF ANY ACTION OR OMISSION TO ACT ON ITS PART UNDER THE PLANT INDENTURE.

(g) The Plant Trustee shall not be required to take notice or be deemed to have notice of any default or Event of Default under the Plant Indenture, except any default under subsections (a), (b) or (c) under the section captioned “Defaults; Events of Default”, unless a Responsible Officer in the corporate trust department of the Plant Trustee or the department designated by any successor shall have actually received notice in writing of such default by the Issuer or the Owners of at least 25% in aggregate principal amount of all Plant Bonds then Outstanding or the Remarketing Agent.

(h) The Plant Trustee shall not be required to give any bond or surety in respect of the execution of its trusts and powers under the Plant Indenture.

(i) Before taking any action under the Plant Indenture at the request or direction of the Owners, the Plant Trustee may require that a satisfactory indemnity bond or other form of indemnification acceptable to the Plant Trustee be furnished by the Owners, for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default in connection with any action so taken.

(j) All moneys received by the Plant Trustee shall, until used or applied or invested as provided in the Plant Indenture, be held in trust for the purposes for which they were received and shall not be commingled with the general funds of the Plant Trustee but need not be segregated from other funds except to the extent required by law. Neither the Plant Trustee nor any Paying Agent shall be under any liability for interest on any moneys received under the Plant Indenture except such as may be agreed upon in writing.

(k) The Plant Trustee, prior to the occurrence of an Event of Default specified in the section captioned “Defaults; Events of Default” and after the curing or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in the Plant Indenture and, in the absence of bad faith on its part, the Plant Trustee may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, upon certificates or opinions furnished to the Plant Trustee and conforming to the requirements of the Plant Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Plant Trustee, the Plant Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of the Plant Indenture. In case an Event of Default has occurred (which has not been cured or waived) the Plant Trustee shall exercise such of the rights and powers vested in it by the Plant Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(l) No provision of the Plant Indenture shall be construed to relieve the Plant Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) This subsection shall not be construed to limit the effect of subsection (k) of this section captioned “Acceptance of the Trusts by Plant Trustee”;

(ii) The Plant Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Plant Trustee, unless it shall be proved that the Responsible Officer of the Plant Trustee was negligent in ascertaining the pertinent facts;
(iii) The Plant Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of a majority in aggregate principal amount of the Plant Bonds Outstanding or a Senior Debt Majority, as the case may be, relating to the time, method and place of conducting any proceeding or any remedy available to the Plant Trustee, or exercising any trust or power conferred upon the Plant Trustee, under the Plant Indenture; and

(iv) No provision of the Plant Indenture shall require the Plant Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under the Plant Indenture, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(m) Notwithstanding anything elsewhere contained in the Plant Indenture, the Plant Trustee shall have the right, but shall not be required to demand, in respect of the authentication of any Plant Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of the Plant Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Plant Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Plant Bonds, the withdrawal of any cash, or as a condition to the taking of any action by the Plant Trustee.

(n) In connection with the acceptance and performance of the trusts set forth in the Plant Indenture, the Plant Trustee is also executing or accepting, as appropriate, the Remarketing Agreement and the Collateral Trust Agreement as Plant Trustee for the benefit of the Owners of the Plant Bonds. In acting or omitting to act under such other documents, the Plant Trustee shall be entitled to all of the rights, protections and immunities accorded to it as Plant Trustee under the Plant Indenture.

(o) The Plant Trustee shall have no responsibility for preparing or filing any SEC filing with respect to any Plant Bonds or to record the Plant Indenture or any other Financing Documents. The Plant Trustee nevertheless agrees that it shall sign any instrument or document provided to it that it reasonably believes is necessary or desirable to accomplish any such results. The recitals contained in the Plant Indenture, in any Indenture supplement or in the Plant Bonds, except the Plant Trustee’s certificates of authentication, shall not be taken as the statements of the Plant Trustee, and the Plant Trustee assumes no responsibility for their correctness. The Plant Trustee makes no representations as to the validity or sufficiency of the Plant Indenture, or the Plant Bonds, except that the Plant Trustee represents and warrants that each Plant Bond shall be authenticated and delivered by such of its officers who are duly authorized to execute, authenticate and deliver such Plant Bond, on the Plant Trustee’s behalf.

(p) The rights, privileges, protections, immunities and benefits provided to the Plant Trustee under the Plant Indenture (including its right to be indemnified) are extended to, and shall be enforceable by, the Plant Trustee in each of its capacities under the Plant Indenture and to each of its agents, custodians and other Persons duly employed by the Plant Trustee under the Plant Indenture. Except as expressly provided under the Financing Documents to which it is a party or as otherwise agreed in writing, the Plant Trustee shall have no obligation to perform any obligation or duty of the Issuer or to take any action to collect or enforce any claim for payment.

(q) In no event shall the Plant Trustee be liable under any Financing Document for any failure or delay in performance of its obligations under the Plant Indenture because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, loss or malfunction of utilities, communications or computer (software or hardware) services, or government action, including any laws, ordinances, regulations or the like which delay, restrict or prohibit the providing of the services contemplated by the Plant Indenture or by any other Financing Document.

Corporate Plant Trustee Required; Eligibility

There shall at all times be a Plant Trustee under the Plant Indenture which shall be a trust company, association, corporation or bank having the powers of a trust company, including all those required to enable it to perform the functions contemplated in the Plant Indenture, and which either (i) has a combined capital and surplus
of at least fifty million dollars ($50,000,000) and is subject to supervision or examination by federal or state authority or (ii) is a wholly owned subsidiary of a bank, association, trust company, corporation or bank holding company meeting, on an aggregate basis, the tests set out in subsection (i). If such trust company, association, corporation of bank publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for purposes of this section captioned “Corporate Plant Trustee Required; Eligibility”, the combined capital and surplus shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Plant Trustee shall cease to be eligible in accordance with the provisions of this section captioned “Corporate Plant Trustee Required; Eligibility”, it shall resign immediately in the manner and with the effect hereinafter specified in the Plant Indenture, and shall immediately provide notice of such resignation by registered or certified mail to the Issuer, the Water Authority, the Collateral Agent, the Company and the Holder of each Plant Bond.

Successor Plant Trustee

Any corporation, bank or banking association into which the Plant Trustee may be merged or converted, or with which it may be consolidated, or to which it may sell, lease or transfer its corporate trust business and assets as a whole or substantially as a whole, shall be and become successor Plant Trustee under the Plant Indenture and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges under the Plant Indenture as was its predecessor, without the execution or filing of any instrument on the part of any of the parties to the Plant Indenture.

Resignation by the Plant Trustee

The Plant Trustee may at any time resign from the trusts created by giving 30 days’ written notice by registered or certified mail to the Issuer, the Company, the Owner of each Plant Bond and the Remarketing Agent and such resignation shall take effect at the appointment of a successor Plant Trustee pursuant to the provisions of the section captioned “Appointment of Successor Plant Trustee” and acceptance by the successor Plant Trustee of such trusts. If no successor Plant Trustee shall have been so appointed and have accepted appointment within 30 days of the giving of written notice by the resigning Plant Trustee as aforesaid, the resigning Plant Trustee may petition any court of competent jurisdiction for the appointment of a successor Plant Trustee.

Removal of the Plant Trustee

The Issuer may remove the Plant Trustee at any time upon its own decision and shall remove the Plant Trustee at any time upon 30 days’ written notice, by an instrument or concurrent instruments in writing delivered to the Plant Trustee, the Collateral Agent, the Company and the Remarketing Agent and signed by the Owners of a majority in aggregate principal amount of Plant Bonds then Outstanding. All such removals shall take effect at the appointment of a successor Plant Trustee pursuant to the provisions of the section captioned “Appointment of Successor Plant Trustee” and acceptance by the successor Plant Trustee of such trusts. If no successor Plant Trustee shall have been so appointed and have accepted appointment within 30 days of the delivery of such written instrument or instruments to the Plant Trustee as aforesaid, the Plant Trustee or any such party may petition any court of competent jurisdiction for the appointment of a successor Plant Trustee.

Appointment of Successor Plant Trustee

In case the Plant Trustee under the Plant Indenture shall

(a) resign pursuant to the sections captioned “Corporate Plant Trustee Required; Eligibility” or “Resignation by the Plant Trustee”;

(b) be removed pursuant to the section captioned “Removal of the Plant Trustee”; or

(c) be dissolved, taken under the control of any public officer or officers or of a receiver appointed by a court, or otherwise become incapable of acting under the Plant Indenture,
a successor shall be appointed by the Issuer at the direction of the Company; provided, that if a successor Plant Trustee is not so appointed within 10 days after notice of resignation is mailed or instrument of removal is delivered as provided under sections captioned “Corporate Plant Trustee Required; Eligibility”, “Resignation by the Plant Trustee” or “Removal of the Plant Trustee”, respectively, or within 10 days of the Issuer’s knowledge of any of the events specified in subsection (c) hereinafore, then the Owners of a majority in aggregate principal amount of Plant Bonds then outstanding, by filing with the Issuer, the Company and the Remarketing Agent an instrument or concurrent instruments in writing signed by or on behalf of such Owners, may designate a successor Plant Trustee.

