

Welcome to Huntington Beach. I am Merle Moshiri, President of Residents for Responsible Desalination, a grass roots organization formed in S. E. Huntington Beach to advocate for protecting our community and coastal resources from further industrialization.

From your tour of the AES property, I am sure that you also saw the Talbert and Magnolia Wetlands and the site for the proposed Poseidon Ocean Desalination Plant, along with the 38 acre ASCON Toxic Land Fill.

Our concerns rise from what many of us see the cumulative effect of so much industry and construction in the immediate area of homes, schools and wetlands and whether the planning and permitting, particularly of the desalination project is representative of what will transpire in that area and whether the data being furnished is up to date and adequate.

As you are aware, Poseidon has still not completed its Coastal Development plan to the Coastal Commission, and there may be an LCP violation on the part of AES as it hurries to grade and degrade possible wetlands findings on the AES property.

As residents in this immediate area, we are worried about adequate seismic studies being furnished. Both AES and the proposed plant would straddle the Newport-Inglewood fault line. All of the homes and industry in this area are built on fill that is subject to liquefaction and in fact, during the installation of pipelines by the OC Sanitation District down Bushard St., 64 home were subject to subsidence.

There is also the problem of intrusion into the plumes of toxic waste running under the lagoons of the ASCON landfill that immediately

adjacent to the AES/Poseidon properties, that might cause the materials to move during heavy construction.

Noise is another area not adequately addressed. Not just noise effecting nesting birds, but humans living in close proximity to the two plants.

There is the problem of locating a reservoir for the City of Huntington Beach within the power plant location. One more construction site. How much are we being asked to bear? What is the time table, and exactly who is on first? AES, Posiedon, or the clean up of the toxic waste site? WE LIVE HERE!

Until these problems are addressed, we think it is premature to issue any AFC certification.

Thank you for your time and attention and welcome to Surf City USA, inspite of what you might have seen today.

Merle Moshiri, President

Residents for Responsible Desalination, Huntington Beach CA.

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For proof of the connection between AES + Posiedon, please see page 13 of attached Term Sheet for the Proposed Water Purchase Contract - Huntington Beach Seawater Desalination Project (3/22/12 Draft)

MACS X
March

DRITX PRSGX

Term Sheet
Proposed Water Purchase Contract
Huntington Beach Seawater Desalination Project

**Municipal Water District of Orange County and/or Orange
County Water District and/or Participating Retail Agencies
and**

Poseidon Resources (Surfside) LLC

March 2012

3/22/12 DRAFT

TERMINOLOGY

Subject	Meaning
1. Parties	<p>Seller Poseidon Resources (Surfside) LLC ("Seller"). Seller is a special purpose project company established and controlled by Poseidon Water, LLC.</p> <p>[TBD] ("Buyer(s)").</p> <p>Together, the "Parties."</p>
2. Project	<p>A reverse osmosis seawater desalination plant, including the seawater intake, concentrate disposal facilities, product water pump station ("Product Water Pump Station"), and appurtenant facilities to be located on a site adjacent to the AES Huntington Beach Generating Station ("Plant"), capable of delivering 56,000 acre-feet/year of desalinated water ("Product Water") to the boundary of the Project site at Newland Street ("Delivery Point") consistent with the Subsequent Environmental Impact Report (SEIR).</p>
3. Delivery Point, Product Water Pump Station and Delivery System	<p>The Delivery Point is defined as the boundary line of the Project site at Newland Street. The Product Water Pump Station will be adequate to transport and deliver Product Water at the quantity and pressure required by the Contract. The Delivery System shall be defined as offsite facilities (i.e., pipeline and booster pumps) to deliver the Product Water from the Project's Delivery Point to Buyer(s). The Delivery System will be adequate to transport and deliver Product Water at all times in the quantities required by the Contract.</p>
4. Water Purchase Contract	<p>A contract ("Contract") between the Seller and the Buyer(s) under which the Seller shall construct and operate the Project and deliver water to the Delivery Point and the Buyer(s) shall construct and operate the Delivery System and purchase Product Water under terms set forth in the Agreement.</p>
5. Contract Date	<p>The date on which the Contract is executed and delivered by the parties.</p>
6. EPC Contractor; EPC Contract	<p>A proposed contract between Seller and the Project's engineering, procurement and construction contractor and with its principal process subcontractor (the "EPC Contractor") for the design, construction and startup of the</p>

Subject	Meaning
	Plant (the "EPC Contract"). The EPC Contractor will be selected by Seller from a pre-qualified list approved by the Buyer(s).
7. Operations Agreement	A proposed contract between Seller and the Operating Contractor for the operation, maintenance, repair and equipment replacement of the Plant. The Operating Contractor will be selected by Seller from a pre-qualified list approved by the Buyer(s).
8. MWD	Metropolitan Water District of Southern California.
9. MWD Agreement	The MWD Seawater Desalination Program Agreement between the Buyer(s) and MWD.
10. SEIR	The Subsequent Environmental Impact Report for the Project certified by the city of Huntington Beach in September, 2010.

