



SC-66-11

WATER PURCHASE AGREEMENT

by and between

VIRGIN ISLANDS WATER AND POWER AUTHORITY

and

SEVEN SEAS WATER CORPORATION (USVI)

dated as of

APRIL 5, 2012

 14 H

TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS..... 7

ARTICLE 2. TERM AND EARLY TERMINATION..... 13

 Section 2.1 Contract Term..... 13

 Section 2.2 Extension of Contract Term 13

 Section 2.3 Removal 13

ARTICLE 3. CONSTRUCTION OF THE FACILITY 14

 Section 3.1 Description and Location of the Facility..... 14

 Section 3.2 Design of the Facility 15

 Section 3.3 Commercial Operation Date..... 15

 Section 3.4 Construction Milestones..... 15

 Section 3.5 Responsibilities of WAPA 16

 Section 3.6 Permits and Approvals..... 17

 Section 3.7 Facility Contracts..... 18

 Section 3.8 Progress Reports 18

 Section 3.9 Inspection and Testing..... 19

 Section 3.10 Test Water 19

 Section 3.11 Construction Security..... 19

ARTICLE 4. WATER PURCHASE AND SALE 20

 Section 4.1 Sale and Purchase of Water..... 20

 Section 4.2 Water Charge..... 20

 Section 4.3 Water Quality Standards 20

 Section 4.4 Scheduling and Dispatch 21

 Section 4.5 Scheduling and Dispatch Obligations 21

 Section 4.6 Exceptions to Obligation to Dispatch Water 22

 Section 4.7 Risk of Loss..... 23

 Section 4.8 Exclusivity..... 23

 Section 4.9 Government Grants, Credits, Incentives, or Abatements..... 25

 Section 4.10 Audit..... 26

ARTICLE 5. BILLING AND PAYMENT 26

 Section 5.1 Meter Reading; Invoicing..... 26

 Section 5.2 Invoicing 26

 Section 5.3 Payment of Invoices..... 27

 H.A.

Section 5.4	Invoice Disputes	28
ARTICLE 6. FACILITY SPECIFICATIONS RATING		28
Section 6.1	Water Measurement	28
Section 6.2	Facility Specifications Rating Criteria	28
Section 6.3	Initial Facility Specifications Rating	28
Section 6.4	Facility Specifications Rerating	29
Section 6.5	Water Quality Rerating	30
Section 6.6	Water Test Interruptions	30
ARTICLE 7. FACILITY LOCATION AND WATER SYSTEM INTERCONNECTION		30
Section 7.1	Facility Location	30
Section 7.2	Facility Design Plans to be provided by Seven Seas	30
Section 7.3	Interconnection Facilities	31
Section 7.4	Seven Seas' Obligations	31
Section 7.5	Soil Conditions of the Site	31
Section 7.6	WAPA's Obligations	32
Section 7.7	Technical Requirements and Operations	32
Section 7.8	Site Access	32
ARTICLE 8. OPERATION AND MAINTENANCE		32
Section 8.1	Operations Schedule	32
Section 8.2	Scheduled Maintenance Outages	33
Section 8.3	Operation and Maintenance	33
Section 8.4	Operating Representatives	33
Section 8.5	Project Management Procedures	34
Section 8.6	Environmental Credits	34
Section 8.7	Equal Opportunity Employment Certification	35
ARTICLE 9. METERING		35
Section 9.1	Installation of Meter	35
Section 9.2	Measurement and Invoicing of Water Delivered; Testing of Water Meter	35
Section 9.3	Facility's Electrical Consumption	35
ARTICLE 10. AUDITS		35
Section 10.1	Audit Rights	35
Section 10.2	Operating Records	35
Section 10.3	Operating Log	35

DB AH

Section 10.4	Billing and Payment Records.....	36
ARTICLE 11.	INSURANCE	36
Section 11.1	Seven Seas' Insurance Requirements.....	36
Section 11.2	WAPA's Insurance Requirements	36
ARTICLE 12.	UNCONTROLLABLE CIRCUMSTANCES.....	36
Section 12.1	Effect of Uncontrollable Circumstance.....	36
Section 12.2	Changes Due to Uncontrollable Circumstance	36
Section 12.3	Termination Due to Uncontrollable Circumstance.....	37
Section 12.4	Destruction	37
ARTICLE 13.	DEFAULT AND TERMINATION.....	38
Section 13.1	Seven Seas Default	38
Section 13.2	WAPA Default.....	39
Section 13.3	Termination for Seven Seas or WAPA Default.....	40
Section 13.4	WAPA's Right to Control and Operate Facility.....	41
Section 13.5	Remedies Cumulative	42
ARTICLE 14.	LIMITATION ON LIABILITY AND INDEMNIFICATION.....	42
Section 14.1	Exclusion of Consequential Damages.....	42
Section 14.2	Indemnification by Seven Seas	42
Section 14.3	Indemnification by WAPA.....	43
Section 14.4	Termination Remedy; Liquidated Damages	43
Section 14.5	Limitation on Liability	43
Section 14.6	Subrogation	43
ARTICLE 15.	REPRESENTATIONS AND WARRANTIES.....	44
Section 15.1	Representations and Warranties of Seven Seas.....	44
Section 15.2	Representations and Warranties of WAPA.....	45
ARTICLE 16.	DISPUTE RESOLUTION	45
Section 16.1	Continued Performance.....	45
Section 16.2	Negotiations	46
Section 16.3	Arbitration.....	46
ARTICLE 17.	TAXES	48
Section 17.1	Seven Seas' Liability for Taxes.....	48
Section 17.2	Gross Receipt Taxes.....	48
ARTICLE 18.	MISCELLANEOUS	49

[Handwritten Signature] A.R.

