

**PROJECT LABOR AGREEMENT  
FOR  
THE CARLSBAD DESALINATION PROJECT**

**SAN DIEGO COUNTY, CALIFORNIA**

1. INITIAL PROVISIONS

1.1 This Project Labor Agreement (“Agreement”) is entered into by Kiewit Shea Desalination, a Joint Venture (“Primary Employer”); the State Building and Construction Trades Council of California (“State Council”); and the San Diego Building & Construction Trades Council (“Local Council”) and the local unions who have executed this Agreement, all of whom are referred to collectively as the “Unions.” This is a stand-alone Project Labor Agreement between the above mentioned parties and shall expire at the completion of the construction of the Carlsbad Desalination Project.

1.2 The Carlsbad Desalination Project (the “Project”) is an approximately 54 million gallon per day desalination facility and water delivery pipeline system primarily located in the City of Carlsbad, California. Poseidon Resources (Channelside) LLC (“Poseidon” or “Owner”) is the owner of the Project. It is understood and agreed by and between the Parties to this Agreement that the final plans for the Project may be subject to modifications and approval by those public agencies possessing lawful approval authority over the Project. This Agreement applies to all construction of the Project as it is finally approved by such entities and agencies.

1.3 Primary Employer is the EPC contractor to Poseidon for the Project and will act as general contractor. Primary Employer is a contractor engaged primarily in the building and construction industry.

1.4 As provided below, all contractors, subcontractors or other persons or entities assigning, awarding or subcontracting Covered Work (as defined in Article 2), or authorizing another party to assign, award or subcontract Covered Work, or performing Covered Work will be subject to this Agreement by executing Attachment A, the Employer Agreement to be Bound (all of whom, including

Primary Employer, are individually and collectively referred to as “Employer” or “Employers”).

1.5 The Unions are labor organizations whose members are construction industry employees who generally work in close proximity to one another at construction job sites and whose jobs are closely related and coordinated. Each of the Unions is a party to a multi-employer collective bargaining agreement (“Master Agreement”) that covers the geographic area of the Project. Where the term Master Agreement is used, it means the existing Master Agreement currently in effect as to each of the Unions.

1.6 A large labor pool represented by the Unions will be required to execute the work involved in the Project. Employers wish, and it is the purpose of this Agreement, to ensure that a sufficient supply of skilled craft workers are available at the Project, that all construction work and related work performed by the members of the Unions on this Project shall proceed continuously, without interruption, in a safe and efficient manner, economically with due consideration for the protection of labor standards, wages and working conditions. In furtherance of these purposes and to secure optimum productivity, harmonious relations between the parties and the orderly performance of the work, the parties to this Agreement agree to establish adequate and fair wage levels and working conditions and to protect the Project against strikes and lockouts and other interference with the process of the work.

1.7 It is a central purpose of Employers in executing this Agreement to protect the Project against the jobsite friction that could arise at a common-situs jobsite if union employees had to work alongside non-union employees in their own craft or in those other crafts with which they generally work in close proximity performing work that is closely related and coordinated. This Agreement accomplishes Primary Employer’s purpose by ensuring that all Covered Work will be performed by workers who are union members. In the event that any

construction work falls outside the scope of this Agreement, the Employers further protect themselves from the natural result of jobsite friction by prohibiting all strikes, picketing or similar activity for any reason whatsoever, and by imposing severe penalties on any Union that violates this prohibition.

1.8 In the interest of the future of the construction industry in the local area, of which the Unions are a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work and cooperate with the management of the Project to produce the most efficient utilization of labor and equipment in accordance with this Agreement.