NEGOTIATION AND APPROVAL PROCESS

Subject	Understanding
1. Purpose	<p>The purpose of this Term Sheet is to set forth the basis for negotiations toward a possible Contract between the Parties. The proposed terms and conditions set forth herein do not bind either party in any manner, and in particular do not commit the Buyer(s) to purchase Product Water. It is a summary only and is not comprehensive or definitive.</p> <p>The parties understand that substantive terms and detailed provisions not noted or fully developed in this Term Sheet are expected to be included in any final Contract.</p>
2. Schedule	<p>A. Schedule Milestones for Project Seller anticipates:</p> <ul style="list-style-type: none"> • that it shall obtain all required discretionary permits approvals no later than June 30, 2013 (the "Permit Deadline"); • that it shall obtain full construction financing no later than June 30, 2014 (the "Construction Finance Deadline"); • that the Commercial Operation Date will be the earlier of (1) December 31, 2017, or (2) the date that is 40 months following the actual date of financial close, as such date may be extended due to Uncontrollable Circumstances (the "Scheduled Commercial Operation Date"). <p>B. Schedule Extensions The Contract shall provide for extensions of such dates due to the occurrence of Uncontrollable Circumstances or Changes-in-Law and, in the absence of Uncontrollable Circumstances or Changes-in-Law, as mutually agreed to by the Parties.</p> <p>C. Failure to Meet Deadlines In the event that, after extensions that may be provided for in the Contract, Seller has not been able to meet the Permit Deadline or the Construction Finance Deadline, Buyer(s) may terminate the Contract. If the Scheduled Commercial Operation Date is not met, and/or if Seller has notified Buyer(s) of its intent to abandon the Project, the Buyer(s) may terminate the Contract and shall have the right, but not the obligation, to purchase the Project from Seller on terms and conditions that will be set forth in the Contract.</p>

Subject	Understanding
3. Contract Negotiations	<p><u>Termination of Negotiations</u> The parties acknowledge that either party may suspend, terminate or renew negotiations at any time and for any reason without consequence.</p>
4. Buyer(s) Due Diligence	<p>During the negotiating periods, the Buyer(s) intend to conduct a complete due diligence examination of Seller and the Project. Seller intends to fully cooperate with the examination, and provide all documents and information requested by the Buyer(s) in connection therewith. Due diligence will address, among other things, (1) Seller's investors, ownership structure, management, financial condition and contingent liabilities; (2) any existing agreements, commitments, understandings, rights and claims of any other party pertaining to Seller and the Project; (3) Plant design specifications, (4) the proposed EPC Agreement and EPC Contractor; (5) the proposed Operations Agreement and operating contractor; (6) legal entitlements; (7) litigation; (8) development equity, construction and term equity and debt arrangements, participation and terms; (9) financial projections for the Project; (10) all procurements, negotiations and discussions Seller has engaged in for contractors and subcontractors for the Project; (11) and any and all land leases for property or appurtenant facilities including, but not limited to, the site lease with AES and land lease with the State Lands Commission.</p>
5. No Buyer(s) Responsibility for the Project	<p>Seller understands and acknowledges Buyer(s) do not assume any responsibility for the Project whatsoever. Any Contract resulting from the negotiations will be a contract solely for the purchase of Product Water. Seller has planned and developed and will implement the Project completely at its own risk. Seller will be solely responsible for the efficacy of the Project and its permitting, financing, design, construction, commissioning and capability of successfully passing acceptance tests producing Product Water to the standards of the Contract. No due diligence performed by the Buyer(s) shall constitute any transfer of liability to the Buyer(s) for the Project or its performance.</p>

**TERMS AND CONDITIONS OF
THE PROPOSED WATER PURCHASE CONTRACT**

Subject	Proposed Term/Condition
1. Term	<p>A. Initial Term The initial term ("Initial Term") of the Contract shall begin upon the execution of the Contract and shall terminate 30 years from the Commercial Operation Date.</p> <p>B. Renewal The Contract may be renewed at the sole option of Buyer(s) for two additional 15-year terms ("Renewal Terms"). Buyer(s) shall notify Seller no later than 3 years prior to the expiration of the Initial Term (or, as the case may be, a Renewal Term) of its intentions regarding renewal. With the exception of Product Water Quantity, Product Water Quality and Price (each of which shall be subject to negotiation), the terms and conditions of the Initial Term will carry forward into any Renewal Terms, provided however that Product Water Quantity, Product Water Quality and Price negotiations shall be concluded no later than 18 months prior to the expiration date, and, if not, the Contract shall expire at the end of the Initial Term or Renewal Term, as applicable.</p>
2. Roles of the Parties	<p>A. Seller Seller shall design, permit, finance, construct, start-up and acceptance test the Project all in conformity to applicable law, prudent industry practices and the requirements of the Contract. Upon the commencement of the commercial operation of the Project ("Commercial Operation Date"), Seller shall operate and maintain the Project in accordance with prudent industry practices and applicable laws and regulations sufficient to meet the Reliability and Product Water Quality, permitting and regulatory requirements of the Contract.</p> <p>B. Buyer(s) Buyer(s) shall cooperate with Seller during the period of Project, as necessary and appropriate, with respect to activities such as permitting, financing and public information, but shall have no responsibility or liability regarding such activities of Seller.</p> <p>Buyer(s) shall design, permit, finance, construct, start-up</p>