Section 18.1	Seven Seas' Assignment Rights.....	49
Section 18.2	WAPA's Assignment Rights	50
Section 18.3	Ownership of Facility	50
Section 18.4	Further Assurances.....	50
Section 18.5	Relationship of Parties.....	51
Section 18.6	Notices	51
Section 18.7	Waiver.....	51
Section 18.8	Confidential Information	52
Section 18.9	Public Utility.....	53
Section 18.10	Subcontracting	53
Section 18.11	Employees of Seven Seas	53
Section 18.12	Survivals	53
Section 18.13	Posting of Vacancies	53
Section 18.14	Headings	54
Section 18.15	Governing Law.....	54
Section 18.16	Third Party Rights.....	54
Section 18.17	Counterparts	54
Section 18.18	Severability.....	54
Section 18.19	Terms Generally.....	54
Section 18.20	Entire Document	54
EXHIBIT A - DESCRIPTION OF THE FACILITIES AND SITES		57
EXHIBIT B - LIST OF ANTICIPATED PERMITS AND APPROVALS.....		58
EXHIBIT C - FEED WATER CHARACTERISTICS.....		59
EXHIBIT D - [RESERVED].....		60
EXHIBIT E - LEASE BETWEEN LANDLORD AND TENANT.....		61
EXHIBIT F - INTERCONNECTION FACILITIES SPECIFICATIONS		62
EXHIBIT G - DESCRIPTION OF FACILITY METERING & HIGH PRESSURE PROTECTIVE DEVICES		80
EXHIBIT H - SAFE DRINKING WATER STANDARDS		81
EXHIBIT I - SEVEN SEAS' FINANCIAL STATEMENTS.....		82
SCHEDULE 1. FACILITY SPECIFICATIONS.....		84
SCHEDULE 2. CHARGES FOR WATER		85
SCHEDULE 3. REQUIREMENTS FOR COMMERCIAL OPERATION DATE.....		87

JRB A.H.

SCHEDULE 4. PROJECT MILESTONES	88
SCHEDULE 5. DISPATCH OBLIGATIONS	89
SCHEDULE 6. METERING	90
SCHEDULE 7. SPECIFICATIONS FOR WATER	92
SCHEDULE 8. [RESERVED]	93
SCHEDULE 9. [RESERVED]	94
SCHEDULE 10. INSURANCE REQUIREMENTS	95
SCHEDULE 11. SCHEDULING AND DISPATCH	101
SCHEDULE 12. [RESERVED]	102
SCHEDULE 13. [RESERVED]	103
SCHEDULE 14. FORM OF INVOICE	104
SCHEDULE 15. ELECTRICAL CONSUMPTION	105

 H.H.

WATER PURCHASE AGREEMENT

THIS WATER PURCHASE AGREEMENT (this "Agreement") is made and entered into as of April 5th, 2012 ("Contract Commencement Date") by and between the VIRGIN ISLANDS WATER AND POWER AUTHORITY ("WAPA"), a public authority established and existing under the laws of the United States Virgin Islands (the "U.S. Virgin Islands"), and Seven Seas Water Corporation (USVI), ("Seven Seas"), a corporation organized and existing under the laws of the United States Virgin Islands. Each of WAPA and Seven Seas may be referred to in this Agreement as the "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Seven Seas desires to construct, own and operate a minimum of 3.3 MGD water production facility (as more fully described in Exhibit A hereto, the "Facility") located at the Richmond Generation Plant on the island of St. Croix, U.S. Virgin Islands; and,

WHEREAS, Seven Seas desires to sell and deliver to WAPA, and WAPA desires to purchase and accept from Seven Seas, water produced by the Facility; and,

WHEREAS, Seven Seas has responded to WAPA's 2010 Request for Proposals (PR-19-10) to provide water, product pumping and transfer tank with a capacity of no more than 20 kgal to WAPA (the "RFP"), and WAPA has selected Seven Seas to provide water, product pumping and transfer tank with a capacity of no more than 20 kgal in accordance with the terms and conditions of this Agreement; and,

WHEREAS, concurrently with the execution and delivery of this Agreement, WAPA and Seven Seas have executed and delivered to one another a lease in the form set forth as Exhibit E (the "Lease"), pursuant to which WAPA is leasing the Site to Seven Seas; and,

NOW, THEREFORE, in consideration of the mutual promises and covenants of each Party to the other contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

The following terms shall have the meanings set forth below:

"Affiliate" of a given party means any other person directly or indirectly controlling, directly or indirectly controlled by, or under direct or indirect common control with, such Party and any assigns, subsidiaries, or any new entity formed as result of a merger, consolidation, or reorganization involving the Party, or in connection with a sale of all or substantially all of the assets or voting stock of the Party. For this purpose, "controlling" means having fifty percent (50%) or greater ownership of voting securities of the entity controlled (or, without such ownership, having the right by contract or otherwise to direct the management and policies of the entity controlled).

"Agreement" has the meaning set forth in the Preamble.

"Applicable Interest Rate" means the interest rate, as applicable, of nine percent (9%) per annum for any amounts outstanding between 31 and 60 days from the date originally invoiced, twelve percent (12%) per annum for any amounts outstanding between 61 and 90 days from the

AH 

date originally invoiced and fifteen percent (15%) per annum for any amounts outstanding for more than 90 Days from the date originally invoiced.