## 2. SCOPE OF AGREEMENT

2.1 This Agreement covers all on-site construction, alteration, painting or repair of buildings, structures and other works and related activities for the Project that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project, including, without limitation, pipelines (including those in linear corridors built to serve the Project), pumps, pump stations, start-up, site preparation, material inspection and testing, all on-site fabrication work provided such work is within the fabrication provision of a local master or national agreement of one of the Unions, demolition of existing structures, and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. On-site fabrication work includes work done for the Project in temporary yards or areas near the Project. All fabrication work over which the Owner possesses the right of control, other than vendor-supplied piping, including without limitation, the fabrication of air-handling systems and ducts, and HVAC sheet metal work, and which is traditionally claimed as on-site fabrication shall be performed on-site. For the convenience of Primary Employer or other Employers, such work may be performed off-site. In that event, such fabrication work shall be performed in accordance with the union standards established by this Agreement for the appropriate craft Union or by a fabrication agreement approved

by the craft's International Union. Vendor-supplied piping (supplied by IDE) is exempt from the Union fabrication requirements as contained in this section. On-site construction shall also include the site of any batch plant constructed solely to supply materials to the Project. All work within the scope of this Agreement is referred to as "Covered Work" in this Agreement.

2.2 Specialized or technical manual work requiring specialized training, unique skills, or a level of specific technical experience which employees represented by the Union do not possess is excluded from this Agreement. At least ten (10) working days notice shall be given to the Local Council before any work is performed pursuant to this Section.

2.3 This Agreement applies to all employees performing Covered Work. It does not apply to Primary Employer's technical or non-manual employees including, but not limited to, executives, superintendents, inspectors not covered by a collective bargaining agreement, staff engineers, mail carriers, guards, safety personnel, emergency medical and first aid technicians, other profession engineering, administrative, community relations or public affairs personnel, environmental compliance personnel, office and clerical employees, drafters, supervisors not covered by a collective bargaining agreement, time keepers, messengers, or any other employees above the classification of general foreman or who perform administrative/clerical functions.

2.4 This Agreement covers all physical work typically performed by craft labor in California that is part of startup and commissioning, including but not limited to system flushes and testing, loop checks, rework and modifications, functional and operational testing up to and including the final running test. It is understood that Owner's, manufacturer's and vendor's representatives, and plant operating personnel may supervise and direct this activity, and that craft work is typically performed as part of a joint effort with these representatives and personnel. A manufacturer or its representatives may perform industry standard

work to satisfy its guarantee or warranty prior to startup of a piece of equipment. After a system or subsystem becomes operational and upon acceptance, Covered Work on that system or subsystem is completed. However, system flushes, rework, modifications and other related work normally provided as a function of the construction effort and normally provided by members of the Unions will be performed by members of the Unions.

### 3. SUBCONTRACTING

3.1 Primary Employer, and each other Employer agree that they will contract for the assignment, awarding or subcontracting of Covered Work, or authorize another party to assign, award or subcontract Covered Work, only to a person, firm, corporation or other entity that, at the time the contract is executed, has become a party to this Agreement by executing Attachment A, the Agreement to be Bound.

3.2 Primary Employer, and each other Employer agree that they will subcontract Covered Work only to a person, firm, corporation or other entity who is or becomes party to this Agreement and (except for the Primary Employer and its joint venture members) who is or becomes signatory to either a local, area or regional Master Agreement with the craft Union having traditional and customary building trades craft jurisdiction over the work or, only in the case of a national contractor, a national agreement with the International Union of the craft Union having traditional and customary jurisdiction over the work. Any Employer (including Primary Employer) performing Covered Work on the Project shall, as a condition to working on the Project, perform all work under the terms of this Agreement and the applicable Master Agreement. Before being authorized to perform any Covered Work, Employers (other than Primary Employer) shall become a party to this Agreement by signing Attachment A, the "Agreement to be Bound." Every Employer shall notify the Local Council and the State Council in writing within five business days after it has subcontracted work, and shall at the same

time provide to the Local Council and the State Council a copy of the executed Agreement to be Bound.

3.3 Nothing in this Agreement shall in any manner whatsoever limit the rights of the Primary Employer, or any other Employer, to subcontract Covered Work or to select its contractors or subcontractors, provided, however, that all Employers, at all tiers, assigning, awarding, contracting or performing, or authorizing another to assign, award, contract or perform Covered Work shall be required to comply with the provisions of this Agreement. Primary Employer and every other Employer shall notify each of its contractors and subcontractors of the provisions of this Agreement and require as a condition precedent to the assigning, awarding or subcontracting of any Covered Work or allowing any subcontracted Covered Work to be performed, that all such contractors and subcontractors at all tiers become signatory to this Agreement and (except for the Primary Employer and its joint venture members) be signatory to the applicable Master Agreement. Any Employer that fails to provide the Local Council and State Council with the Employer Agreement to be Bound executed by its contractor or subcontractor shall be liable for any failure of that contractor or subcontractor, to comply with the provisions of this Agreement. That Employer's liability shall not be for wages and contributions, but shall equal the wages and trust fund contributions not received as a result of the failure.