In case at any time the Plant Trustee shall resign and no appointment of a successor Plant Trustee shall be made pursuant to the foregoing provisions of the Plant Indenture prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the Owner of any Plant Bond may apply to any court of competent jurisdiction to appoint a successor Plant Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor Plant Trustee.

Concerning any Successor Plant Trustees

Every successor Plant Trustee appointed under the Plant Indenture shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Company, an instrument in writing accepting such appointment under the Plant Indenture, and thereupon such successor shall become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor; but, nevertheless, and upon payment of its charges (1) such predecessor shall, on the written request of the Issuer, execute and deliver an instrument transferring to such successor Plant Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor under the Plant Indenture and (2) such predecessor shall deliver all securities and moneys held by it as Plant Trustee under the Plant Indenture to its successor. Should any instrument in writing from the Issuer be required by any successor Plant Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges vested in the predecessor any and all such instruments in writing shall, on request, be executed acknowledged and delivered by the Issuer at the expense of the Company. The resignation of any Plant Trustee and the instrument or instruments removing any Plant Trustee and appointing a successor under the Plant Indenture, together with all other instruments provided for in the Plant Indenture, shall be filed or recorded by the successor Plant Trustee in each recording office, if any, where the Indenture or a financing statement relating thereto shall have been filed or recorded.

Successor Plant Trustee as the Plant Trustee of Plant Bond Fund, Paying Agent and Registrar

In the event of a substitution of the Plant Trustee, the predecessor Plant Trustee which has resigned or been removed shall cease to be Plant Trustee of the Plant Bond Fund and Registrar and a Paying Agent for principal of and premium, if any, and interest on the Plant Bonds, and the successor Plant Trustee shall become such Plant Trustee, Registrar and a Paying Agent.

Notices to the Issuer

The Plant Trustee shall provide the Issuer with the following:

(a) On or before January 15 of each year, commencing January 15, 2013, during which any of the Plant Bonds are Outstanding, or upon any significant change that occurs which would adversely impact the Plant Trustee’s ability to perform its duties under the Plant Indenture, a written disclosure of any such change, or if applicable, of any conflicts that the Plant Trustee may have as a result of other business dealings between the Plant Trustee and the Company;

(b) If there is a failure to pay any amount of principal or purchase price of, premium, if any, or interest on any Plant Bond when due; or if there is an occurrence of an Event of Default under the Plant Indenture, of which the Plant Trustee has knowledge, the Plant Trustee shall provide written notice to the Issuer, the Collateral Agent and the Company within five Business Days of such occurrence and such notice shall include a statement setting forth the steps the Plant Trustee is taking to remedy such failure or Event of Default, as applicable; and

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(c) As of June 30 and December 31 of each year, commencing December 31, 2012, a Trustee Audit Letter, which shall be received no later than July 15 or January 15 next following each such June 30 or December 31, as the case may be.

**Actions Under the Collateral Trust Agreement.**

(a) At the request of the Company, the Issuer authorizes the Plant Trustee to enter into the Collateral Trust Agreement and the Plant Trustee agrees to comply with the provisions thereof and to exercise its rights and remedies thereunder in accordance with the Collateral Trust Agreement.

(b) At any time during which the Plant Trustee shall act on behalf of a Senior Debt Majority under the Collateral Trust Agreement, the Plant Trustee shall use the same degree of care and skill in the exercise of the rights and powers vested in a Senior Debt Majority under the Collateral Trust Agreement as a prudent person would exercise or use under the circumstances in the conduct of its own affairs.

(c) The Plant Trustee shall promptly submit to the Collateral Agent the necessary written requests or standing instructions for disbursements to allow Plant Trustee to make timely payment of principal, premium (including make-whole/spread premium for Taxable Plant Bonds) and interest on the Plant Bonds when due.

(d) The Plant Trustee shall promptly submit to the Collateral Agent requests for disbursements to allow Plant Trustee to make the disbursements under subsection (c) under the section captioned “Rebate Fund”.

(e) The Plant Trustee shall promptly submit any notices it receives as a Secured Party under the Collateral Trust Agreement to the Issuer.

**SUPPLEMENTAL INDENTURES**

**Supplemental Indentures Not Requiring Consent of Owners (But Requiring Consent of Company or Collateral Agent)**

The Issuer and the Plant Trustee may without the consent of, or notice to, any of the Owners or the Beneficial Owners, but with the consent of the Company and the Collateral Agent pursuant to the section captioned “Consent of Company”, enter into an indenture or indentures supplemental to the Plant Indenture for any one or more of the following purposes:

(a) to add to the covenants and agreements of, and limitations and restrictions upon, the Issuer in the Plant Indenture, other covenants, agreements, limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with the Plant Indenture as theretofore in effect;

(b) to grant to or confer or impose upon the Plant Trustee for the benefit of the Owners any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with the Plant Indenture as heretofore in effect;

(c) to cure any ambiguity or omission or to cure, correct or supplement any defective provision of the Plant Indenture in each case in such manner as shall not adversely affect the Owners;

(d) to evidence the appointment of a separate trustee or a co-trustee or to evidence the succession of a new trustee or a new co-trustee under the Plant Indenture;

(e) to comply with the applicable requirements of the Trust Indenture Act of 1939, as from time to time amended;

(f) to subject to the Plant Indenture additional revenues, properties or collateral;
(g) to make such changes as are necessary in connection with the delivery of an issuer of a Bond Insurance Policy or a Liquidity Facility relating to the Plant Bonds of a Tax Exempt Series;

(h) to discontinue or provide for the use of a securities depository or for a change from a book-entry system without Plant Bond certificates to a system with bond certificates or vice versa;

(i) to amend the section captioned “Determination of Rate Periods and Interest Rates”, with the prior written consent of the Remarketing Agent, on the effective date of a change from one Rate Period to a different Rate Period, including the effective date of a Term Rate Period which was immediately preceded by a Term Rate Period of a different duration or a Term Rate Period of the same duration (provided, however, that the Issuer and the Plant Trustee have received a Favorable Opinion of Bond Counsel);

(j) to authorize different Authorized Denominations of the Plant Bonds and to make correlative amendments and modifications to the Plant Indenture regarding exchangeability of Plant Bonds of different Authorized Denominations, redemptions of portions of Plant Bonds of particular Authorized Denominations and similar amendments and modifications of a technical nature;

(k) to modify, delete or supplement any provision, term or requirement relating to Plant Bonds that may bear interest at Flexible Rates to the extent deemed necessary or desirable further to protect or assure the Tax Exempt status of interest on the Plant Bonds of any Tax Exempt Series; provided, however, that the effective date of any such modification, deletion or supplementation with respect to any Plant Bond shall be no earlier than the day next succeeding the last day of any then current Flexible Segment with respect to such Plant Bond;

(l) to add or amend any provisions considered necessary by Bond Counsel due to a change in the Code or Regulations, or otherwise as required to effectuate a Conversion of all or any portion of the Plant Bonds to a Tax Exempt Series;

(m) to modify, alter, amend or supplement the Plant Indenture in any other respect which is not materially adverse to the Owners;

(n) in connection with any mandatory purchase of all of the Plant Bonds of a Tax Exempt Series or purchase of all such Plant Bonds pursuant to the section captioned “Purchase in Lieu of Redemption”, to modify the Plant Indenture in any respect (even such modification is adverse to the interests of the Owners) provided that such amendment shall not be effective until after such mandatory purchase or purchase in lieu of redemption and the payment of the purchase price in connection therewith; or

(o) to provide for issuance of a Series of Additional Plant Bonds.

The Plant Trustee is authorized to join the execution of any such Indenture supplement, to make any further appropriate agreements and stipulations that may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder. If at any time the Issuer shall request the Plant Trustee to enter into any such supplemental indenture for any of the purposes allowed by this section captioned “Supplemental Indentures Not Requiring Consent of Owners (But Requiring Consent of Company or Collateral Agent)”, the Plant Trustee shall, at the request of the Issuer and upon receiving satisfactory payment with respect to related expenses and upon receiving from the Company forms of notices and any other related solicitation materials, cause notice of the proposed execution of such supplemental indenture to be mailed to the Owners of the Plant Bonds. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the Principal Office of the Plant Trustee for inspection by all Owners.