"Applicable Laws" means any and all federal, U.S. Virgin Islands, state, or local statutes, laws, municipal charter provisions, regulations, ordinances, rules, mandates, judgments, orders, decrees, Permits and Approvals, codes or license requirements, or other governmental requirements or restrictions, or any interpretation or administration of any of the foregoing by any Governmental Authority, that apply to the services or obligations of either Party under this Agreement, whether now or hereafter in effect.

"Billing Period" means each calendar month commencing on the Commercial Operation Date and ending on the last Day of the Contract Term; provided, that the first Billing Period shall commence on the Commercial Operation Date and shall end at 12:00 midnight at the end of the last Day of the calendar month in which the Commercial Operation Date occurs and the last Billing Period shall end at 12:00 midnight at the end of the last Day of the Contract Term.

"Change in Law" means the enactment, adoption, promulgation, modification, repeal, or change after the Contract Date of any Applicable Law that (a) applies directly to Seven Seas, WAPA, the Facility, the Site or WAPA's Water System and (b) establishes requirements that significantly and adversely impact either Party financially or operationally, or imposes on either Party burdens significantly greater than those that were in effect with respect to operation of the Facility or WAPA's Water System on the Contract Date.

"Codes and Standards" means all industrial or engineering codes, standards, or guidelines, and insurance requirements applicable to the design, engineering, construction, completion, start-up, testing, commissioning, operation or maintenance of the Facility.

"Commercial Operation Date" means the date that WAPA provides notice to Seven Seas, pursuant to Section 3.3, that all of the conditions set forth on Schedule 3 have been satisfied and Seven Seas has met the requirements of Schedule 4.

"Confidential Information" means all confidential information, trade secret information, or proprietary information, in written or electronic form, which is disclosed by the Disclosing Party to the Receiving Party, and which is marked or designated in writing at the time of disclosure as "proprietary" or "confidential"; provided, that Confidential Information shall exclude (i) information that, at the time of disclosure hereunder, is in the public domain, other than information that entered the public domain by breach of this or any other agreement, or in violation of any Applicable Law; (ii) information that, after disclosure hereunder, enters the public domain, other than information that entered the public domain by breach of this or any other agreement, or in violation of any Applicable Law; (iii) information that, prior to disclosure hereunder, was already in the Receiving Party's possession, either without limitation on disclosure to others or subsequently becoming free of such limitation; (iv) information obtained by the recipient from a third party having an independent right to disclose the information; or (v) information that is available through independent research without use of or access to Confidential Information.

"Construction Security Amount" has the meaning set forth in Section 3.11.

Handwritten signature and initials, possibly "H.H.", in the bottom right corner of the page.

"Consulting Engineer" means a reputable engineering firm, experienced in the water treatment industry, selected by WAPA with the approval of Seven Seas, such approval shall not unreasonably be withheld or delayed, and retained by WAPA at WAPA's expense.

"Contract Capacity" means a minimum of 3.3 MGD for First Pass Water and a minimum of 0.25 MGD for Ultrapure Water.

"Contract Date" and "Contract Commencement Date" means the date of execution of this Agreement.

"Contract Term" has the meaning set forth in Section 2.1.

"Day" means a calendar day.

"Delivery Point(s)" means the physical point on the "Interconnection Facilities" where Seven Seas' ownership and maintenance responsibility ends – which will include the water meters used to measure First Pass Water and Ultrapure Water and as set forth in Schedule 6 – and WAPA's ownership and maintenance responsibility begins. The location of the Delivery Point(s) shall be on WAPA's property, as close as practical, but no further than fifteen feet (15') from Seven Seas' leased premises.

"Disclosing Party" has the meaning set forth in Section 18.8

"Disclosure Order" shall mean a judgment or final order from a court of competent jurisdiction, which orders the Receiving Party to disclose Confidential Information.

"Dispute" has the meaning set forth in Section 16.2.

"Dispute Notice" has the meaning set forth in Section 16.2.

"Distillation Plant Maintenance" has the meaning set forth in Section 4.8(g).

"Dollars" or "\$" means United States Dollars.

"DPNR" means the U.S. Virgin Islands Department of Planning and Natural Resources or its successors.

"EDI" means the electrodeionization of water to produce Ultrapure Water.

"EPA" means the U.S. Environmental Protection Agency or its successors.

"Extended Operation Date" has the meaning set forth in Section 3.4(a).

"Extended Outage" means (a) a complete outage at the Facility for more than thirty (30) consecutive Days due to circumstances within Seven Seas' control, or (b) the failure of Seven Seas to schedule and deliver for any consecutive sixty (60) Day period at least 3.3 MGD of First Pass Water and 0.25 MGD of Ultrapure Water using EDI from the Facility due to circumstances within Seven Seas' control, provided that WAPA's demand requirements for First Pass Water and Ultrapure Water dictated such a need during the above-referenced consecutive 60-day period in accordance with Schedule 11.

"Facility" has the meaning set forth in the Recitals.

"First Pass Water" means water produced by seawater reverse osmosis that meets the water standards set forth in Section 4.3(a)-(b).

HA 

"Gallon" means a unit of liquid measure equal to four (4) United States quarts.