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	<p>and operate the Delivery System.</p> <p>Upon the achievement of the Commercial Operation Date, Buyer(s) shall purchase Product Water as provided for under the Contract and accept delivery of the Product Water at the Delivery Point and operate and maintain the Delivery System.</p>
3. Financing Period	<p><u>A. Construction Finance Deadline</u> In the event a Contract is successfully negotiated and executed, Seller shall achieve financial close (with all construction financing in place for the Project) by the Construction Finance Deadline.</p> <p><u>B. Failure to Achieve Financial Close by the Construction Finance Deadline</u> If Seller fails to achieve financial close for the Project by the Construction Finance Deadline, the Buyer(s) may terminate the Water Purchase Contract.</p> <p><u>C. Achievement of Financial Close</u> If Seller succeeds in achieving financial close before the Construction Finance Deadline Seller will proceed to construct the Project.</p>
4. Financing Plan	<p><u>A. Seller Responsibilities</u> Seller will be solely responsible for the financing of the Project. Seller will keep the Buyer(s) regularly informed of its progress in executing the plan of financing.</p> <p><u>B. Amount of Financing</u> Seller may not issue additional Project debt without the approval of the Buyer(s), except (1) debt for Project completion, (2) refinancing debt, (3) debt necessary to pay capital costs resulting from uninsured force majeure events and Changes in Laws, and (4) debt for other purposes to be negotiated.</p> <p><u>C. Capital Amortization Period</u> The amortization term of any Project debt financing or refinancing undertaken will not exceed the term of the Contract.</p>
5. Design and	<u>A. Construction Period Design Reviews for the Plant</u>

Subject	Proposed Term/Condition
<p>Construction of the Plant and Delivery System</p>	<p>During the Construction Period, the Buyer(s) will have the right, but not the obligation, to periodically review the design of the Plant for compliance with the EPC Agreement and design specifications as set forth in the Contract. The Buyer(s) will not have approval authority over the design of the Plant, except as such may relate to compliance with the requirements of the Contract. Seller will agree to consider and respond to comments or concerns made by the Buyer(s).</p> <p><u>B. Construction Period Reporting and Review for the Project</u> Seller will attend monthly progress meetings with the Buyer(s) and will provide the Buyer(s) access to information regarding the Project. Seller will consider and respond to comments or concerns made by the Buyer(s). The Buyer(s) will have the right to observe and inspect construction of the Project at any reasonable time. The Contract will detail the Buyer(s) inspection rights and requirements, and Seller's obligations during the construction of the Project.</p> <p><u>C. Start-Up and Acceptance Testing of the Plant</u> The Contract will set forth acceptance test standards and procedures designed to assure the Buyer(s) that the Plant will be capable, on a long term basis, of meeting the requirements of the Contract. The Buyer(s) will have the right to review and comment on the acceptance test protocol to be developed in accordance with the requirements of the Contract, and to observe Plant start-up and acceptance testing.</p> <p><u>D. Construction and Start-Up of the Delivery System</u> The Buyer(s) shall cause construction of the Distribution System to be substantially complete, and to be suitable for the purpose of commencing the Commercial Operability Tests, by the date that is ____ days [following the closing of Seller's construction financing. The Buyer(s) shall regularly apprise the Seller as to the progress of construction. If Seller is unable to achieve commercial operation by the Scheduled Commercial Operation Date due to the Buyer(s)' failure to complete construction, the Buyer(s)' should pay the sum of the Capital Charge, Fixed Operating Charge and Fixed Electricity Charge for 56,000</p>

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	<p>AF.</p> <p><u>E. Modifications Due to Changes in Law During the Construction Period</u></p> <p>In the event that capital improvements or modifications are required due to a Change in Law occurring during the Construction Period, Seller will inform the Buyer(s) of such need and of the schedule for and an estimated cost of addressing such need. Seller will mitigate the effects of the Change in Law, and minimize the delay in design or construction and minimize the cost of such capital improvements or modifications. The Buyer(s) will be responsible for such costs, but only if: (1) the Commercial Operation Date is achieved; and (2) such Change in Law is not imposed as the result of the acts or omissions of Seller.</p>
<p>6. Scheduled Commercial Operation Date</p>	<p>If Seller fails to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date, and/or if Seller has notified Buyer(s) of its intent to abandon the Project, the Buyer(s) may terminate the Contract and shall have the right, but not the obligation, to purchase the Project from Seller on terms and conditions that will be set forth in the Contract.</p>
<p>7. Operation and Maintenance</p>	<p><u>A. Seller's Obligation to Operate the Plant</u></p> <p>Upon the achievement of the Commercial Operation Date, Seller will operate, maintain, repair and replace the Plant in accordance with the terms of the Contract, prudent industry practices and applicable laws and regulations sufficient to meet the contractual performance and regulatory requirements.</p> <p><u>B. Operation and Maintenance of the Delivery System</u></p> <p>The Delivery System will be operated and maintained by Buyer(s).</p> <p><u>C. Operator</u></p> <p>Seller will, prior to the Contract Date, contract for the operation, maintenance, repair and equipment replacement of the Plant with the Operating Contractor. The Operating Contractor will not be replaced without the Buyer(s) approval, which shall not be unreasonably withheld. Seller will deliver a copy of the proposed Operations Agreement to the Buyer(s) for review and</p>