Supplemental Indentures Requiring Consent of Owners and Company

Except for supplemental indentures covered by the section captioned “Supplemental Indentures Not Requiring Consent of Owners (But Requiring Consent of Company or Collateral Agent)” and subject to the terms and provisions contained in this section captioned “Supplemental Indentures Requiring Consent of Owners and Company”, and not otherwise, the Owners of not less than a majority in aggregate principal amount of Plant Bonds

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then Outstanding shall have the right, from time to time, anything contained in the Plant Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Plant Trustee of such other indenture or indentures supplemental to the Plant Indenture for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Plant Indenture; provided, however, that nothing in this section captioned “Supplemental Indentures Requiring Consent of Owners and Company” contained shall permit or be construed as permitting, without the consent of the Owners of 100% of the Plant Bonds then Outstanding, (a) an extension of the Stated Maturity of the principal of or the interest on any Plant Bond issued under the Plant Indenture, or (b) a reduction in the principal amount of, premium, if any, on any Plant Bond or the rate of interest thereon, or (c) an adverse change in the rights of the Owners of the Plant Bonds to the purchase thereof pursuant to the Plant Indenture, or (d) a privilege or priority of any Plant Bond or Plant Bonds over any other Plant Bond or Plant Bonds, or (e) a reduction in the aggregate principal amount of the Plant Bonds required for consent to such supplemental indenture, except in each case in connection with a refunding of any Plant Bonds, or (f) the deprivation of the Collateral Agent, the Plant Trustee or the Owner of any Plant Bond of the benefit of the security interest granted by the Security Document.

If at any time the Issuer shall request the Plant Trustee to enter into any such supplemental indenture for any of the purposes allowed by this section captioned “Supplemental Indentures Requiring Consent of Owners and Company”, the Plant Trustee shall, at the request of the Issuer and upon receiving satisfactory payment with respect to related expenses and upon receiving from the Company forms of notices and any other related solicitation materials, cause notice of the proposed execution of such supplemental indenture to be mailed to the Owners of the Plant Bonds. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the Principal Office of the Plant Trustee for inspection by all Owners. If, within 60 days or such longer period of time as shall be prescribed by the Issuer following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of Plant Bonds then Outstanding, as the case may be, in aggregate principal amount of the Plant Bonds Outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as provided in the Plant Indenture, no Owner of any Plant Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Plant Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. The Issuer shall have the right to (and upon request of the Company shall) extend from time to time the period within which such consent and approval may be obtained from Owners. Upon the execution of any such supplemental indenture as in this section captioned “Supplemental Indentures Requiring Consent of Owners and Company” permitted and provided, the Plant Indenture shall be and be deemed to be modified and amended in accordance therewith.

Consent of Company

Anything in the Plant Indenture directly to the contrary notwithstanding, a supplemental indenture that adversely affects any rights of the Company shall not become effective unless and until the Company shall have consented to the execution and delivery of such supplemental indenture.

Consent of Remarketing Agent

Anything in the Plant Indenture to the contrary notwithstanding, a supplemental indenture that adversely affects any rights of the Company which affects any rights, duties or obligations of the Remarketing Agent shall not become effective unless and until the Remarketing Agent shall have consented to the execution and delivery of such supplemental indenture.

Consent of Plant Trustee

The Plant Trustee may, but shall not be obligated to, enter into any supplemental indenture which adversely affects the Plant Trustee’s own rights, liabilities, duties or immunities under the Plant Indenture or otherwise.

AMENDMENT OF LOAN AGREEMENT OR COLLATERAL DOCUMENTS

Amendments, Etc., to Loan Agreement Not Requiring Consent of Owners
The Issuer or the Plant Trustee, as appropriate, and the Company may without the consent of or notice to any of the Owners or the Beneficial Owners, enter into any amendment, change or modification of the Plant Loan Agreement (a) as may be required by the provisions of the Plant Loan Agreement or the Plant Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission, (c) so as to add additional rights acquired in accordance with the provisions of the Plant Loan Agreement, (d) to obtain or preserve the Tax Exempt status of interest on the Plant Bonds of any Tax Exempt Series, or any portion of the Plant Bonds, (e) which, if the conditions for the issuance of Additional Plant Bonds are otherwise satisfied, makes such changes as may be necessary in connection with the issuance of Additional Plant Bonds, or (f) which is not materially adverse to the Owners and which does not involve a change described in subsection (a) or (b) of the section captioned “Amendments, Etc., to Loan Agreement, Requiring Consent of Owners”.

**Amendments, Etc., to Loan Agreement, Requiring Consent of Owners**

Except for the amendments, changes or modifications as provided in the section captioned “Amendments, Etc., to Loan Agreement Not Requiring Consent of Owners”, none of the Issuer, the Company or the Plant Trustee shall enter into any other amendment, change or modification of the Plant Loan Agreement without mailing of notice and the written approval or consent of the Owners of not less than a majority in aggregate principal amount of Plant Bonds then Outstanding given and procured as provided in this section captioned “Amendments, Etc., to Loan Agreement, Requiring Consent of Owners”;

provided, however, that nothing in this section captioned “Amendments, Etc., to Loan Agreement, Requiring Consent of Owners” or the section captioned “Amendments, Etc., to Loan Agreement Not Requiring Consent of Owners” shall permit or be construed as permitting, without the consent of the Owners of 100% in aggregate principal amount of the Plant Bonds then Outstanding, (a) an extension of the time of the payment of any amounts payable by the Company under the Plant Loan Agreement with respect to the principal of or the interest on any Plant Bond issued under the Plant Indenture, (b) a reduction in the amount of any payment or in the total amount due from the Company under the Plant Loan Agreement with respect to the principal amount of, premium, if any, on any Plant Bond or the rate of interest thereon (including any adverse change in the rights of the Owners of the Plant Bonds to the purchase thereof pursuant to the Plant Indenture), except in each case in connection with a refunding of any Plant Bonds, (c) any changes to the Events of Default set forth in the section captioned “Defaults; Events of Default” or (d) the deprivation of the Collateral Agent Plant Trustee or the Owner of any Plant Bond of the benefit of the security interest granted under the Security Documents.

If at any time the Issuer and the Company shall request the consent of the Plant Trustee to any such proposed amendment, change or modification of the Plant Loan Agreement in accordance with this section captioned “Amendments, Etc., to Loan Agreement, Requiring Consent of Owners”, the Plant Trustee shall, at the request of the Issuer and upon being satisfactorily indemnified with respect to expenses and upon receiving from the Company forms of notices and any other related solicitation materials, cause notice of such proposed amendment, change or modification to be mailed to the Owners of Plant Bonds in the same manner as provided by the section captioned [“Notice of Redemption”] with respect to redemption of Plant Bonds. Such notice shall briefly set forth the nature of such proposed amendment change or modification and shall state that copies of the instrument embodying the same are on file with the Plant Trustee for inspection by all Owners. If, within 60 days, or such longer period as shall be prescribed by the Issuer, following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of Plant Bonds then Outstanding in aggregate principal amount of the Plant Bonds Outstanding at the time of the execution of any such amendment, change or modification, as the case may be, shall have consented to and approved the execution thereof as provided in the Plant Indenture, no Owner of any Plant Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Company or the Issuer from executing the same or from taking any action pursuant to the provisions thereof, or the Plant Trustee from consenting thereto. The Issuer shall have the right to extend from time to time the period within which such consent and approval may be obtained from Owners. Upon the execution of any such amendment, change or modification as in this section captioned “Amendments, Etc., to Loan Agreement, Requiring Consent of Owners” permitted and provided, the Plant Loan Agreement shall be and be deemed to be modified, changed and amended in accordance therewith.

**Amendments, Etc. to Collateral Trust Agreement.**
The Plant Trustee may, without the consent of or notice to any of the Owners or the Beneficial Owners, enter into any amendment, change or modification of the Collateral Trust Agreement that is permitted to be made thereunder without the consent of a Senior Debt Majority.

Notwithstanding the foregoing, the Plant Trustee may not enter into any amendment, change or modification of the Collateral Trust Agreement that would cause any Senior Debt to have any privilege or priority over any other Senior Debt without the consent of the Owners of 100% of such other Senior Debt then Outstanding.

Consent of Plant Trustee

The Plant Trustee may, but shall not be obligated to, consent to any amendment, change or modification of the Plant Loan Agreement or the Collateral Documents which adversely affects the Plant Trustee’s own rights, duties or immunities under the Plant Indenture or otherwise.

Consent of the Company and the Collateral Agent

Anything in the Plant Indenture directly to the contrary notwithstanding, a supplemental indenture that adversely affects any rights of the Company and the Collateral Agent shall not become effective unless and until the Company and the Collateral Agent shall have consented to the execution and delivery of such supplemental indenture.

MISCELLANEOUS

Consents, Etc., of Owners

Any consent, approval, direction or other instrument required by the Plant Indenture to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such consent, approval, direction or other instrument or of the writing appointing any such agent, if made in the following manner, shall be sufficient for any of the purposes of the Plant Indenture, and shall be conclusive in favor of the Plant Trustee with regard to any action taken under such request or other instrument, namely:

The fact and date of the execution by any Person of any such instrument or writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such instrument or writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution or in any other manner satisfactory to the Plant Trustee; or

The fact of ownership of Plant Bonds and the amount or amounts, numbers and other identification of such Plant Bonds, and the date of acquiring the same shall be proved by the registration books of the Issuer maintained by the Plant Trustee pursuant to the section captioned “Ownership, Transfer, Exchange and Registration of Plant Bonds”; provided that while the Plant Bonds are in Book Entry form, the Plant Trustee shall be entitled to rely on such evidence as it deems appropriate to recognize the Beneficial Ownership of Plant Bonds.