"Good Engineering and Operating Practices" means generally accepted and sound utility industry practices, methods and acts applicable to similarly situated U.S. facilities, which at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Applicable Laws, reliability, safety, environmental protection, economy and expedition. With respect to the Facility, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:

- (a) adequate materials, resources and supplies, including raw water in sufficient reliable volumes and quality, are available to meet the Facility's needs under normal conditions and reasonable anticipated abnormal conditions;
- (b) sufficient qualified operating, maintenance and supervisory personnel are available and adequately experienced and trained to operate, maintain and supervise the Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions;
- (c) preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable and safe long-term operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures;
- (d) appropriate monitoring and testing are done periodically to ensure that equipment and systems are functioning as designed and to assure that equipment and systems will function properly under normal conditions and emergency conditions; and
- (e) equipment and systems are operated in a manner safe to workers, the general public and the environment and with regard to design and operating limitations such as pressure, temperature, chemical content, quality of effluent and so forth.

"Governmental Authority" means (a) the government of the U.S. Virgin Islands, (b) any federal, state, local, municipal or other government, or (c) any other governmental, quasi-governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory, or taxing authority or power having jurisdiction over either Party, the Site, the Facility, the Interconnection Facilities, or WAPA's Water System, whether acting under actual or assumed authority; provided, that for purposes of this Agreement, WAPA shall not be deemed to be a Governmental Authority.

"Harley Facility" means the water production facility as contemplated in the water purchase agreement executed by WAPA and Seven Seas on May 12, 2011 regarding the Harley Generation Plant.

"Industrial Grade Water" means water that is processed by a combination of seawater and brackish water reverse osmosis and/or EDI (if required) to meet a conductivity level of 150 μ S/cm or below.

H.H. 

"Installed Capacity" means the maximum capacity which the Facility is designed to produce daily which will initially be a minimum of 3.3 MGD of First Pass Water, a portion of which will be further processed to produce a minimum of 0.25 MGD of Ultrapure Water. The Installed Capacity may also be expanded to a total minimum of 4.4 MGD of First Pass Water according to the procedure as set forth in Schedule 1.

"Interconnection Point(s)" for First Pass Water means the physical point of interconnection to WAPA's Water System as depicted in PR-19-10, Clarification 1.8.e Exhibit G; and for Ultrapure Water means the physical point of interconnection to WAPA's Ultrapure Water System as agreed by both Parties and depicted in Exhibit A of this Agreement.

"Interconnection Facilities" means all facilities and equipment including the high pressure protective devices as depicted in Exhibit G, physical structures, easements and right of ways – installed by Seven Seas at Seven Seas' cost – necessary to connect Seven Seas' Facility to WAPA's Interconnection Point(s). Upon Seven Seas' Commercial Operation Date, ownership and maintenance responsibility of the Interconnection Facilities beyond the Delivery Point(s) shall be transferred to WAPA.

"Invoice" has the meaning set forth in Section 5.2(b).

"kgal" means one thousand Gallons.

"KGD" means one thousand Gallons per day.

"MGD" means one million Gallons per day.

"Milestones" has the meaning set forth in Section 3.4(a).

"Minimum Water Quality" has the meaning set forth in Section 4.3(a)-(b).

"Operating Representatives" has the meaning set forth in Section 8.4.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Permits and Approvals" means any and all permits, approvals, consents, authorizations, agreements, licenses, or inspection certificates of, by, or with any Governmental Authority necessary or desirable for Seven Seas to construct, own and operate the Facility for the distribution of Water to WAPA.

"Person" means any legal or natural person, including any individual, corporation, partnership, limited liability company, joint stock company, association, joint venture, trust, Governmental Authority or other entity.

"Project Management Procedures" has the meaning set forth in Section 8.5.

"Public Request" shall have the meaning set forth in Section 18.8(c).

"Receiving Party" has the meaning set forth in Section 18.8(a).

"RFP" has the meaning set forth in the Recitals.

"Request" shall mean any demand, application, freedom of information act (FOIA) submission, claim, lawsuit or inquiry sent to or served upon the Receiving Party, in any form, that seeks Confidential Information.

HH 

"Required Disclosure" has the meaning set forth in Section 18.8(b).

"Safe Drinking Water Standards" has the meaning set forth in Section 4.3(a)-(b).

"Scheduled Maintenance Outages" means those scheduled maintenance outages for the Facility planned by Seven Seas each calendar year pursuant to Section 8.2.

"Seven Seas" shall mean Seven Seas Water Corporation (USVI), regardless of a change in name resulting from a merger, consolidation or any sale of Seven Seas.

"Site" means the parcel of land on the Island St. Croix, U.S. Virgin Islands, as determined pursuant to Section 3.1 herein, where the equipment comprising the Facility will be situated.

"Storage and Distribution Facilities" means storage tanks, pumps, pipe, valves, fittings, and other appurtenances used for the transmission, storage and distribution of potable water.

"Test Protocol" has the meaning set forth in Section 3.9.

"Test Water" has the meaning set forth in Section 3.10

"UCC" means the Uniform Commercial Code of the U.S. Virgin Islands.

"Ultrapure Water" means First Pass Water that is further processed by brackish water reverse osmosis and EDI to meet the water standards set forth in Section 4.3(c).

"Uncontrollable Circumstance" means any act, event or condition, that is not caused by the negligence or lack of due diligence of the Party relying thereon as justification for any failure of performance hereunder, that is beyond the reasonable control of such party, and that has a material adverse effect on the performance of the affected Party's obligations under this Agreement, including: (a) act of God, hurricane, tornado, lightning, earthquake, fire, explosion, flood, act of public enemy, war, blockade, insurrection, riot or civil disturbance, sabotage, or the exercise of the power of eminent domain, condemnation or other taking by or on behalf of any public, quasi-public or private Person; (b) a deviation of feed water quality by greater than 10% of those parameters found in Exhibit C, with the exception of that parameter for temperature; and (c) Change in Law; provided, that the following acts or events shall not be considered an Uncontrollable Circumstance: (i) breakdown of the affected Party's equipment (or inability to use such equipment) caused by its design, construction, operation, maintenance or inability to meet regulatory standards existing at the time of execution of this Agreement or otherwise caused by an event originating from the affected Party's equipment at the Facility; (ii) any event or circumstance arising from the Facility's failure to meet the requirements of Section 3.1, Section 3.2 and Schedule 1; (iii) strikes, lockouts other labor disturbances; and (iv) any event of circumstance that the Facility is to be designed to withstand in accordance with Section 3.1, Section 3.2 and Schedule 1.