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	<p>comment prior to execution.</p> <p><u>D. Operations and Maintenance Manual</u> Two months prior to the Commercial Operation Date, Seller will provide the Buyer(s) with a draft copy of the Plant's operation and maintenance manual for review and comment.</p> <p><u>E. Life-Cycle Maintenance</u> The Contract will contain all necessary assurances that the Plant will be properly maintained, repaired and replaced over the term of the Contract. These will include a requirement to have a CMMS system and use it to perform ordinary and capital maintenance, and periodic maintenance inspections.</p> <p><u>F. Restoration of the Plant</u> In the event of damage to the Plant, Seller will be obligated to repair or replace damaged components to enable the restoration of full operations and the full performance of its obligations under the Contract, whether through the application of insurance proceeds or Seller's own capital. In order to provide for the circumstance under which Seller is not able to restore the Plant, Seller agrees that the Project's financing documentation will enable the Buyer(s), at the Buyer(s) sole option, to purchase the Plant for an amount equal to Seller's outstanding indebtedness, net of available insurance proceeds.</p> <p><u>G. Buyer(s) Right to Monitor</u> The Buyer(s) will have the right to monitor the operation and maintenance of the Plant in order to confirm compliance with the requirements of the Contract. The Buyer(s) will have the right to conduct periodic inspections of the Plant, and will notify Seller of any operations and maintenance deficiencies found for rectification by Seller. The Buyer(s) will have the right to engage consultants and advisors for inspections and to review Seller performance and provide performance reports and recommendations to the Buyer(s).</p>
8. Plant Expansions	The Buyer(s) shall have the first right to propose to purchase any additional Product Water, subject to mutual agreement between Seller and the Buyer(s) as to terms and

Subject	Proposed Term/Condition
	conditions.
9. Water Quantity	<p><u>A. Water Quantity Commitments</u> Seller will agree to produce and deliver, and the Buyer(s) will agree to take (on a "take-if-delivered" basis), 56,000 acre-feet per year of Product Water. For the actual quantity of Product Water taken, the Buyer(s) will pay a per-acre foot unit charge as set forth in Item 14.</p> <p><u>B. Payment for Available Water that is Not Taken</u> In the event that the Buyer(s) do not take the Product Water it is required to take under Item 9A, the Buyer(s) will nonetheless pay Seller a per-acre foot charge to be set forth in the Contract, based on the Delivery Schedule.</p> <p><u>C. Delivery Schedule</u> The schedule for periodic deliveries of Product Water (daily, monthly, quarterly) will be mutually agreed to by the parties on an annual basis.</p> <p><u>D. Operating Committee</u> Seller, the Operating Contractor, and the Buyer(s) will establish an Operating Committee to address daily flow changes and operations.</p> <p><u>E. Water Ownership</u> The Buyer(s) will own all Product Water received and accepted at the Delivery Point.</p> <p><u>F. Product Water Pressure and Hydraulic Transients Guarantee</u> Seller will guarantee Product Water pressure, and will operate the Product Water pump station within agreed upon protocols so to minimize hydraulic transients in the Buyer(s) Delivery System.</p> <p><u>G. Distribution System Emergencies</u> In the event of emergencies in its distribution system, the Buyer(s) may demand a curtailment of Plant operation and Product Water deliveries, excusing the Buyer(s) from its purchase obligation for the duration of the emergency.</p> <p><u>H. Product Water Not Delivered Due to Uncontrollable Circumstances</u></p>

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	<p>Product Water which Seller would have delivered to the Buyer(s) but which Seller is unable to deliver due to a Seller Uncontrollable Circumstance or a Buyer(s) Uncontrollable Circumstance shall be delivered by Seller and purchased by the Buyer(s) from any excess Product Water on a negotiated basis, or during an extension of the term of the Water Purchase Contract not to exceed three years.</p> <p><u>I. Respective Cost Obligations of the Parties</u> Seller will be responsible for all costs incurred in producing and delivering Product Water to the Delivery Point, and the Buyer(s) will be responsible for all costs incurred in receiving and distributing Product Water after the Delivery Point.</p>
10. Water Quality	<p><u>A. Product Water Quality Requirements Generally</u> Product Water delivered by Seller will meet all legal potable water quality requirements and not exceed regulatory or maximum contaminant levels established by the state, federal, and local agencies. A detailed set of water quality specifications will be incorporated in the Contract per Attachment A to this Term Sheet.</p> <p><u>B. Third Party Claims Regarding Product Water Quality</u> Seller will be solely liable for any fines, penalties or damages that may be incurred by either party due to Seller's failure to meet water quality requirements. Seller will indemnify the Buyer(s) against any fines, penalties or damages (including third party tort claims) that may be incurred by the Buyer(s) due to the delivery of Product Water that does not meet the Product Water quality requirements.</p> <p><u>C. Limitation on the Buyer(s) Obligation to Accept Product Water</u> The Buyer(s) will not be obligated to accept or pay for Product Water that does not meet the Product Water quality requirements.</p>
11. Performance Liquidated Damages	<p><u>A. Product Water Quantity Failures</u> The Contract will specify liquidated damages for failure to deliver 85 percent of Product Water quantities specified in the Contract during any Contract Year (any period running</p>