Any request, demand, authorization, direction, notice, consent, waiver or other action by any Owner shall bind every future Owner of the same Plant Bond in respect of anything done or suffered to be done by the Plant Trustee or the Issuer in reliance thereon, whether or not notation of such action is made upon such Plant Bond.

Liability of Issuer Limited to the Trust Estate

The Company shall be solely responsible for the payment of the Plant Bonds. Neither the State nor the Issuer shall be obligated to pay the Plant Bonds or the interest thereon except from the Trust Estate, for the Issuer’s obligation to make payments, and neither the faith and credit nor the taxing power of the State or of any political subdivision or any local agency thereof shall be pledged to the payment of the principal of, premium, if any, or interest on the Plant Bonds. The issuance of the Plant Bonds shall not directly or indirectly or contingently obligate the State or any political subdivision or any local agency thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The Issuer has no taxing powers.

Dealing in Plant Bonds
The Plant Trustee, or the Remarketing Agent, in its individual capacity, may buy, sell, own, hold and deal in any of the Plant Bonds, and may join in any action which any Owner may be entitled to take with like effect as if it did not act in any capacity under the Plant Indenture. The Plant Trustee or the Remarketing Agent, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Company, and may act as depositary, trustee or agent for any committee or body of Owners secured by the Plant Indenture or other obligations of the Issuer as freely as if it did not act in any capacity under the Plant Indenture.

Unclaimed Moneys

Notwithstanding any provisions of the Plant Indenture to the contrary, and subject to applicable laws of the State, any moneys deposited with the Plant Trustee in trust for the payment of the principal of, or interest on, any Plant Bonds remaining unclaimed for two (2) years after the principal of any or all of the Outstanding Plant Bonds has become due and payable (whether at maturity or upon call for redemption or by declaration as provided in the Plant Indenture), shall then be repaid to the Company upon its written request, and the Owners of such Plant Bonds shall thereafter be entitled to look only to the Company for payment thereof, and all liability of the Issuer and the Plant Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Company as aforesaid, the Plant Trustee shall (at the request and cost of the Company) first give notice by mail to each affected Owner, which notice shall be in such form as may be deemed appropriate by the Company and the Plant Trustee, in respect of the Plant Bonds so payable and not presented and in respect of the provisions relating to the repayment to the Company of the moneys held for the payment thereof. In the event of the repayment of any such moneys to the Company as aforesaid, the Owners of the Plant Bonds in respect of which such moneys were deposited shall thereafter be deemed to be unsecured creditors of the Company for amounts equivalent to the respective amounts deposited for the payment of such Plant Bonds and so repaid to the Company (without interest thereon).

Governing Law; Venue

The Plant Indenture shall be construed in accordance with and governed by the Constitution and laws of the State applicable to contracts made and performed in the State. The Plant Indenture shall be enforceable in the State, and any action arising out of the Plant Indenture shall be filed and maintained in the Sacramento County Superior Court, Sacramento, California, unless the Authority waives this requirement in writing.

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APPENDIX J

Form of Opinion of Bond Counsel
Form of Opinion of Bond Counsel

[Closing Date]

California Pollution Control Financing Authority
Sacramento, California

California Pollution Control Financing Authority
Water Furnishing Revenue Refunding Bonds, Series 2019
(San Diego County Water Authority Desalination Project Pipeline)

(Final Opinion)

Ladies and Gentlemen:

We have acted as bond counsel to the California Pollution Control Financing Authority (the “Issuer”) in connection with the issuance of $________ aggregate principal amount of its Water Furnishing Revenue Refunding Bonds, Series 2019 (San Diego County Water Authority Desalination Project Pipeline) (the “Bonds”), issued pursuant to the Trust Indenture, dated as of February 1, 2019 (the “Indenture”), between the Issuer and MUFG Union Bank, N.A., as trustee (the “Trustee”). The Indenture provides that the Bonds are issued for the stated purpose of making a loan of the proceeds thereof to the San Diego County Water Authority Financing Agency (the “Borrower”), pursuant to the Pipeline Loan Agreement, dated December 24, 2012 (as amended by the Omnibus Refunding Amendment Agreement, dated as of February 1, 2019 (the “Omnibus Agreement”), the “Loan Agreement”), by and between the Issuer and the Borrower. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

In such connection, we have reviewed the Indenture, the Loan Agreement, the Pipeline Installment Sale and Assignment Agreement, dated December 24, 2012 (as amended by the Omnibus Agreement, the “Installment Sale Agreement”), by and between the Borrower and the San Diego County Water Authority (the “Water Authority”), the Tax Certificate and Agreement, dated the date hereof (the “Tax Certificate”), by and among the Issuer, the Borrower and the Water Authority, opinions of counsel to the Issuer, the Trustee, the Borrower and the Water Authority, certificates of the Issuer, the Trustee, the Borrower, the Water Authority and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Accordingly, this letter speaks only as of its date and is not intended to, and may not, be relied upon or otherwise used in connection with any such actions, events or matters. Our engagement with respect to the Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than the Issuer. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture, the Loan Agreement, the Installment Sale Agreement and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the Bonds, the Indenture, the Loan Agreement and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, receivership, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against authorities of the State of California. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the real or personal property described in or as subject to the lien of the Indenture, the Loan Agreement or the Installment Sale Agreement or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such property. Our services did not include financial or other non-legal advice. Finally, we undertake no responsibility for the accuracy, completeness or
fairness of the Limited Offering Memorandum, dated __________, 2019, or other offering material relating to the Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Bonds constitute the valid and binding limited obligations of the Issuer.

2. The Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Issuer. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Bonds, of the right, title and interest of the Issuer (except for the Retained Rights) in the Loan Agreement, including Loan Repayments and Contracted Shortfall Payments, and any other amounts held by the Trustee in any fund or account established pursuant to the Indenture, except the Rebate Fund and the Costs of Issuance Fund, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture.

3. The Loan Agreement has been duly executed and delivered by, and constitutes a valid and binding agreement of, the Issuer.

4. The Bonds are not a lien or charge upon the funds or property of the Issuer except to the extent of the aforementioned pledge. Neither the faith and credit nor the taxing power of the State of California or of any political subdivision thereof or any local agency is pledged to the payment of the principal of or interest on the Bonds. The Bonds are not a debt of the State of California and said State is not liable for the payment thereof.

5. Interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. Interest on the Bonds is not a specific preference item for purposes of the federal alternative minimum tax. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the Bonds.

Very truly yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP
per
APPENDIX K

Form of Company Continuing Disclosure Agreement
FORM OF THE COMPANY CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (this “Disclosure Agreement”) is executed and delivered by Poseidon Resources (Channelside) LP, a Delaware limited partnership (the “Company”), MUFG Union Bank, N.A., as trustee under the 2019 Pipeline Indenture referred to below (in such capacity herein, together with any successors in such capacity, called the “Trustee”).

BACKGROUND

A. The California Pollution Control Financing Authority (the “Issuer”) issued $203,215,000 original aggregate principal amount of its Water Furnishing Revenue Bonds, Series 2012 (San Diego County Water Authority Desalination Project Pipeline) (the “Series 2012 Pipeline Bonds”) pursuant to a Trust Indenture, dated as of December 24, 2012, between the Issuer and Union Bank, N.A. (the predecessor-in-interest to MUFG Union Bank, N.A.), as trustee, to provide funds for the purpose of financing the Pipeline (as defined below); and

B. In connection with the issuance of the Series 2012 Pipeline Bonds, the San Diego County Water Authority Financing Agency (the “Financing Agency”) and the Issuer entered into a Loan Agreement, dated as of December 24, 2012 (the “Original Pipeline Loan Agreement”). The Financing Agency made the proceeds under the Original Pipeline Loan Agreement available to the San Diego Water Authority (the “Water Authority”) pursuant to an Installment Sale and Assignment Agreement, dated as of December 24, 2012 (the “Original Installment Sale and Assignment Agreement”), between the Financing Agency and the Water Authority to pay the costs of development, designing, acquiring and constructing the Pipeline.

C. The Issuer proposes to issue [$_________] aggregate principal amount of its Water Furnishing Revenue Refunding Bonds, Series 2019 (San Diego County Water Authority Desalination Project Pipeline) (the “Series 2019 Pipeline Bonds”), pursuant to a Trust Indenture, dated as of [February 1], 2019 (the “Indenture”), between the Issuer and the Trustee (i) to provide funds to current refund the outstanding Series 2012 Pipeline Bonds, and (ii) to pay certain costs of issuance of the Series 2019 Pipeline Bonds.