"U.S. Virgin Islands" has the meaning set forth in the Preamble.

"WAPA" has the meaning set forth in the Preamble.

"WAPA Fiscal Year" means the fiscal year of WAPA, which as of the Contract Date is the twelve-month period beginning each July 1 and concluding on June 30, as such fiscal year may be changed from time to time by WAPA upon reasonable notice to Seven Seas.

HA 

"WAPA's Water System" means the Storage and Distribution Facilities owned, operated and maintained from time to time by WAPA.

"Water" means First Pass Water or Ultrapure Water produced by the Facility and delivered to WAPA at the Delivery Point.

"Water Capacity Test" has the meaning set forth in Section 6.2, Section 6.3 and Schedule 1.

"Water Charge" means the amount in Dollars payable by WAPA per kgal of Water, as calculated pursuant to Schedule 2.

"Water Meter" means the integrated water meters installed by Seven Seas at the Delivery Point pursuant to Schedule 6.

"Water Pressure Test" has the meaning set forth in Section 6.3(c).

"Water Quality Test" means testing performed in accordance with EPA and DPNR Permits and Approvals and in compliance with the Safe Drinking Water Standards for First Pass Water or with the water standards set forth in Schedule 7.1(a) and Schedule 7.1(b) for Ultrapure Water.

"Water System Emergency" means the existence of a physical or operational condition and/or the occurrence of an event on WAPA's Water System which is: (a) imminently likely to endanger life, health, property, or the environment; or (b) impairs and/or imminently will impair: (i) WAPA's ability to discharge its statutory obligation(s) to provide safe, adequate and proper service to its water customers, and/or (ii) the safety and/or reliability of the WAPA's Water System.

"Water Test" has the meaning set forth in Section 6.2.

"Water Transfer Pressure" shall be the transfer pressure as described in Schedule 1(g).

ARTICLE 2. TERM AND EARLY TERMINATION

Section 2.1 Contract Term

The term of this Agreement shall commence on the Contract Commencement Date and shall expire, unless extended by Section 2.2 herein, on the earlier occurrence of (a) the Fifteenth (15th) anniversary of the Commercial Operation Date (the "Initial Term"), unless sooner terminated in accordance with ARTICLE 12 or ARTICLE 13 or (b) the termination of the Lease Agreement, (the "Lease") entered into by the parties herewith (the "Contract Term").

Section 2.2 Extension of Contract Term

WAPA may extend the Initial Term for one additional five (5) year period by delivering a written notice of such extension to Seven Seas not less than one (1) year prior to the expiration of the Initial Term.

Section 2.3 Removal

Seven Seas shall comply promptly with all obligations, if any, that may be imposed by Applicable Law to remove the Facility upon the expiration of the Contract Term or the Lease Agreement or the earlier termination of either as provided therein. Notwithstanding anything

AH 

contained in this Agreement, Seven Seas shall have a period of one hundred eighty (180) days following the date the Contract Term actually ends; to remove the Facility from the Site and Seven Seas shall have an easement to access the Site during such period as and whenever necessary to remove the Facility therefrom. Upon the removal of the Facility, Seven Seas shall return the Site to a condition no worse than the condition the Site is in when Seven Seas took possession. It is understood and agreed that if the preparation of the Site and the construction of the Facility require the demolition and/or modification of any structures on the Site, Seven Seas shall not be required to restore any such structures in connection with the removal of the Facility and return of the Site pursuant to this Section 2.3.

ARTICLE 3. CONSTRUCTION OF THE FACILITY

Section 3.1 Description and Location of the Facility

The Facility shall be capable of producing a minimum of 3.3 MGD Seawater Reverse Osmosis first pass Water with 0.25 MGD ultrapure with EDI water production facility located at the Site. The Parties acknowledge that the Site has yet to be determined as of the Contract Date. As such, the Site shall be determined as follows:

- (a) WAPA has located two (2) possible Sites.
 - (i) Site No. 1 is a parcel of property which was formerly utilized by WAPA as parking lot and is located directly south of the south-east entrance to WAPA's Richmond Plant's security entrance, hereinafter called the "Lot Property," and is more accurately depicted in Exhibit "A." The Lot Property is owned by the Government of the Virgin Islands. WAPA is currently attempting to acquire ownership to the Lot Property from the Virgin Islands Government.
 - (ii) Site No. 2, is called the Devcon Property, hereinafter called "Devcon," which is located within WAPA's Richmond Plant boundaries owned by WAPA.
- (b) Due to its location, the Parties agree that the preferred site is the Lot Property which will provide the maximum efficiency in construction, design and compatibility with Seven Seas' existing facility and WAPA's existing infrastructure.
- (c) Seven Seas shall, within fourteen (14) days of Contract Date, begin the permitting process for both the Lot Property and the Devcon Property pursuant to Section 3.6 below. It is understood by the Parties that permitting emphasis should be provided to the Lot Property.
- (d) Within one hundred and twenty (120) days of the Contract Date, WAPA shall obtain ownership of the Lot Property, hereinafter the "Ownership Period." If necessary, WAPA may extend the Ownership Period by an additional sixty (60) days by providing written notice to Seven Seas, within seven (7) days prior to the end of the Ownership Period, that such extension is necessary. Any other

AA- 

extension of time regarding the Ownership Period, other than the initial 30 day extension described herein, must be agreed to in writing by the Parties.