#### 4. WAGES AND BENEFITS

4.1 All employees covered by this Agreement (including foremen and general foremen if they are covered by the Master Agreement) shall be classified and paid wages, other compensation including but not limited to travel, subsistence, and shift premium pay, and contributions made on their behalf to multi-employer trust funds, all in accordance with the then current multi-employer Master Agreement of the applicable Union.

4.2 Any special interest bargaining which establishes wage rates, classifications, zones, or wage escalations which apply exclusively to the Project will not be recognized. In addition, there shall be no redlining of the Project in any future multi-employer collective bargaining agreements by singling out, either by name or by effect, the Project or the Employers for less favorable wages, benefits or working conditions than are generally accorded other industrial projects in the same general geographic area.

## 5. UNION RECOGNITION

5.1 The Employers recognize the Unions signatory to this Agreement as the sole and exclusive collective bargaining agents for their respective construction craft employees performing Covered Work for the Project, and further recognize the traditional and customary craft jurisdiction of each Union.

5.2 All employees performing Covered Work shall be or shall become and then remain members in good standing of the appropriate Union as a condition of employment on or before the eighth (8th) day of employment, or the eighth (8th) day following the execution of this Agreement, whichever is later.

5.3 The Unions shall be the source of all craft employees for Covered Work for the Project. Employers agree to be bound by the hiring and layoff practices of the respective Union, including hiring of apprentices, and to utilize its registration facilities and referral systems.

5.4 In the event the referral facilities maintained by the Unions do not refer the employees as requested by the Employer within a forty eight (48) hour period after such requisition is made by the Employer (Saturdays, Sundays and holidays excepted), the Employer may employ applicants from any source, but shall arrange for a dispatch to be issued for such applicant from the Union within twenty four (24) hours of the commencement of employment and the dispatch shall upon



request be issued to the Union to the employee. Employer will notify the Unions of such gate-hires.

5.5 Each Union shall have the right to designate a working journeyperson as a steward. The steward shall be a qualified employee performing the work of that craft and shall not exercise any supervisory functions. Each steward shall be concerned with the employees of the steward's Employer and not with the employees of any other Employer. A steward shall be allowed sufficient time to perform his duties.

## 6. WORK STOPPAGES AND LOCKOUTS

6.1 During the term of this Agreement there shall be no strikes, sympathy strikes, picketing, work stoppages, slow downs, interference with the work or other disruptive activity at the Project site for any reason by the Union or by any employee and there shall be no lockout by any Employer. Failure of any Union or employee to cross any picket line established at the Employer's Project site is a violation of this Article.

6.2 The Union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the same project for a period of not less than ninety (90) days.

6.3 The Union shall not be liable for acts of employees for which it has no responsibility. The business manager(s) of the respective Union(s) will immediately instruct, order and use the best efforts of his office to cause the Union(s) to cease any violations of this Article. The principal officer or officers of a Union will

immediately instruct, order and use the best efforts of his office to cause the employees the Union represents to cease any violations of the Article. A Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Employer to exercise its right in any instances shall not be deemed a waiver of its right in any other instance.

6.4 The Union(s) agrees that if any union or any other persons, whether parties to this Agreement or otherwise, engage in any picketing or work stoppages, the signatory Unions shall consider such work stoppage or picketing to be illegal, and refuse to honor such picket line or work stoppage.

6.5 In the event of any work stoppage, strike, sympathy strike, picketing interference with the work or other disruptive activity in violation of this Article, the Employer may suspend all or any portion of the project work affected by such activity at the Employer's discretion and without penalty.

6.5.1 There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns or interference with the work during the term of this Agreement. Any Union which initiates or participates in a work stoppage in violation of this Article, or which recognizes or supports the work stoppage of another Union which is in violation of this Article, agrees as a remedy for said violation, to pay liquidated damages in accordance with Section 6.6.8 of this Article.