D. In connection with the issuance of the Series 2019 Pipeline Bonds, the proceeds of the Series 2019 Pipeline Bonds are being made available to the Financing Agency pursuant to the Original Pipeline Loan Agreement, as amended by that certain Omnibus Refunding Amendment Agreement dated as of [February 1], 2019 (the “Omnibus Refunding Amendment”; and the Original Pipeline Loan Agreement, as amended by the Omnibus Refunding Amendment, the “Loan Agreement”), among the Issuer, the Financing Agency, the Water Authority, the Company and MUFG Union Bank, N.A., in its capacity (i) as the Trustee, (ii) as trustee (in such capacity, the “Series 2012 Plant Bonds Trustee”), with respect to the Water Authority’s outstanding Water Furnishing Revenue Bonds Series 2012 (Poseidon Resources (Channelside) LP Desalination Project)(AMT), and (ii) as collateral agent (in such capacity, the “Collateral Agent”) under the Collateral Trust Agreement dated as of December 24, 2012 (the “Original Collateral Trust Agreement”, as amended, modified and supplemented from time to time, including by the Omnibus Refunding Amendment, the “Collateral Trust Agreement”) by and among the Company, the Collateral Agent, the Trustee and the Series 2012 Plant Bonds Trustee.

E. The Financing Agency is making the proceeds of the Series 2019 Pipeline Bonds under the Pipeline Loan Agreement available to the Water Authority pursuant to the Installment Sale and Assignment Agreement, dated as of December 24, 2012 (the “Original Installment Sale and Assignment Agreement”), as amended, modified and supplemented from time to time, including by the Omnibus Refunding Amendment (the Original Installment Sale and Assignment Agreement, as so

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amended, the “Installment Sale and Assignment Agreement”) between the Financing Agency and the Water Authority.

H. The Company and the Water Authority entered into a Water Purchase Agreement, dated as of December 24, 2012 (the “Water Purchase Agreement”) pursuant to which the Water Authority purchases water produced by the Plant. The Company is obligated under the Water Purchase Agreement to make certain payments (“Contractual Shortfall Payments”) to the Water Authority if the Company fails to perform certain obligations thereunder. The Water Authority’s obligations to make payments under the Installment Sale and Assignment Agreement will be reduced by the amount of Contracted Shortfall Payments payable by the Company, whether or not paid. Pursuant to the Installment Sale and Assignment Agreement, the Water Authority assigned its right to receive Contracted Shortfall Payments to the Financing Agency and in the Pipeline Loan Agreement the Financing Agency assigned its rights to receive the Contracted Shortfall Payments to the Pipeline Trustee. The Plant began commercial operation on December 23, 2015.

AGREEMENTS

In consideration of the Background and intending to be legally bound, the Company and the Trustee covenant and agree as follows:

Section 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Company and the Trustee for the benefit of the Owners (as defined in the Indenture) and the Holders (as hereinafter defined) of the Series 2019 Pipeline Bonds and in order to assist the Participating Underwriters (as hereinafter defined) in complying with the Rule (as hereinafter defined). The Company acknowledges that it has undertaken all responsibility for compliance with the continuing disclosure requirements concerning the Series 2019 Pipeline Bonds. The Company further acknowledges that the Issuer has not undertaken any responsibility with respect to any reports, notices or disclosures provided or required under this Disclosure Agreement or the Rule and has no liability to any person, including any Owner or Holder of the Series 2019 Pipeline Bonds, with respect to any such reports, notices or disclosures or the Rule.

Section 2. Definitions. To the extent not otherwise defined in this Disclosure Agreement, and in addition to the definitions set forth or incorporated in the Indenture and the Loan Agreement which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Disclosure Agreement, the following capitalized terms shall have the following meanings:

Dissemination Agent means the Company or any successor Dissemination Agent designated as such in writing by the Company and which has filed with the Company a written acceptance of such designation.

EMMA means the Electronic Municipal Market Access system and the EMMA Continuing Disclosure Service of the MSRB (as hereinafter defined), or any successor thereto approved by the SEC (as hereinafter defined) as a repository for municipal continuing disclosure information pursuant to the Rule.

Holder means any person who has or shares the power, directly or indirectly, to make investment decisions with respect to the Series 2019 Pipeline Bonds, but does not include persons who have rights to acquire either the Plant Bonds or the Series 2019 Pipeline Bonds in the future.

Listed Events means any of the events listed in Section 4 of this Disclosure Agreement.
MSRB means the Municipal Securities Rulemaking Board or any successor thereto.

1934 Act means the Securities Exchange Act of 1934, as the same may be amended from time to time.

Obligated Person means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations of any of the Series 2019 Pipeline Bonds.

Participating Underwriters means the initial purchasers of any of the Series 2019 Pipeline Bonds required to comply with the Rule in connection with an offering of the Series 2019 Pipeline Bonds.

Rule means Rule 15c2-12 (17 CFR 240.15c2-12) adopted by the SEC under the 1934 Act, as the same may be amended from time to time.

SEC means the U.S. Securities and Exchange Commission.

Section 3. Provision of Annual Financial Statements and Operating Data; Monthly Quarterly Reports. (A) The Company shall provide, or cause the Dissemination Agent to provide, not later than one hundred twenty (120) days after the close of its fiscal year to the MSRB, through EMMA, and to the Trustee (a) financial statements with respect to the Company, which financial statements shall be (i) prepared in accordance with generally accepted accounting principles or such other accounting principles as the Company may be required to employ from time to time, or as it may otherwise elect, provided that such election does not cause a violation of the Rule and (ii) (1) audited financial statements, if the Company commissions an audit of such statements and the audit is completed within the 120-day period during which they must be provided or (2) if audited financial statements are commissioned but are not completed within such 120-day period, unaudited financial statements within such 120-day period, and the Company shall promptly provide audited financial statements for the applicable fiscal year to the MSRB, through EMMA, when and if audited financial statements become available; (b) a copy of the most recent Current Case Financial Projections submitted to the Collateral Agent pursuant to Section 5.4(a) of the Collateral Trust Agreement; (c) a copy of the Company’s annual operating budget and a discussion of any over-budget variances; and (d) without duplication, historical annual operating data and financial information for the immediately preceding five years of the type set forth in the table contained in the Limited Offering Memorandum, dated [January __], 2019, relating to the Series 2019 Pipeline Bonds under the heading “SUMMARY FINANCIAL PROJECTIONS.”

Not later than five (5) business days prior to said date, the Company shall provide such financial information and operating data to the Dissemination Agent (if the Dissemination Agent is other than the Company).

The Dissemination Agent shall (if the Dissemination Agent is other than the Company) file a report with the Company certifying that such financial information and operating data has been provided pursuant to this Disclosure Agreement and stating the date it was provided to the MSRB.

If the Company changes its fiscal year, it will notify the MSRB, through EMMA, and the Trustee of the change (and the date of the new fiscal year end) prior to the next date by which the Company otherwise would be required to provide financial information and operating data pursuant to this Disclosure Agreement.
(B) The Company shall provide, or shall cause the Dissemination Agent to provide, within 60 days after the end of each calendar quarter, a quarterly operating report that includes:

1. total Project Revenues and total O&M Costs for the quarter and a description of any variance between such amounts and the budgeted amounts, and in the case of a variance of 10% or more, a brief description of the reason the variance occurred; and

2. reports of the average daily water production – in acre feet, any Excused or Unexcused Supply or Demand Shortfalls and any Unscheduled Outages; and

3. any shortfalls or exceedances against the Minimum Monthly Demand Commitment and the Adjusted Monthly Demand Commitment, and any Operating Period Shortfall Payments paid; and

4. a detailed description of any Capital Project for which the costs are expected to exceed $2,000,000 (Escalated) undertaken together with a detailed description of the sources of funding for such Capital Project and a discussion of the progress of construction.

(C) The financial information and operating data to be provided pursuant to this Disclosure Agreement may be set forth in full in one or more documents or may be included by specific reference to any document that is available to the public on the MSRB’s website or filed with the SEC.

**Section 4. Reporting of Listed Events.** The Company shall provide, or cause to be provided, to both the MSRB, through EMMA, and the Trustee, in a timely manner (but not in excess of 10 business days of the occurrence of the Listed Events), notice of the occurrence of any of the following events with respect to the Series 2019 Pipeline Bonds:

1. Principal and interest payment delinquencies;

2. Non-payment related defaults under any of the Plant Financing Documents, the Series 2019 Pipeline Bonds, the Pipeline Loan Agreement, the 2019 Pipeline Indenture, the Installment Sale and Assignment Agreement, the Pipeline Bond Purchase Agreement, or any of the Principal Project Contracts, if material;

3. Unscheduled draws on debt service reserves reflecting financial difficulties;

4. Unscheduled draws on credit enhancements reflecting financial difficulties;

5. Substitution of credit or liquidity providers, or their failure to perform;

6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Series 2019 Pipeline Bonds, or other material events affecting the tax status of the Series 2019 Pipeline Bonds;

7. Modifications to the rights of Owners of the Series 2019 Pipeline Bonds, if material;

8. Project Bond calls, if material, and tender offers;
(ix) Defeasances;

(x) Release, substitution or sale of property securing repayment of the Series 2019 Pipeline Bonds, if material;

(xi) Rating changes;

(xii) Receipt by the Company of the notice of the Water Authority of its intent to exercise its Project Assets Purchase Option (as defined in the Water Purchase Agreement);

(xiii) Bankruptcy, insolvency, receivership or similar proceeding regarding the Issuer or an Obligated Person, including the Company;

(xiv) The consummation of a merger, consolidation, or acquisition involving the Issuer or an Obligated Person, including the Company, or the sale of all or substantially all of the assets of the Issuer or an Obligated Person, including the Company, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(xv) Appointment of a successor or additional trustee, or the change of the name of a trustee, if material.\(^5\)

For purposes of the event identified in Section 4(xiii) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an Obligated Person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Obligated Person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Obligated Person.