- (e) In the event that WAPA does not acquire ownership of the Lot Property in the time period specified in Section 3.1(d) above, then Deveon shall become the Site with WAPA assuming responsibility for all costs associated with remedying any soil conditions (including but not limited to unfavorable soil compaction and/or soil contamination) at Deveon that may delay the project and/or adversely impact the cost of civil works ("Deveon Civil Works") for the Facility.
- (f) All other costs necessary to construct the Facility as specified in this Contract, other than those associated with Section 3.1(e) above and those specified in Schedule 2.1(c) below, shall remain the responsibility of Seven Seas.

Section 3.2 Design of the Facility

Seven Seas shall proceed with due diligence to design, engineer, procure, and construct the Facility in accordance with this Agreement, the Codes and Standards, Good Engineering and Operating Practices and Applicable Laws. The Facility shall adhere to the specifications set forth in Schedule 1.

Section 3.3 Commercial Operation Date

The Facility shall achieve the Commercial Operation Date when Seven Seas has demonstrated to WAPA, and WAPA has accepted by written notice to Seven Seas, which acceptance and notice may not be unreasonably withheld, conditioned or delayed, that each of the conditions set forth on Schedule 3 has been satisfied. Unless extended as provided herein, subject to WAPA having fully and timely performed all of its obligations in Section 3.5 and elsewhere in this Agreement, Seven Seas shall fully and timely perform all of its obligations under this Section 3.3 and elsewhere in this Agreement required in connection with the design, construction and testing of the Facility. Seven Seas shall use commercially reasonable efforts to cause the Facility to achieve the Commercial Operation Date and to be fully capable of reliably producing and delivering Water in accordance with this Agreement no later than the date set forth in Schedule 4 (the "Commercial Operation Date").

Section 3.4 Construction Milestones

- (a) Seven Seas shall meet the Commercial Operation Date as set forth on Schedule 4. Seven Seas shall submit a construction schedule to WAPA at least fifteen (15) Days prior to starting construction of the Facility. If Seven Seas fails to achieve Commercial Operation by the Commercial Operation Date, as set forth on Schedule 4, then Seven Seas shall pay to WAPA the per day liquidated damages amount corresponding to said missed Commercial Operation Date. Upon WAPA's receipt of such liquidated damages, the Commercial Operation Date, shall be extended day-for-day for each Day for which such delay damages are paid, up to a maximum extension of ninety (90) Days ("Extended Commercial Operation Date").

AH


- (b) To the extent that Seven Seas' failure to meet the Commercial Operation Date or the Extended Commercial Operation Date is attributable to a delay caused by an Uncontrollable Circumstance or WAPA's failure to fully and timely perform all of its obligations in Section 3.5 or elsewhere in this Agreement, WAPA shall not be paid delay damages provided in Section 3.4(a) and Seven Seas' obligation to achieve such Commercial Operation Date or the Extended Commercial Operation Date shall be extended day-for-day for each Day for which such delay is caused by an Uncontrollable Circumstance or any such failure by WAPA, up to a maximum extension of ninety (90) Days or as and to the extent otherwise set forth in ARTICLE 12, including the termination provisions set forth in Section 12.3.

Section 3.5 Responsibilities of WAPA

- (a) WAPA accepts the responsibility, including all costs and expenses relating thereto, for the following duties necessary for construction and operation of the Facility:
- (i) Provide Seven Seas' personnel with 24-hour access, including access via barge, to the leased property as necessary for the design, installation, operation, inspection, maintenance, repair and removal, if necessary, of the Facility.
 - (ii) Provide to Seven Seas a reasonable material lay down area for the construction of the Facility as outlined in Exhibit A, along with 24-hour accessibility for Seven Seas' personnel.
 - (iii) Provide 480 volts, 60 Hz, up to 3,730 KVA necessary for electrical service to the Facility and 480 volts, 60 Hz, up to 333 KVA necessary for electrical service to the Ultrapure Water facility including from the Contract Date through the termination of the Lease, including throughout the periods of the development, construction and testing phases of the Facility, its operation and its removal, an electric meter, and an electrical disconnect switch as specified in Schedule 15, unless Seven Seas requests in writing that WAPA not do so as contemplated by Schedule 15.
 - (iv) Provide, maintain and operate any desired chemical post-treatment of the Water including chemical injection stations and those related to chlorine;
 - (v) Provide and maintain space in appropriate Storage and Distribution Facilities to receive Water from the Facility;
 - (vi) File all reports required by Governmental Authorities to be filed by WAPA and pay for all water tests required of WAPA by Governmental Authorities. Maintain in full force and effect all Intake permits and TPDES permits related to all outfall effluents, after Seven Seas applies for and obtains same;