6.6 In lieu of, or in addition to, any other action at law or equity, any party may institute the following procedure when a breach of this Article is alleged, after the Union(s) and/or local union(s) has been notified of the fact.

6.6.1 The party invoking this procedure shall notify Norman Brand or Michael Rappaport who the parties to this agreement agree shall be the permanent Arbitrators under this procedure. In the event that either of the permanent Arbitrators is unavailable at any time, either one of the permanent Arbitrators shall nominate a replacement arbitrator within twenty-four (24) hours of notice.

Notice to the Arbitrator shall be by the most expeditious means available, with notice by fax or electronic means or any other effective written means, to the party alleged to be in violation and the involved International Union President, and or local union.

6.6.2 Upon receipt of said notice the Arbitrators named above shall set and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists.

6.6.3 The Arbitrator shall notify the parties by fax or electronic means or any other effective written means, of the place and time he has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.

6.6.4 The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The Arbitrator may order cessation of the violation of this Article by the Union, and such Award shall be served on all parties by hand or registered mail upon issuance.

6.6.5 Such Award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. The fax or electronic notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's Award as issued under Section 6.6.4 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order

or orders enforcing the Arbitrator's Award shall be served on all parties by hand or by delivery to their last known address or by registered mail.

6.6.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by the parties to whom they accrue.

6.6.7 The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.

6.6.8 If the Arbitrator determines that a violation has occurred in accordance with Section 6.6.4 above, the party or parties found to be in violation shall pay as liquidated damages, the following amounts: for the first shift in which the violation occurred, \$15,000; for the second shift, \$20,000; for the third shift, \$25,000; for each shift thereafter on which the craft has not returned to work, \$25,000 per shift. The Arbitrator shall retain jurisdiction to determine compliance with this section and this Article.

6.7 The procedures contained in Section 6.6 shall be applicable to alleged violations of this Article. Disputes alleging violation of any other provision of this Agreement, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance procedures of Article 8.

6.8 Notwithstanding the provisions of Section 6.1 above, it is agreed that, with two business days prior notice to the Primary Employer, a Union retains the right to withhold the services of its members from a particular contractor or subcontractor who fails to make timely payments to the Union's benefit plans, or fails to timely pay its weekly payroll, in accordance with its agreements with the Union; provided, however, that in the event the Union or any of its members withholds their services from such contractor or subcontractor, Primary Employer

shall have the right to replace such contractor or subcontractor with any other contractor or subcontractor who executes the Agreement to be Bound.

6.9 It will not be a violation of this Agreement when the Employer considers it necessary to shut down to avoid the possible loss of human life because of an emergency situation that could endanger the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Employer requests employees to wait in a designated area available for work the employees will be compensated for the waiting time.

6.10 In the event that any applicable labor agreement expires and the parties to that agreement fail to reach agreement on a new contract by the date of expiration, a Union shall not engage in any strike, sympathy strike, picketing, work stoppage, slow down, interference with the work, or other disruptive activity at the Project site for any reason and shall continue to provide employees to the Employers to perform Covered Work on the Project under all the terms of the expired agreement until a new agreement is negotiated, at which time all terms and conditions of that new agreement shall be applied to Covered Work at the Project, except to the extent they conflict with any provision of this Agreement. In addition, if the new labor agreement provides for wage or benefit increases, then any Employer shall pay to its employees who performed Covered Work at the Project during the hiatus between the effective dates of such labor agreements, an amount equal to any such wage and benefit increases established by the new labor agreement for such work performed.

6.11 The provisions of this Article 6 apply only to the Project and not to any other project or location.

7. HOURS OF WORK AND HOLIDAYS

7.1 The standard work day shall consist of eight (8) hours of work between 6:00 a.m. and 5:30 p.m. with one-half hour designated as an unpaid period for lunch. The standard work week shall be five (5) consecutive days of work commencing on Monday. Nothing herein shall be construed as guaranteeing any employee eight (8) hours of work per day or forty (40) hours of work per week.