In addition, the Company shall notify both the MSRB, through EMMA, and the Trustee in a timely manner of any failure of the Company to provide such financial information or operating data as described hereunder, or failure of the Company to provide notice of such Listed Event, on or before the date by which such financial information, operating data or notice is required to be provided hereunder.

All documents provided to the MSRB, whether by the Company directly or by the appointed Dissemination Agent, shall be in an electronic format and accompanied by identifying information (including CUSIP numbers) prescribed by the MSRB or may be provided in any other manner consistent with the Rule.

Section 5. Termination of Reporting Obligations. The Company’s obligations under this Disclosure Agreement shall terminate if the Company is no longer an Obligated Person, including upon the defeasance, prior redemption or payment in full of all of the Series 2019 Pipeline Bonds. The

\(^5\) NOTE: If closing occurs on or after February 27, 2019, additional material events regarding material financial obligations to be added pursuant to August 2018 Amendment to Rule 15c2-12.
Company may not assign or transfer its obligations under the Loan Agreement or the Water Purchase Agreement to any other person, corporation or entity, unless such person, corporation or entity assumes in writing the Company’s obligations and responsibilities for compliance with this Disclosure Agreement as an Obligated Person in the same manner as if it were the Company. The Company shall give notice in a timely manner if this Section is applicable to the MSRB.

Section 6. Dissemination Agent. The Company may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Company pursuant to this Disclosure Agreement. The initial Dissemination Agent shall be the Company.

Section 7. Amendment Waiver. Notwithstanding any other provision of this Disclosure Agreement, this Disclosure Agreement may be amended, without the consent of the Owners or Holders of the Series 2019 Pipeline Bonds (and the Trustee shall agree to any amendment so requested by the Company which does not adversely affect the rights, privileges, protections, immunities and indemnities afforded to the Trustee), and any provision of this Disclosure Agreement may be waived, but only if (i) such amendment or waiver, after giving effect thereto, will not adversely affect the compliance of the Company with this Disclosure Agreement and by the Company with the Rule and (ii) the Company shall have provided notice of such amendment or waiver to the MSRB, through EMMA. Any such amendment or waiver shall satisfy, unless otherwise permitted by the Rule, the following conditions:

(i) The amendment may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of the Company or type of business conducted;

(ii) In the opinion of parties unaffiliated with the Issuer or the Company, this Disclosure Agreement, as amended, would have complied with the requirements of the Rule at the time of the primary offering after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(iii) The amendment or waiver does not materially impair the interests of Bondholders or beneficial owners of the Series 2019 Pipeline Bonds, as determined either by parties unaffiliated with the Company (such as nationally recognized bond or securities counsel) or by an approving vote of the Bondholders of the Series 2019 Pipeline Bonds pursuant to the terms of the respective Indenture at the time of the amendment.

If the Company so amends or waives any provision of this Disclosure Agreement, as the case may be, it shall include with any amended financial information or operating data an explanation, in narrative form, of the reasons for the amendment or waiver and the effect of the change, if any, in the type of operating data or financial information being provided.

Section 8. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Company from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any financial information or operating data or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Company chooses to include any information in any financial information or operating data or notice of occurrence of a Listed Event in
addition to that which is specifically required by this Disclosure Agreement, the Company shall have no obligation under this Disclosure Agreement to update such information or include it in any future financial information or operating data or notice of occurrence of a Listed Event.

Section 9. Default. In the event of the failure by the Company or the Trustee to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of the Owners of at least 25% aggregate principal amount of outstanding of Plant Bonds, and at the request of the Owners of at least 25% aggregate principal amount outstanding of Series 2019 Pipeline Bonds, shall), and any Owner or Holder may take such actions as may be necessary and appropriate, including seeking a mandate or specific performance by court order, to cause the Company to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, the Loan Agreement, the Collateral Trust Agreement or the Security Documents.

Section 10. CUSIP Numbers. The CUSIP Numbers of the Series 2019 Pipeline Bonds are as follows:

[TO BE INSERTED].

Section 11. Duties, Immunities and Liabilities of Trustee. Article X of the 2019 Pipeline Indenture and Section 8.3 of the Pipeline Loan Agreement are hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Indenture and the Loan Agreement.

Section 12. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Company, the Trustee, the Participating Underwriters, the Owners and the Holders from time to time of the Series 2019 Pipeline Bonds, and shall create no rights in any other person or entity.

Section 13. Notices. Except as otherwise provided in this Disclosure Agreement, all notices and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows:

If to the Trustee: MUFG Union Bank, N.A.
445 South Figueroa Street, Suite 401
Los Angeles, CA 90071
Attention: Corporate Trust Administration
F: 1-213-972-5694

If to the Company: [Poseidon Resources (Channelside) LP
5780 Fleet Street, Suite 140
Carlsbad, CA 92008
Attention: Project Manager]6

with a copy to:

[Poseidon Water LP
One Boston Place, 26th Floor
Boston, MA 20108

6 Confirm: Current information?
The Trustee and the Company may by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent. Unless otherwise requested by the Issuer, the Trustee or the Company, any notice required to be given under this Disclosure Agreement in writing may be given by any form of electronic transmission that is capable of producing a written record. Each such party shall file with the Trustee information appropriate to receiving electronic notice.

Section 14. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

Section 15. Governing Law. This Disclosure Agreement shall be governed by and construed in accordance with the laws of the State of California.

[Signatures appear on the following page]
SIGNATURES
As evidence of their intent to be legally bound, the parties have signed this Agreement as of this ___ day of [February], 2019.

POSEIDON RESOURCES (CHANNELSIDE) LP
By: POSEIDON RESOURCES CHANNELSIDE GP, INC., its general partner

By: ____________________________
   Name:
   Title:

MUFG UNION BANK, N.A., as Trustee

By: ____________________________
   Name:
   Title:
APPENDIX L

Form of Water Authority Continuing Disclosure Agreement
FORM OF THE WATER AUTHORITY CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (this “Disclosure Agreement”) is executed and delivered by the San Diego County Water Authority ("Water Authority"), MUFG Union Bank, N.A., as trustee under the 2019 Pipeline Indenture referred to below (in such capacity herein, together with any successors in such capacity, called the “Trustee”), and Digital Assurance Certification, L.L.C., as Dissemination Agent.

BACKGROUND

A. The California Pollution Control Financing Authority (the “Issuer”) issued $203,215,000 original aggregate principal amount of its Water Furnishing Revenue Bonds, Series 2012 (San Diego County Water Authority Desalination Project Pipeline) (the “Series 2012 Pipeline Bonds”), pursuant to a Trust Indenture, dated as of December 24, 2012, between the Issuer and Union Bank, N.A. (the predecessor-in-interest to MUFG Union Bank, N.A.), as trustee, to provide funds for the purpose of financing the Pipeline (as defined below); and

B. In connection with the issuance of the Series 2012 Pipeline Bonds, the San Diego County Water Authority Financing Agency (the “Financing Agency”) and the Issuer entered into a Loan Agreement, dated as of December 24, 2012 (the “Original Pipeline Loan Agreement”). The Financing Agency made the proceeds under the Original Pipeline Loan Agreement available to the San Diego Water Authority (the “Water Authority”) pursuant to an Installment Sale and Assignment Agreement, dated as of December 24, 2012 (the “Original Installment Sale and Assignment Agreement”), between the Financing Agency and the Water Authority to pay the costs of development, designing, acquiring and constructing the Pipeline.

C. The Issuer proposes to issue [$_________] aggregate principal amount of its Water Furnishing Revenue Refunding Bonds, Series 2019 (San Diego County Water Authority Desalination Project Pipeline) (the “Series 2019 Pipeline Bonds”), pursuant to a Trust Indenture, dated as of [February 1], 2019 (the “Indenture”), between the Issuer and the Trustee (i) to provide funds to current refund the outstanding Series 2012 Pipeline Bonds, and (ii) to pay certain costs of issuance of the Series 2019 Pipeline Bonds.