HH

- (vii) Provide authorization to Seven Seas to obtain a dedicated telephone line to the control center of the Facility and access to high-speed (726/384) Internet with the cost of such telephone line and Internet access to be paid by Seven Seas;
 - (viii) Provide access from the Facility to, and maintenance, operation and repair, if necessary, the existing WAPA outfall line to permit sufficient drainage of any effluent discharged from the Facility;
 - (ix) Provide access from the Facility to Richmond Plant Intake Structure such that Seven Seas may maintain, operate and repair, if necessary, all pumps, pipes, valves and appurtenances installed by Seven Seas at the Richmond Plant Intake Structure which are necessary for Seven Seas' operation of the Facility. WAPA shall be solely responsible for the maintenance and repairs of the physical structure and pipeline of the Richmond Plant Intake Structure and any pumps, pipes, valves and appurtenances that WAPA installed for its own operation on the Richmond Plant Intake Structure;
 - (x) Provide Seven Seas' personnel with access to its sanitary facilities or provide Seven Seas access to sanitary mains for connection of Seven Seas' own sanitary facilities within the Facility;
 - (xi) Provide written notice to Seven Seas that WAPA has completed all items required under this Section 3.5 to be done by WAPA; and,
 - (xii) Abide by the terms and conditions of the Lease Agreement.
- (b) Seven Seas shall establish a sampling location at the delivery point and prior to Seven Seas' outfall discharge commingling with WAPA's discharge. Seven Seas shall maintain procedures and test monthly its discharge outfall effluent as required under WAPA's TPDES Permit. Seven Seas shall be responsible for all costs associated with remedying any violation of WAPA's TPDES Permit directly associated with Seven Seas' outfall effluent to the extent that such problem is not otherwise attributable to an Uncontrollable Circumstance or the failure of WAPA to perform its obligations set forth in Section 3.5 and elsewhere in the Agreement. Seven Seas shall not be liable if any violation of WAPA's TPDES Permit is a result of a contamination or change in the quality of feed water as set forth in Exhibit C, in which case, then the Parties will use commercially reasonable efforts to seek a mutually beneficial solution in a timely manner to correct such violation.

Section 3.6 Permits and Approvals

- (a) Seven Seas shall provide, to the best of its knowledge, a list of all Permits and Approvals necessary under Applicable Laws to enable it to construct, own and operate the Facility and said list shall be attached to this Contract as Exhibit B.

 AH

- (b) Seven Seas shall, in good faith, prepare at Seven Seas' expense all Permits and Approvals which will be required from all Governmental Authorities with jurisdiction over Seven Seas, the Facility or the Site and which are necessary for the construction, completion, operation and maintenance of the Facility or the Site and for Seven Seas to perform its other obligations under this Agreement. Seven Seas shall comply with all Permits and Approvals throughout the term of this Contract once same are obtained.
- (c) WAPA's representative shall sign all completed Permit and Approval applications and assist Seven Seas with its application and presentation of any completed permit applications, approvals or requests to all necessary Governmental Authorities. Regardless of said signature and presentation, WAPA shall not be responsible in any way whatsoever to Seven Seas for any delays in the acquisition of the required Permits and Approvals or environmental studies or assessments that may be necessary for Seven Seas to perform its obligations under this Agreement.
- (d) Seven Seas shall have eighteen (18) months from the Contract Date to acquire all Permits and Approvals necessary under Applicable Laws to construct, own and operate the Facility ("Permit Deadline"). In the event that Seven Seas is unable to acquire the necessary Permits and Approvals required to construct, own and operate the Facility within eighteen (18) months from the Contract Date then the Parties may mutually agree to extend the Permit Deadline by which Seven Seas must acquire said Permits and Approvals for an additional six (6) months (the "Permit Extension"). Should Seven Seas fail to acquire the necessary or desirable Permits and Approvals by the end of either the Permit Deadline or, if applicable, by the end of the agreed upon Permit Extension date, then either Party may cancel this Agreement with written ten (10) days notice of cancellation. Upon cancellation, this Agreement shall become null and void with each Party thereby released from all further obligations and liabilities to the other Party.

Section 3.7 Facility Contracts

- (a) Seven Seas shall provide to WAPA, as the following becomes known to Seven Seas, the name(s), address(es), telephone number(s) and facsimile number(s) of all contractors who will perform construction work for Seven Seas regarding the Facility, including but not limited to, all engineers, general contractors, and sub-contractors.
- (b) Seven Seas shall also provide WAPA with reasonable evidence that it has the capability to finance the Facility's construction and such evidence shall consist of the Seven Seas' Financial Balance Sheet as attached in Exhibit I.

Section 3.8 Progress Reports

Seven Seas shall submit construction progress reports on or before the first business Day of every month until the Commercial Operation Date and notify WAPA of any changes to the


HH.

construction and completion schedules in a timely manner. WAPA shall have the right to monitor the construction, completion, start-up, testing and commissioning of the Facility.

Section 3.9 Inspection and Testing

- (a) Seven Seas shall submit its start-up and test schedule for the Facility (including the Initial Water Test) for WAPA's review as set forth in Schedule 3 prior to start-up and testing. Seven Seas shall follow the Initial Water Test as set forth in Section 6.3 to establish whether the Commercial Operation Date has occurred (the "Test Protocol"). WAPA shall have the right to have representatives present for such testing. Seven Seas shall cooperate in such physical inspections of the Facility as may be reasonably required by WAPA during the Contract Term. WAPA's technical review and inspection of the Facility shall neither be construed as endorsing the design thereof nor as any warranty of the safety, durability or reliability of the Facility.
- (b) Seven Seas shall include in its startup and test schedule the hydrostatic testing, contaminant flushing, disinfection and de-chlorination schedules for the Interconnection Facilities. Seven Seas may hydrostatically test the Interconnection Facilities in advance of the Initial Water Test, but shall flush, disinfect and de-chlorinate the Interconnection Facilities no later than seven (7) days prior to the Initial Water Test. Seven Seas shall conform to all applicable AWWA standards and afford the WAPA representative reasonable access to witness such activities.