7.2 Recognized holidays shall be as follows:

7.2.1 New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day. Under no circumstances shall any work be performed on Labor Day except in cases of emergency involving life or property. In the event a holiday falls in Saturday, the previous day, Friday, shall be observed as such holiday. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. There shall be no paid holidays. If employees are required to work on a holiday, they shall receive the appropriate rate; but in no case shall such overtime rate be more than double the straight time rate.

8. GRIEVANCE PROCEDURE

8.1 It is mutually agreed that any question arising out of and during the term of this Agreement involving its interpretation and application (other than jurisdictional disputes or successorship) shall be considered a grievance. Questions between or among parties signatory to a Master Agreement arising out of or involving the interpretation of a Master Agreement shall be resolved under the grievance procedure provided in that Master Agreement.

8.2 Employers, as well as the Unions, may bring forth grievances under this Article.

8.3 A grievance shall be considered null and void if not brought to the attention of the Employer(s) within five (5) working days after the incident that initiated the alleged grievance occurred or was discovered, whichever is later. The term "working days" as used in this Article shall exclude Saturdays, Sundays or holidays regardless of whether any work is actually performed on such days.

8.4 Grievances shall be settled according to the following procedure except that grievances that do not involve an individual grievant shall be discussed by the Primary Employer, State Council and Local Council and then, if not resolved within 5 working days of written notice unless extended by mutual consent, commence at Step 4:

Step 1

The Steward and the grievant shall attempt to resolve the grievance with the craft supervisor within five (5) working days after the Grievance has been brought to the attention of the Employer.

Step 2

In the event the matter remains unresolved in Step 1 above after five (5) working days, within five (5) working days thereafter, the alleged grievance may be referred in writing to the Business Manager(s) of the Union(s) affected and the site construction manager or Labor Relations representative of the Employer(s) for discussion and resolution. A copy of the written grievance shall also be mailed/faxed/mailed to the Primary Employer.

Step 3

In the event the matter remains unresolved in Step 2 above within five (5) working days, within five (5) working days thereafter, the grievance may be referred in writing to the Business Manager(s) of the affected Union(s) involved and the Manager of Labor Relations of the Employer(s) or the Manager's designated representative, and Primary Employer for discussion and resolution.

Step 4

If the grievance is not settled in Step 3 within five (5) working days, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request

for arbitration and/or the request for an extension of time must be in writing with a copy to the Primary Employer. Should the parties be unable to mutually agree on the selection of an Arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the San Diego office of the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance. Primary Employer shall keep a record of the sequence and shall notify the parties to the grievance as to which party has the right to strike a name first.

8.5 The Arbitrator shall conduct a hearing at which the parties to the grievance shall be entitled to present testimonial and documentary evidence. Hearings will be transcribed by a certified court reporter. The parties shall be entitled to file written briefs after the close of the hearing and receipt of the transcript.

8.6 Upon expiration of the time for the parties to file briefs, the Arbitrator shall issue a written decision that will be served on all parties and on Primary Employer. The Arbitrator shall have the authority to utilize any equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement. The arbitrator may only award contract damages. The Arbitrator's decision shall be final and binding as to all parties signatory to this Agreement.

8.7 The cost of the Arbitrator and the court reporter, and any cost to pay for facilities for the hearing, shall be borne equally by the parties to the grievance. All other costs and expenses in connection with the grievance hearing shall be borne by the party who incurs them.

8.8 The Arbitrator's decision shall be confined to the issue(s) posed by the grievance and, except as provided in Section 13.1.1, the Arbitrator shall not have the authority to modify, amend, alter, add to or subtract from, any provision of this Agreement.



8.9 Any party to a grievance may invite Primary Employer to participate in resolution of a grievance. Primary Employer may, at their own initiative, participate in Steps 1 through 3 of the grievance procedure.

8.10 In determining whether the time limits of Steps 2-4 of the grievance procedure have been met, a written referral or request shall be considered timely if it is personally delivered, faxed or postmarked within the five (5) working day period. Any of the time periods set forth in this Article may be extended in writing by mutual consent of the parties to the grievance, and any written referral or request shall be considered timely if it is personally delivered, faxed or postmarked during the extended time period.