Subject	Proposed Term/Condition
	<p>from July 1 to the following June 30 during the term of the Contract).</p> <p><u>B. Product Water Quality Failures</u> The Contract will specify liquidated damages for Product Water quality non-compliance.</p>
12.Raw Water Risks	The Contract will set forth the assumed raw water quality parameters upon which Seller's performance guarantees are based. If (1) actual raw water quality parameters are outside those assumed, or (2) specific negotiated events occur affecting raw water quality (such as pollution events), Seller will be entitled to relief from its water quantity production guarantee.
13.AES	<p>Seller shall bear all risks relating to <u>AES and AES's</u> generating plant and property, except (1) the occurrence of force majeure events damaging or destroying the raw water intake, outfall and any other <u>AES</u> facilities necessary for the conveyance of raw water to the Plant and the discharge from the Plant or other events effecting the construction and operations of the Project, and (2) other reasonable exceptions negotiated by the parties in which event Seller shall be entitled to relief from its water quantity production guarantee. Such <u>AES risks</u> include <u>AES</u> sale, merger or bankruptcy; <u>AES</u> lease breach, default and termination; changes in law, permit modifications or denials, or regulatory orders affecting the <u>AES plant</u>.</p>
14.Water Purchase Price	<p><u>A. Buyer(s)Obligation to Pay for Product Water</u> The Buyer(s) will only pay for Product Water that meets the Product Water quality requirements and is actually delivered or ready to be delivered to the Delivery Point.</p> <p><u>B. Water Purchase Price</u> The price payable by the Buyer(s) for Product Water shall consist of (1) the negotiated Unit Price per acre-foot, multiplied by (2) the number of acre-feet of Product Water purchased by the Buyer(s). Any extraordinary items (such as costs payable by the Buyer(s) associated with Changes in Law and amounts payable by Seller for non-compliance with the MWD Agreement, liquidated damages or indemnity payments) shall be paid or credited as a separate element of the Water Purchase Price, or shall be</p>

Subject	Proposed Term/Condition
	<p>reflected in a revised Unit Price, as appropriate.</p> <p><u>C. Unit Price</u></p> <p>The negotiation of the Unit Price will be determined in accordance with the following principles:</p> <ol style="list-style-type: none"> 1. The Unit Price will be based on the capital and operating costs of the Project (as opposed to the "avoided cost" of water). 2. Seller will provide full transparency to the Buyer(s) with respect to capital costs, operating costs, and financial returns to Seller. 3. The Unit Price will support the financing, construction and operation of a high-quality desalination facility that operates in a highly reliable manner. 4. The Unit Price will provide financial incentive to Seller for efficient plant operations. The Buyer(s) will reserve the right to provide wholesale power to the Project. 5. The Unit Pricing structure will determine how actual debt service costs, and future refinancing savings will be reflected in the Unit Price. 6. The Unit Price will not be finalized until the underlying capital and operational costs of the Project have been established through binding contracts, and these contracts and the financing costs and draft financing documents have been received, reviewed and accepted as reasonable by the Buyer(s). 7. Charges: <ol style="list-style-type: none"> a. Capital Charge. The Capital Charge for each Contract Year shall be a per-Acre-Foot amount set to cover annual debt service and provide a return to equity. b. Operating Charges.

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	<p>i. Fixed Operating Charge. The Fixed Operating Charge shall be a per-Acre Foot amount index linked. It will be set to cover operating expenses that do not vary with water production.</p> <p>ii. Variable Operating Charge. The Variable Operating Charge shall be a per-Acre Foot amount index linked. It will be set to cover operating expenses that vary with water production.</p> <p>c. Electricity Charges.</p> <p>i. Fixed Electricity Charge. The Fixed Electricity Charge shall be a per-Acre Foot amount index linked. It will be set to cover electricity costs that do not vary with water production.</p> <p>ii. Variable Electricity Charge. The Variable Electricity Charge shall be a per-Acre Foot amount index linked. It will be set to cover electricity costs that vary with water production.</p> <p><u>D. Site Conditions Risk</u> Seller shall bear all price risk associated with any differing site conditions and regulated site conditions (such as hazardous substances and cultural resources).</p> <p><u>E. Grants and Subsidies Benefit Buyer(s)</u> Any subsidy, grant, or contribution received directly or indirectly by the Buyer(s) or Seller from the MWD or any other local, regional, state or federal governmental agency will be for the full benefit of the Buyer(s). The parties will also consider alternative approaches regarding federal, state, regional and local financial support to help reduce the cost of the Product Water.</p> <p><u>F. Notification of Annual Price Adjustments</u> For budgetary purposes, Seller will notify the Buyer(s) no</p>