D. In connection with the issuance of the Series 2019 Pipeline Bonds, the proceeds of the Series 2019 Pipeline Bonds are being made available to the Financing Agency pursuant to the Original Pipeline Loan Agreement, as amended by that certain Omnibus Refunding Amendment Agreement dated as of [February 1], 2019 (the “Omnibus Refunding Amendment”; and the Original Pipeline Loan Agreement, as amended by the Omnibus Refunding Amendment, the “Loan Agreement”), among the Issuer, the Financing Agency, the Water Authority, the Company and MUFG Union Bank, N.A., in its capacity (i) as the Trustee, (ii) as trustee (in such capacity, the “Series 2012 Plant Bonds Trustee”), with respect to the Water Authority’s outstanding Water Furnishing Revenue Bonds Series 2012 (Poseidon Resources (Channelside) LP Desalination Project)(AMT), and (ii) as collateral agent (in such capacity, the “Collateral Agent”) under the Collateral Trust Agreement dated as of December 24, 2012 (the “Original Collateral Trust Agreement,” as amended, modified and supplemented from time to time, including by the Omnibus Refunding Amendment, the “Collateral Trust Agreement”) by and among Poseidon Resources (Channelside) LP, a Delaware limited partnership (the “Company”), the Company, the Collateral Agent, the Trustee and the Series 2012 Plant Bonds Trustee.

E. The Financing Agency is making the proceeds of the Series 2019 Pipeline Bonds under the Pipeline Loan Agreement available to the Water Authority pursuant to the Installment Sale and Assignment Agreement, dated as of December 24, 2012 (the “Original Installment Sale and
Assignment Agreement”), as amended, modified and supplemented from time to time, including by the Omnibus Refunding Amendment (the Original Installment Sale and Assignment Agreement, as so amended, the “Installment Sale and Assignment Agreement”) between the Financing Agency and the Water Authority.

F. The Company and the Water Authority entered into a Water Purchase Agreement, dated as of December 24, 2012 (the “Water Purchase Agreement”) pursuant to which the Water Authority purchases water produced by the Plant. The Company is obligated under the Water Purchase Agreement to make certain payments (“Contractual Shortfall Payments”) to the Water Authority if the Company fails to perform certain obligations thereunder. The Water Authority’s obligations to make payments under the Installment Sale and Assignment Agreement will be reduced by the amount of Contractual Shortfall Payments payable by the Company, whether or not paid. Pursuant to the Installment Sale and Assignment Agreement, the Water Authority assigned its right to receive Contracted Shortfall Payments to the Financing Agency and in the Pipeline Loan Agreement the Financing Agency assigned its rights to receive the Contracted Shortfall Payments to the Pipeline Trustee. The Plant began commercial operation on December 23, 2015.

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Water Authority and the Dissemination Agent for the benefit of the Owners and Beneficial Owners of the Series 2019 Pipeline Bonds and in order to assist the Participating Underwriters in complying with the Rule (defined below).

SECTION 2. Definitions. To the extent not otherwise defined in this Disclosure Agreement, and in addition to the definitions set forth in the 2019 Pipeline Indenture which apply to any capitalized term used in this Disclosure Agreement, unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Disclosure Report” means any Annual Disclosure Report provided by the Water Authority pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Series 2019 Pipeline Bonds (including persons holding Series 2019 Pipeline Bonds through nominees, depositaries or other intermediaries).

“Disclosure Representative” means the General Manager of the Water Authority or his or her designee, or such other person as the Water Authority shall designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” means Digital Assurance Certification, L.L.C., acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Water Authority.

“Limited Offering Memorandum” means the Limited Offering Memorandum, dated [February __, 2019], executed and delivered by the Water Authority in connection with the initial offering of the Series 2019 Pipeline Bonds.

“Listed Events” means any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” means the Municipal Securities Rulemaking Board or any other entity designated or authorized by the Securities and Exchange Commission to receive continuing disclosure filings pursuant to the Rule. Until otherwise designated by the MSRB or the Securities and Exchange Commission,
filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) website of the MSRB currently located at http://emma.msrb.org.

“Owner” means the person in whose name any Series 2019 Pipeline Bonds shall be registered.

“Participating Underwriter” means any of the original underwriters of the Series 2019 Pipeline Bonds required to comply with the Rule in connection with offering of the Series 2019 Pipeline Bonds.

“Rule” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State” means the State of California.

SECTION 3. Provision of Annual Disclosure Reports.

(a) The Water Authority shall, or upon written direction shall cause the Dissemination Agent to, not later than 270 days after the end of the Water Authority’s fiscal year (presently June 30), commencing with the report for the Fiscal Year ended June 30, 2019, provide to the MSRB an Annual Disclosure Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Disclosure Report must be submitted in electronic format and accompanied by such identifying information as is prescribed by the MSRB, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Water Authority may be submitted separately from the balance of the Annual Disclosure Report and later than the date required above for the filing of the Annual Disclosure Report if they are not available by that date. If the Water Authority’s fiscal year changes, it shall give notice of such change in a filing with the MSRB. The Annual Disclosure Report shall be submitted on a standard form in use by industry participants or other appropriate form and shall identify the Series 2019 Pipeline Bonds by name and CUSIP number.

(b) Not later than fifteen (15) Business Days prior to the date specified in subsection (a) for providing the Annual Disclosure Report to the MSRB, the Water Authority shall provide the Annual Disclosure Report to the Dissemination Agent. If by such date the Dissemination Agent has not received a copy of the Annual Disclosure Report, the Dissemination Agent shall contact the Water Authority to inquire if the Water Authority is in compliance with the first sentence of this subsection (b). The Water Authority shall provide a written certification with each Annual Disclosure Report furnishing to the Dissemination Agent to the effect that such Annual Disclosure Report constitutes the Annual Disclosure Report required to be furnished by it hereunder. The Dissemination Agent may conclusively rely upon such certification of the Water Authority and shall have no duty or obligation to review such Annual Disclosure Report.

(c) If the Dissemination Agent is unable to confirm that an Annual Disclosure Report has been provided to the MSRB by the date required in subsection (a), the Dissemination Agent shall send a notice to the MSRB in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall, to the extent the Annual Disclosure Report has been provided to the Dissemination Agent, file a report with the Water Authority certifying that the Annual Disclosure Report has been provided to the MSRB pursuant to this Disclosure Agreement and stating the date it was provided.

SECTION 4. Content of Annual Disclosure Reports. The Water Authority’s Annual Disclosure Report shall contain or include by reference the following:
(a) the audited financial statements of the Water Authority for the prior fiscal year, prepared in accordance with generally accepted accounting principles as promulgated from time to time by the Financial Accounting Standards Board. If the Water Authority’s audited financial statements are not available by the time the Annual Disclosure Report is required to be filed pursuant to Section 3(a), the Annual Disclosure Report shall contain unaudited financial statements in a format similar to the financial statements contained in the Final Limited Offering Memorandum, and the audited financial statements shall be filed in the same manner as the Annual Disclosure Report when they become available.

(b) tables setting forth the following information as of the end of such fiscal year:

(i) the aggregate principal amount of each maturity of Series 2019 Pipeline Bonds Outstanding;

(ii) an update of the information contained in the following tables in Appendix C to the Limited Offering Memorandum:

   (A) “Member Agency Voting Entitlement” on page __;

   (B) “Water Use of Member Agencies – Fiscal Years ended June 30, ____ to June 30, ____ on page __;

   (C) “Gross Receipts From Water Authority Water Sales” on page ___; and

   (D) “Historical Operating Results” on page __.

(c) Any or all of the items listed in paragraphs (a) and (b) above may be included by specific reference to other documents, including official statements of debt issues with respect to which the Water Authority is an “obligated person” (as defined by the Rule), which are available to the public on the MSRB website. If the document included by reference is a final official statement, it must be available from the MSRB. The Water Authority shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) The Water Authority shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Series 2019 Pipeline Bonds in a timely manner not later than ten business days after the occurrence of the event:

1. Principal and interest payment delinquencies;

2. Unscheduled draws on debt service reserves reflecting financial difficulties;

3. Unscheduled draws on credit enhancements reflecting financial difficulties;

4. Substitution of credit or liquidity providers, or their failure to perform;

5. Issuance by the Internal Revenue Service of proposed or final determination of taxability or of a Notice of Proposed Issue (IRS Form 5701 TEB);

6. Tender offers;

7. Defeasances;
8. Rating changes; or
9. Bankruptcy, insolvency, receivership or similar event of the Water Authority.

Note: for the purposes of the event identified in subparagraph (9), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Water Authority in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Water Authority, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Water Authority.

(b) The Water Authority shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Series 2019 Pipeline Bonds, if material, in a timely manner not later than ten business days after the occurrence of the event:

1. Unless described in Section 5(a)(5), adverse tax opinions or other material notices or determinations by the Internal Revenue Service with respect to the tax status of the Series 2019 Pipeline Bonds or other material events affecting the tax status of the Project Pipeline Bonds;
2. Modifications to rights of the Project Bond holders;
3. Optional, unscheduled or contingent Bond calls;
4. Release, substitution, or sale of property securing repayment of the Series 2019 Pipeline Bonds;
5. Non-payment related defaults;
6. The consummation of a merger, consolidation, or acquisition involving the Water Authority or the sale of all or substantially all of the assets of the Water Authority, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms; or
7. Appointment of a successor or additional trustee or the change of name of a trustee for the Series 2019 Pipeline Bonds.  