## 9. JURISDICTIONAL DISPUTES

9.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

9.2 All jurisdictional disputes between or among the Unions and their employees, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

9.3 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

9.4 Each Employer will conduct a pre-job conference with the Local Council prior to commencing work. Primary Employer and any other Employer will be advised in advance of all such conferences and may participate if they wish.

10. GENERAL WORKING CONDITIONS

10.1 Employment begins and ends at the project site.

10.2 The selection of craft foremen and/or general foremen shall be entirely the responsibility of the Employer, it being understood that in the selection of such foremen and/or general foremen the Employer will give primary consideration to the qualified individuals referred to the Employer who are available in the local area. After giving such consideration, the Employer may select such individuals from other areas. The number of foremen and general foremen required shall be in accordance with the respective local craft Master Agreements. All foremen shall take orders from the designated Employer representatives. Craft foremen shall be designated working foremen at the request of the Employer, in accordance with the Master Agreement.

10.3 There shall be no limit on production by employees or restrictions on the full use of tools or equipment. Employees using tools shall perform any of the work of the trade and shall work under the direction of the craft foremen. There shall be no restrictions on efficient use of manpower other than as may be required by safety regulations.

10.4 Employees shall be at their place of work and ready to work at the starting time (which is the gang box, tool box or place where the foreman gives instructions to employees). A reasonable time will be allowed for employees to put company and personal tools in secured storage and return to the parking lot by quitting time. The Employer will provide adequate facilities for checking in and out in an expeditious manner.

10.5 The Employer may utilize the most efficient methods or techniques of construction, tools or other labor saving devices to safely accomplish the work.

10.6 Individual seniority shall not be recognized or applied to employees working on projects under this Agreement.

10.7 The Employer shall establish and employees shall observe such reasonable project job site work rules as the Employer deems appropriate. These rules will be reviewed and discussed at the pre-job conference, distributed to all employees, posted at the project site by the Employer, and may be amended thereafter as necessary.

10.8 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms while on the Owner's premises or at any time before or during the work day is prohibited. The parties to this agreement will negotiate a drug and alcohol abuse policy applicable to the Project acceptable to all parties.

## 11. MANAGEMENT RIGHTS

11.1 The Employer retains and shall exercise full and exclusive authority and responsibility for the management of its operations and work forces, except as expressly limited by the terms of this Agreement. This authority includes, but is not limited to, the rights retained by the Employer under the applicable Master Agreement and the right to:

11.1.1 Plan, direct and control the operation of all the work.

11.1.2 Decide the number and type of employees required for the work.

11.1.3 Hire, promote and lay off employees as deemed appropriate to meet work requirements and/or skills required.

11.1.4 Discharge, suspend or discipline employees for just cause as provided in the work rules.

11.1.5 Assign and schedule work at its sole discretion and determine when overtime will be worked. There shall be no refusal by a Union to perform work, including overtime work, assigned. Such cases shall be subject to the grievance procedure.

11.1.6 Utilize any safe work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or designer, except as limited by Section 2.1.

11.1.7 The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein. The Employers, therefore, retain all legal rights not specifically enumerated in this Agreement.

## 12. JOINT LABOR/MANAGEMENT MEETINGS

12.1 During the period of any work performed under this Agreement, the parties will endeavor to hold a joint Labor/Management meeting on an approximately monthly basis or more frequently as needed between Primary Employer, the other Employers, and the signatory Unions. The purpose of these meetings is to promote harmonious labor/management relations, ensure adequate communications and advance the proficiency and efficiency of the craft workers and contractors performing work at the Project. These monthly (or more frequent) meetings will also include discussion of safety, craft resource requirements, scheduling and productivity of work performed at the Project.

12.2 A Pre-Job Conference and Mark-up Meeting will be held prior to the commencement of work to establish the scope of work in each Employer's contract. When a contract has been let to an Employer(s) covered by this Agreement, a Pre-

Job Conference and/or Mark-Up Meeting shall be required upon request of any Union, Primary Employer or any other Employer.