Subject	Proposed Term/Condition
	<p>later than a date to be specified in the Contract prior to the start of the next succeeding Contract Year of the Water Purchase Price that will be in effect for the coming Contract Year based on the specified index adjustments.</p> <p><u>G. Annual "True-Up" Process</u> There will be an annual "true-up" process, based upon the Water Purchase Price paid by the Buyer(s) and other costs or liabilities that may have been incurred by either party, for which responsibility is addressed in the Contract, through which the amounts that were paid by the Buyer(s) and the amounts that were due from the Buyer(s) will be confirmed or reconciled. If it is determined that the Buyer(s) paid less than the amounts actually due, the Buyer(s) will pay any such additional costs to Seller within 60 days of such determination. If it is determined that the Buyer(s) paid more than was actually due, Seller will credit such overpayment against the next immediate billing to the Buyer(s).</p>
15.No Payment Obligation Before Commercial Operation Date; Exception	<p><u>A. General</u> The Buyer(s) will have no obligation to purchase Product Water or make any payment whatsoever to Seller prior to the Commercial Operation Date. If that date does not occur, the Buyer(s) will not have any payment obligations. If Change in Law costs are incurred prior to the Commercial Operation Date, the Buyer(s) will be obligated to pay such costs only as an increase in the Water Purchase Price payable after the Commercial Operation Date, on a negotiated, amortized basis.</p> <p><u>B. Exception</u> Following approval by the State Department of Public Health of the introduction of Product Water into the Buyer(s) distribution system and prior to the Commercial Operation Date, the Buyer(s) will purchase Product Water meeting quality standards. The price of the water and the duration of this commitment will be negotiated.</p>

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16.Site Access	<p><u>B. Plant Tours</u> Seller will make the Plant available for Buyer(s) tours after start of commercial operations, subject to reasonable notice by the Buyer(s).</p> <p><u>C. Site Access</u> Buyer(s) staff, consultants and contractors will be provided access to the site and all facilities owned or leased by Seller during the construction period and after the start of commercial operations, subject to reasonable notice by the Buyer(s).</p>
17.Insurance	<p><u>A. Seller Insurance Obligations</u> Seller will obtain and maintain, in amounts to be agreed upon with the Buyer(s), insurance as follows: commercial general liability insurance; builder's risk and property and casualty insurance that will provide for the full replacement value of the Project; motor vehicle insurance; workers compensation; business interruption insurance in an amount sufficient to cover a minimum of one year of fixed operating and financing costs and, as appropriate, pollution liability insurance.</p> <p><u>B. Insurance Costs and Risks</u> Seller will bear all costs associated with any insurance deductibles, and replacement cost exceedences associated with builders' risk and property insurance coverage. Seller will also bear the risk of any insurance unavailability.</p> <p><u>C. The Buyer(s) Right to Obtain Insurance</u> The Buyer(s) may purchase such insurance on behalf of Seller, if Seller fails to do so, and will be reimbursed by Seller for any costs so incurred.</p>
18.Uncontrollable Circumstances	<p><u>A. Defined</u> Uncontrollable Circumstances are force majeure and other events beyond a party's reasonable control (after exercising diligence to prevent the occurrence and to mitigate the effect of the occurrence) that materially and adversely affect a party. Inclusions and exclusions will be negotiated. Changes in Law are handled separately from Uncontrollable Circumstances.</p>

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	<p><u>B. Seller Performance Relief</u> A Seller Uncontrollable Circumstance will entitle Seller to schedule and water quantity guarantee relief, to the extent that they are adversely affected by Uncontrollable Circumstances.</p> <p><u>C. No Seller Price or Water Quality Relief</u> Unless otherwise stated in the Contract, Seller Uncontrollable Circumstance will not entitle Seller to any price relief or any water quality guarantee relief.</p> <p><u>D. Mitigation and Restoration</u> In the event of an Uncontrollable Circumstance, the affected party will use commercially reasonable efforts to respond to the event and to mitigate its effects and, as soon as is practicable, to restore conditions to the level at which it can fully perform its obligations under the Contract.</p> <p><u>E. Buyer(s) Performance Relief</u> The Buyer(s) will be entitled to relief from its obligation to take and purchase Product Water to the extent its ability to receive delivery of Product Water is adversely affected by a Buyer(s) Uncontrollable Circumstance. The Buyer(s) will purchase "make-up" Product Water following any such occurrence as described in Item 9G.</p>
19.Changes in Law	<p><u>A. Defined</u> A Change in Law is the enactment of a new law, or an amendment to an existing law, after the Contract date that materially delays completion of the Project or increases the cost of producing Product Water, because of new or different equipment, construction, or processes required to comply with the new or amended law. "Law" includes any federal, state or local laws, statutes, codes and regulations; and all governmental approvals, such as licenses, permits, consents and entitlements.</p> <p><u>B. General Exclusions</u> Changes in Law do not include: (1) any law enacted or adopted on or before the Contract date to take effect after the Contract date; (2) any change in tax law; (3) any increases in fines or penalties for violation of applicable law; (4) any increase in the severity of enforcement actions</p>