(c) Whenever (i) the Water Authority obtains knowledge of the occurrence of a Listed Event described in Section 5(a) or (ii) the Water Authority obtains knowledge of the occurrence of a Listed Event described in Section 5(b) and has determined that knowledge of the occurrence of such a Listed Event would be material under applicable federal securities laws, the Water Authority shall promptly

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8 NOTE: If closing occurs on or after February 27, 2019, additional material events regarding material financial obligations to be added pursuant to August 2018 Amendment to Rule 15c2-12.
notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report
the occurrence pursuant to subsection (d) of this Section 5.

(d) If the Dissemination Agent has been instructed by the Water Authority to report the
occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the
MSRB in electronic format, accompanied by such identifying information as is prescribed by the MSRB,
with a copy to the Water Authority. Notwithstanding the foregoing, notice of Listed Events described in
subsections (a)(7) or (b)(3) of this Section 5 need not be given under this subsection any earlier than the
notice (if any) of the underlying event is given to the Holders of affected Series 2019 Pipeline Bonds
pursuant to the applicable Indenture.

SECTION 6. Format for Filings with MSRB. Any report or filing with the MSRB pursuant to
this Disclosure Agreement must be submitted in electronic format, accompanied by such identifying
information as is prescribed by the MSRB.

SECTION 7. Additional Disclosure Obligations. The Water Authority acknowledges and
understands that other state and federal laws, including but not limited to the Securities Act of 1933 and
Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the Water Authority,
and that the failure of the Dissemination Agent to so advise the Water Authority shall not constitute a
breach by the Dissemination Agent of any of its duties and responsibilities under this Disclosure
Agreement. The Water Authority acknowledges and understands that the duties of the Dissemination
Agent relate exclusively to execution of the mechanical tasks of disseminating information as described in
this Disclosure Agreement.

SECTION 8. Termination of Obligations. The Water Authority’s and the Dissemination Agent’s
obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption
or payment in full of all of the Series 2019 Pipeline Bonds. If such termination or substitution occurs
prior to the final maturity of the Series 2019 Pipeline Bonds, the Water Authority shall give notice of such
termination or substitution in a filing with the MSRB.

SECTION 9. Dissemination Agent. The Water Authority hereby appoints Digital Assurance
Certification, L.L.C., as the initial Dissemination Agent. The Water Authority may, from time to time,
appoint or engage one or more Dissemination Agents to assist it in carrying out its obligations under this
Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a
successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the
content of any notice or report prepared by the Water Authority pursuant to this Disclosure Agreement.
The Dissemination Agent may resign by providing thirty (30) days written notice to the Water Authority.
The Dissemination Agent shall have no duty to prepare any information report or event notice nor shall
the Dissemination Agent be responsible for filing any report or event notice not provided to it by the
Water Authority in a timely manner.

SECTION 10. Amendment; Waiver. Notwithstanding any other provision of this Disclosure
Agreement, the Water Authority and the Dissemination Agent may amend this Disclosure Agreement
(and the Dissemination Agent shall agree to any amendment so requested by the Water Authority,
provided that the Dissemination Agent shall not be obligated to enter into any such amendment that
modifies or increases its duties or obligations hereunder) and any provision of this Disclosure Agreement
may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a) or (b), it
may only be made in connection with a change in circumstances that arises from a change in legal
requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Series 2019 Pipeline Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance, sale and delivery of the Series 2019 Pipeline Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Owners of the Series 2019 Pipeline Bonds in the same manner as provided in the applicable Indenture for amendments to such Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or Beneficial Owners of the Series 2019 Pipeline Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Water Authority shall describe such amendment in the next Annual Disclosure Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Water Authority. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in a filing with the MSRB and (ii) the Annual Disclosure Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 11. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Water Authority from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Disclosure Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Water Authority chooses to include any information in any Annual Disclosure Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Agreement, the Water Authority shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Disclosure Report or notice of occurrence of a Listed Event.

SECTION 12. Default. In the event of a failure of the Water Authority or the Trustee to comply with any provision of this Disclosure Agreement, any Participating Underwriter or any Owner or Beneficial Owner of Series 2019 Pipeline Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Water Authority to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an event of default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the Water Authority to comply with this Disclosure Agreement shall be an action to compel performance.

(a) The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement. The Dissemination Agent’s obligation to deliver the information at the times and with the contents described herein shall be limited to the extent the Water Authority has provided such information to the Dissemination Agent as required by this Disclosure Agreement. The Dissemination Agent shall have no duty with respect to the content of any disclosures or notice made pursuant to the terms hereof. The Dissemination Agent shall have no duty or obligation to review or verify any information, disclosures or notices provided to it by the Water Authority and shall not be deemed to be acting in any fiduciary capacity for the Water Authority, the Owners, the Beneficial Owners of the Series 2019 Pipeline Bonds or any other party. The Dissemination Agent shall have no responsibility for the Water Authority’s failure to report to the Dissemination Agent any event described in Sections 5(a) and 5(b) or a duty to determine the materiality thereof. The Dissemination Agent shall have no duty to determine, or liability for failing to determine, whether the Water Authority has complied with this Disclosure Agreement. The Dissemination Agent may conclusively rely on certifications of the Water Authority at all times.

THE WATER AUTHORITY AGREES TO INDEMNIFY AND SAVE THE DISSEMINATION AGENT AND ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, HARMLESS AGAINST ANY LOSS, EXPENSE AND LIABILITIES WHICH THEY MAY INCUR ARISING OUT OF OR IN THE EXERCISE OR PERFORMANCE OF THEIR POWERS AND DUTIES HEREUNDER, INCLUDING THE COSTS AND EXPENSES (INCLUDING ATTORNEYS’ FEES) OF DEFENDING AGAINST ANY CLAIM OF LIABILITY, BUT EXCLUDING LIABILITIES DUE TO THE DISSEMINATION AGENT’S NEGLIGENCE OR WILLFUL MISCONDUCT.

The obligations of the Water Authority under this Section shall survive resignation or removal of the Dissemination Agent and defeasance, redemption or payment of the Series 2019 Pipeline Bonds.

(b) The Dissemination Agent may, from time to time, consult with legal counsel (either in-house or external) of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or its respective duties hereunder, and neither of them shall incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel.

SECTION 14. Notices. Any notices or communications to or among any of the parties to this Disclosure Agreement may be given as follows:

To the Water Authority: [San Diego County Water Authority
4677 Overland Avenue
San Diego, CA  92123
Attention: Director of Finance/Treasurer]9

To the Dissemination Agent: [Digital Assurance Certification, L.L.C.
390 North Orange Ave., Suite 1750
Orlando, FL  32801
Attention: Client Service Manager]10

9 Confirm: Any Updates needed?
10 Confirm: Any Updates needed?
To the Trustee: MUFG Union Bank, N.A.
445 South Figueroa Street, Suite 401
Los Angeles, CA  90071
Attention: Corporate Trust Administration

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

SECTION 15. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Water Authority, the Trustee, the Dissemination Agent, the Participating Underwriters, and Owners and Beneficial Owners from time to time of the Series 2019 Pipeline Bonds, and shall create no rights in any other person or entity.

SECTION 16. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signatures appear on the following page]
SIGNATURES

As evidence of their intent to be legally bound, the parties have signed this Agreement as of this ___ day of __________, 2019.

SAN DIEGO COUNTY WATER AUTHORITY

By: ____________________________

[____________________], General Manager

By: ____________________________

[____________________], Deputy General Manager

MUFG UNION BANK, N.A., as Trustee

By: ____________________________

Name:
Title:

DIGITAL ASSURANCE CERTIFICATION, L.L.C., as Dissemination Agent

By: ____________________________

Authorized Officer
EXHIBIT A

FORM OF NOTICE TO THE
MUNICIPAL SECURITIES RULEMAKING BOARD
OF FAILURE TO FILE ANNUAL DISCLOSURE REPORT

Name of Issuer: The California Pollution Control Financing Authority

Name of Bond Issue: California Pollution Control Financing Authority Water Furnishing Revenue Refunding Bonds (San Diego County Water Authority Desalination Project Pipeline) Series 2019

Date of Issuance: [February 1], 2019

Name of Obligated Party: San Diego County Water Authority

NOTICE IS HEREBY GIVEN that the San Diego County Water Authority has not provided an Annual Disclosure Report with respect to the above-named Bonds as required by the Continuing Disclosure Agreement, dated as of [February 1], 2019, by and between MUFG Union Bank, N.A., as trustee for the owners of the above-named bonds, the San Diego County Water Authority and Digital Assurance Certification, L.L.C. [The Water Authority anticipates that the Annual Disclosure Report will be filed by ______________.]

Dated: ______________

DIGITAL ASSURANCE CERTIFICATION, L.L.C., on behalf of the San Diego County Water Authority

By: ________________________________

cc: San Diego County Water Authority