12.3 Primary Employer will schedule and attend all Pre-Job Conferences and Mark-Up Meetings.

13. LABOR MANAGEMENT COOPERATION TRUST

13.1 Within 10 days of the first hour of Covered Work being performed on the Project, Primary Employer shall contribute the sum of \$18,750 to the California Construction Industry Labor Management Cooperation Trust or its designee. Within 10 days of the 6 month, 12 month and 18 month anniversary of the first hour of Covered Work being performed on the Project, Primary Employer shall contribute the sum of \$18,750 to the California Construction Industry Labor Management Cooperation Trust or its designee, for a total contribution of \$75,000. After such payments are made, there shall be no further obligation by the, Owner or any other Employer(s) to make any contribution to the Trust.

14. HELMETS TO HARDHATS

14.1 The Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment ("Center"), a joint Labor-Management Cooperation Trust Fund, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring,

support network, employment opportunities and other needs as identified by the parties.

14.2 The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans and members of the National Guard and Reserves interested in working on this Project and apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans and members of the National Guard and Reserves for bona fide, provable past experience.

14.3 In recognition of the work of the Center and the value it will bring to the Project, within 10 days of the first hour of Covered Work being performed on the Project, Primary Employer shall make a onetime contribution of \$5,000 to the Center on behalf of itself and all other Employers employing workers under the terms of this Agreement.

14.4 The Center shall function in accordance with, and as provided in the Agreement and Declaration of Trust creating the fund, and any amendments thereto, and any other of its governing documents. Primary Employer approves and consents to the appointment of the Trustees designated pursuant to the Trust Agreement establishing the Center and hereby adopts and agrees to be bound by the terms and provisions of the Trust Agreement.

14.5 If Primary Employer fails to pay the contribution owed to the Center within thirty (30) days of the date when such contribution is due, it shall be liable to the Trust for all costs of collection incurred by the Trust, including, attorneys' fees and court costs. The Trustees are empowered to initiate proceedings at law or equity, and to take any other lawful action necessary to collect contributions and all other payments due.

## 15. GENERAL PROVISIONS

15.1 If any article or provision of this Agreement shall become invalid, inoperative and/or unenforceable by operation of law or by declaration of any competent authority of the executive, legislative, judicial or administrative branches of the federal or state government, the Employers and the State Council shall suspend the operation of such article or provision during the period of its invalidity, and Primary Employer and the State Council shall negotiate in its place and stead an article or provision that will satisfy the objections to its validity and that, to the greatest extent possible, will be in accord with the intent and purpose of the article or provision in question. The new article or provision negotiated by Primary Employer and the State Council shall be binding on all parties signatory to this Agreement.

15.2 If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law, or by any of the above mentioned tribunals of competent jurisdiction, the remainder of the Agreement or application of such article or provision to persons or circumstances other than to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

15.3 Except as enumerated in this Agreement, all other terms and conditions of employment described in the Master Agreement of the Union having traditional and customary jurisdiction over the work shall apply.

15.4 The provisions of this Agreement shall take precedence over conflicting provisions of any Master Agreement or any other national, area or local collective bargaining agreement except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement and the National Cooling Tower Agreement; all instrument calibration work and loop checking Covered Work shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians and work within the craft jurisdiction of the Elevator Constructors will be performed under the terms of the National

Agreements of the International Union of Elevator Constructors; provided that Articles 6, 8 and 9 of this Agreement shall apply to all Covered Work.

15.5 Each person executing this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the party or parties indicated.

15.6 This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any signature pages may be assembled to form a single original document.

15.7 To the fullest extent consistent with the applicable Master Agreement and trust agreement, it is agreed that any liability under this Agreement by Primary Employer, the State Council, the Local Council, a Union, or any other Employer shall be several and not joint. Any alleged breach of this Agreement by a party shall not affect the rights, liabilities, obligations, and duties among the other parties or between that party and any other party.

15.8 Any notices required under this Agreement shall be given as follows:

To Primary Employer:  
Kiewit Shea Desalination, a  
Joint Venture  
David Kirkwood  
10704 Shoemaker Ave.  
Santa Fe Springs, CA 90670

To the State Council:  
Robert L. Balgenorth, President  
State Building and Construction  
Trades Council of California  
1225-8th Street, Suite 375  
Sacramento, CA 95814  
Telephone: 916-443-3302

To the Local Council:  
Tom Lemmon, Business Manager  
San Diego County Building and  
Construction Trades Council  
3737 Camino del Rio South, Suite 202  
San Diego, CA 92108  
Telephone: 619-521-2914



With a copy to:

John S. (Rocky) Miller, Jr.  
Cox, Castle & Nicholson LLP  
2049 Century Park East,  
28<sup>th</sup> Floor  
Los Angeles, CA 90067  
Telephone: 310 277-4222  
jmiller@coxcastle.com

With a copy to:

Marc D. Joseph  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
Telephone: 650-589-1660

Either party may notify the other in writing if its person designated to receive notice is changed.