Subject	Proposed Term/Condition
	<p>typically taken by a regulatory agency; (5) any change in law that does not require greater stringency than the Contract itself requires; and (6) changes in permits, approval, entitlements in consequence of enforcement, lapse, or invalidation of an existing permit.</p> <p><u>C. Changes in Law Affecting AES's Facility</u> If a Change in Law occurs that requires the Plant's raw water intake system, wastewater discharge system and related pumping facilities to be modified and operated on a "stand-alone" basis, separate from AES facility operations, the water purchase price will be increased to reflect the capital and operating costs necessary to respond to the change in law up to a maximum amount of [] million (index linked) and [] million (indexed linked) for the capital and annual operating costs, respectively. Any excess cost will be borne by Seller.</p> <p><u>D. Changes in Law Affecting AES's Seawater Intake Structure</u> Other than that provided in paragraph C above, a Change in Law will not include any change in law pertaining to the operation by AES of its existing seawater intake structure, including any requirement under Section 316(b) of the federal Clean Water Act or similar regulation.</p> <p><u>E. Changes in Law Affecting AES Discharge Facility Operations</u> Other than that provided in paragraph C above, a Change in Law also will not include any change in law pertaining to the operation by AES of its discharge facilities under its NPDES permit, similar permit or any provision of the federal Clean Water Act or California Porter- Cologne Act.</p> <p><u>F. Compliance With Environmental Mitigation Measures</u> Seller will bear the risk of complying with all environmental mitigation measures required by or in connection with the SEIR and governmental approvals for the Project, excluding measures required due to a Change in Law.</p> <p><u>G. Construction Government Approval Risk</u> Seller will be responsible for obtaining and maintaining all</p>

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	<p>governmental approvals required for the Project during construction and acceptance testing (including the California Department of Public Health's drinking water permit) through the Commercial Operation Date. Other than schedule relief, Seller will bear the risk of the denial, delay in issuance of, or imposition of any term or condition in connection with any such governmental approval and of compliance with all such governmental approvals. The occurrence of any such risk will not be Change in Law unless it is caused by the enactment of a statute or the promulgation of regulations of general applicability.</p> <p><u>H. Operating Governmental Approvals</u> Seller will also be responsible for obtaining and maintaining all governmental approvals required during the operating period, through the end of the Contract term. Other than schedule relief, Seller will bear the risk of the denial, delay in issuance of or imposition of any term or condition in connection with any such governmental approval.</p> <p><u>I. Relief</u> Seller will be entitled to both performance relief (excluding, however, water quality guarantee relief) and price relief (including increases in the Water Purchase Price to reflect mitigated cost increases) associated with responses to Changes in Law. Seller will be responsible for an initial amount (index linked and to be negotiated and included in the Contract) of such costs in each Contract Year. Seller will use all commercially reasonable efforts to implement responses to Changes in Law at the lowest cost practicable.</p> <p><u>J. Water Purchase Price Increase Limitation</u> There will be a maximum water purchase price increase limitation that will cap the Buyer(s) annual exposure to Change in Law costs.</p> <p><u>K. Seller Actions</u> No relief of any kind will be permitted for Changes in Law which are imposed as the result of the acts or omissions of Seller.</p>

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

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	to be in need of recalibration, Seller will pay for and undertake such recalibration, and will also reimburse the Buyer(s) for all costs associated with the Buyer(s) inspection and testing.
22. Buyer(s) Plant Purchase Options	<p><u>A. The Buyer(s) Purchase Option Upon Seller Event of Default</u> Upon a material uncured Seller default ("Seller Event of Default"), the Buyer(s) may terminate the Contract and may, but will not be obligated to, purchase the Plant for a negotiated purchase. Seller's Plant financing, lease and other agreements and arrangements will accommodate this purchase option.</p>
23. Security for Performance by Project Contractors	<p><u>A. Construction Bond</u> Seller will obtain and maintain or will cause the EPC contractor to obtain and maintain performance and payment bonds in an amount sufficient to obtain non-recourse financing (or as otherwise agreed to by the parties) for the construction of the Project.</p> <p><u>B. Operations Bond</u> Seller will obtain and maintain or will cause the Operations Contractor to obtain and maintain an operations performance bond in an amount sufficient to obtain non-recourse financing (or as otherwise agreed to by the parties) for the operation and maintenance of the Plant.</p>
24. Security for Performance by Seller	At a date no later than the Construction Financing Deadline, and for the Initial Term and any Renewal Term(s), Seller shall provide to Buyer(s) an annually renewable letter of credit in the amount of \$5 million, which amount shall escalate annually with the CPI up to a maximum of \$8.5 million or as the Parties negotiate in the Contract, as security for its obligations to Buyer(s) under the Contract.
25. General Indemnity	The Parties will indemnify the other Party for claims arising from misrepresentation, negligence or breach of the Contract.
26. Litigation Risk	Seller will also indemnify the Buyer(s) against third party