16. WAIVER

16.1 The parties hereby acknowledge that this Agreement is a lawful pre-hire agreement within the meaning of Section 8(f) of the National Labor Relations Act; and Primary Employer and each other Employer hereby expressly waives its right to contest, challenge, repudiate or void (hereinafter collectively "challenge") this Agreement, directly or indirectly, on any basis, in any proceeding before any federal, state or local court, agency or other tribunal, including the National Labor Relations Board, or before any arbitrator or hearing officer, including any challenge to the validity of this Agreement that is raised as a defense to any action or claim brought by the Unions. This Agreement shall be a complete defense to any such challenge.

16.2 Each Employer further agrees that it shall not solicit, finance or participate in any challenge to this Agreement by any other person or entity. Payment of regular annual dues to an organization or association does not constitute "solicitation," "financing" or "participation in" a challenge as those terms are used in this Agreement.

16.3 This Article shall be enforced pursuant to Article 8 of this Agreement and any grievance shall commence at Step 3 of Section 8.4. The parties agree that

the economic damages to the Unions from a breach of this Article include the reasonable fees and costs of defense.

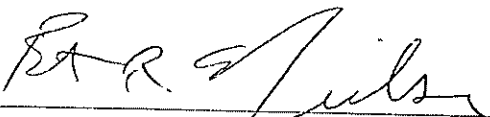
17. TERM OF AGREEMENT

17.1 The term of this Agreement shall commence on the date indicated below as the date of execution, and shall continue in effect until completion of all Covered Work pursuant to Article 2.

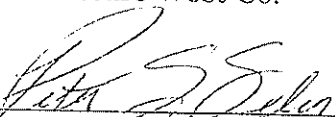
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of \_\_\_\_\_, 2012.

KIEWIT SHEA DESALINATION, A  
JOINT VENTURE

STATE BUILDING & CONSTRUCTION  
TRADES COUNCIL OF CALIFORNIA

  
By: Brent R Nielsen, Sr. Vice President  
and District Manager, Kiewit  
Infrastructure West Co.

By: Robert L. Balgenorth, President

  
By: Peter S Seley, Executive Vice  
President, JF Shea Construction

SAN DIEGO BUILDING &  
CONSTRUCTION TRADES COUNCIL

By: Tom Lemmon , Business Manager



ATTACHMENT B  
SUBSCRIBER AGREEMENT

The undersigned hereby adopt the Trust Agreement known as the California Construction Industry Labor-Management Cooperation Trust Agreement, hereinafter referred to as "Trust" and agree to be bound by the terms thereof. The undersigned employer Subscriber and Union hereby grant Powers of Attorney to the Board of Trustees now holding office, or to the successors, to administer the Trust as representatives of the employer and Union respectively, with full power and authority to act for the employer and Union in all matters of administration of the Trust. In no event shall the Union or employer be responsible for any act or omission of the Trustees nor shall the Union or employer have any liability for any debt or liability of the Trust or its Trustees.

The employer Subscriber shall pay to the Trust the amount specified by the Agreement at the time specified by the Agreement. The undersigned employer Subscriber acknowledges that the failure by the employer to timely remit required contributions will result in liquidated damages being payable under the Trust Agreement to which the employer Subscriber is hereby bound.

The undersigned represent and warrant that they are authorized to execute this Agreement on behalf of their respective organizations and that by their respective execution of this Subscriber Agreement their respective organizations are fully bound hereto and the provisions of the Trust Agreement.

By: \_\_\_\_\_ Date \_\_\_\_\_  
Kiewit Shea Desalination, A Joint  
Venture

By: \_\_\_\_\_ Date \_\_\_\_\_  
State Building & Construction  
Trades Council