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Indemnity	litigation of the kind typically initiated by opponents of projects similar to the Project seeking to prevent project construction and operation (such as litigation) involving environmental reviews, permits, and legal entitlements, other than third party lawsuits challenging the Buyer(s) power or authorization to enter into the Contract, or resulting from a Buyer(s) breach of the Contract.
27. Representations and Warranties	The Contract will include customary representations and warranties regarding: legal standing in California; legal authority to enter into the Contract; absence of material adverse litigation or legal conditions; no conflict with other agreements or commitments; proper approvals of Contract. Seller will make representations and warranties as to CEQA compliance.
28. Tax Risks	Except as described elsewhere in this Term Sheet, Seller will bear all tax risks. This includes all existing taxes payable with respect to construction, operation, maintenance, management, services on water purchases; income, sales, possessory interest, excise and value added taxes; tax law changes; new taxes; and adverse tax law determinations pertaining to bond tax exemption, tax accounting treatment, tax credit depreciation, amortization or otherwise. A tax is a governmental imposition of any kind, and includes fees and charges.
29. Liability Limitations	The Contract will contain no stated dollar limitation on damages for non-performance. Special, consequential and punitive damages will be mutually waived.
30. Dispute Resolution	The parties will agree to attempt to resolve disputes, first, through negotiation and non-binding mediation and, if negotiations and mediation are unsuccessful, then to pursue other remedies available in law or in equity.
31. Assignment by Seller	Seller will not assign the Contract without the prior written approval of the Buyer(s), which approval may not be unreasonably withheld. Notwithstanding the foregoing, Seller will have the right to collaterally assign the Contract to its lenders, and the Buyer(s) will reasonably consent to such assignment.

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32. Seller's Contractors and Subcontractors	The Contract will specify minimum financial, technical and experience qualifications, standards and requirements for any Seller contractors and material subcontractors, and for any party it may engage to replace or substitute for such contractor or subcontractors. Seller will provide adequate information to the Buyer(s) regarding the qualifications of any proposed initial or substitute contractor or contractor. Notwithstanding the above, Seller may not replace or substitute the EPC Contractor or the Operations Contractor without the Buyer(s) approval, which will not be unreasonably withheld.
33. Governing Law	California

HUNTINGTON BEACH SEAWATER DESALINATION PROJECT

ATTACHMENT A

Product Water Quality Specifications

Quality Parameter	Analytical Method ¹	Sampling		Units	Concentration Limits	
		Sample period ²	Sample Method		Central Tendency ³	Extreme ⁴
Total Dissolved Solids	SM 2540 C	one year	Weekly grab	mg/L	350	400
Chloride	SM 4110 B	one year	Weekly grab	mg/L	180	210
Boron	SM 3120 B	one year	Weekly grab	mg/L	0.75	1
Turbidity	SM 2130 B	one month	Continuous ⁵	NTU	0.3	0.5
TTHM	EPA 524.2	one year	Monthly Grab at mutually agreed location	mg/L	-	MCL ⁶
HAA5	SM 6251B	one year	Monthly Grab at mutually agreed location	mg/L	-	MCL ⁶
Temperature	SM 2550	one month	daily grab	°F	-	85 °F

Notes:

1. Methods taken from *Standard Methods On Line*, published by APHA, AWWA, and WEF, or EPA approved methods.
2. Sample period - concentration limits are calculated for this period.
3. Central Tendency - can be exceeded in no more than 50% of samples taken.
4. Extreme - can be exceeded in no more than 10% of samples taken.
5. Continuous analysis, values at 15 minute intervals used in all calculations.

6. Use the MCL that applies in the Client's Distribution system.

7. All samples to assess compliance with the above Water Quality Specifications and all other applicable State and Federal water quality regulations, except for samples for TTHM and HAA5 analysis, are to be collected at one mutually agreed upon location at the Huntington Beach seawater desalination plant. All TTHM and HAA5 samples are to be collected at one mutually agreed upon location in Client's distribution system, unless otherwise specified by applicable State and Federal regulations.

Examples of interpreting the central tendency and the extreme:

- a. TDS - Central tendency requirement: no more than 26 samples among any 52 contiguous weekly samples may exceed 350 mg/L.
- b. TDS – Extreme: no more than 5 samples among any 52 contiguous weekly samples may exceed 400 mg/L.
- c. Turbidity - central tendency requirement: no more than 1440 measurements among 2880 contiguous measurements recorded at 15 minute intervals may exceed 0.3 NTU.
- d. Turbidity - extreme requirement: no more than 288 measurements among 2880 contiguous measurements recorded at 15 minute intervals may exceed 0.5 NTU.