Section 3.10 Test Water

Seven Seas shall coordinate the production and delivery of Water during the construction, start-up, testing and commissioning of the Facility to WAPA's Water System prior to the Commercial Operation Date ("Test Water") with WAPA. WAPA shall cooperate with Seven Seas to facilitate Seven Seas' testing of the Facility and shall accept delivery of all Test Water at the Delivery Point and purchase such Test Water at the prices set forth in Schedule 2; provided, however, that before WAPA accepts any Test Water, such Test Water shall satisfy the Water Standards set forth in Schedule 7. WAPA shall not be required to accept or purchase Test Water in excess of the Water associated with Contract Capacity. The Parties shall use their respective good faith efforts to schedule the delivery of Test Water for the times when it would otherwise be economically dispatched by WAPA.

Section 3.11 Construction Security

Within sixty (60) days of obtaining all necessary Permits and Approvals as defined in Section 3.6 and Schedule 4, Seven Seas shall confirm the deposit into an secured account at Bank of America or such other bank as agreed to by both Parties pursuant to the Agreement for the Harley Generation Plant dated May 12, 2011, the amount of one million dollars (\$1,000,000.00), ("Construction Security Amount"), to secure Seven Seas' obligations to meet the Milestones and to pay liquidated damages as provided in Section 3.4 and Schedule 4. The total Construction Security Amount for both the Facility and the Harley Facility combined shall not exceed one million dollars (\$1,000,000.00). Seven Seas shall give WAPA written notice that Seven Seas has

Handwritten signature and initials, possibly "JB" and "HH", in the bottom right corner of the page.

completed eighty percent (80%) of both the Facility and Harley Facility's construction. Upon receipt of said notice, WAPA shall, within ten (10) Days, provide Seven Seas with WAPA's written authorization to withdraw eighty percent (80%) of the Construction Security Amount (\$800,000.00) or WAPA's Dispute Notice. In the event that WAPA fails to provide its written authorization or Dispute Notice within the ten (10) Days, then WAPA shall be deemed to have consented to said withdrawal. The twenty percent (20%) balance of Construction Security Amount remaining in the Bank of America account or other bank account as agreed to by both Parties, totaling (\$200,000.00), shall remain with Bank of America or such other bank as agreed to by both Parties until the Commercial Operation Dates for both the Facility and the Harley Facility have been achieved pursuant to Section 3.4 whereupon WAPA shall, within ten (10) Days, provide Seven Seas authorization to withdraw the remaining 20% of the Construction Security Amount or WAPA's Dispute Notice. Said Construction Security Amount shall be deposited with specific instructions that any amount payable to either Party shall only be paid after the resolution of any ARTICLE 16 Dispute, if applicable.

ARTICLE 4. WATER PURCHASE AND SALE

Section 4.1 Sale and Purchase of Water

Commencing on the Commercial Operation Date and continuing throughout the Contract Term and subject to the terms and conditions of this Agreement, Seven Seas shall sell and deliver to WAPA, and WAPA shall purchase and accept from Seven Seas, all of WAPA's Water as provided in Section 4.5 and Section 4.6.

Section 4.2 Water Charge

Promptly following the end of each Billing Period, Seven Seas shall determine the amount of Water delivered to WAPA during such Billing Period as provided in ARTICLE 9. WAPA shall pay to Seven Seas, in respect of such Billing Period and in accordance with ARTICLE 5, the amounts determined in accordance with Schedule 2.

Section 4.3 Water Quality Standards

- (a) **Safe Drinking Water Quality Standards:** The First Pass Water to be delivered by Seven Seas to WAPA shall meet the quality standards set forth in the Safe Drinking Water Act (as amended), Pub. L. 93-523 codified at 42 U.S.C. § 300f et seq., and the associated rules, regulations and standards contained in 40 C.F.R. parts 141 through 149 as attached in Exhibit H, and the other standards set forth on Schedule 7, except for those quality standards that depend on chlorine sterilization and/or post treatment which shall be the responsibility of WAPA (collectively, the "Safe Drinking Water Standards").
- (b) **Changes in Water Quality Standards:** If the Safe Drinking Water Standards were to change from those in effect on the Contract Date and the Facility's ability to satisfy those changes require the purchase of additional equipment or the making other capital investments by Seven Seas or increase the operating costs of the Facility, Seven Seas shall confer with WAPA. If the Parties agree, such agreement not to be unreasonably withheld, conditioned or delayed by any Party, that the cost to address the changes are commercially reasonable, Seven Seas will

 RB AH

make such expenditures to purchase the additional equipment or make the other capital investments, and WAPA may elect to pay such capital expenditures either as: (1) a lump sum payment equal to the aggregate amount of such capital expenditures made by Seven Seas promptly upon the complete installation of such additional equipment or (2) the Water Charges to be paid by WAPA as specified in Schedule 2 will be increased to amortize such capital expenditures over the then remaining Contract Term. In addition to the reimbursement of the capital expenditures referred to in the preceding sentence, any increase in the Water Charges to be paid by WAPA, as specified in Schedule 2, will be negotiated by the Parties to reflect any increased operating costs incurred by Seven Seas that are associated with such changes in the Safe Drinking Water Standards over the then remaining Contract Term, if applicable.

- (c) **Ultrapure Water:** Seven Seas warrants that the Ultrapure Water delivered to WAPA shall meet a guaranteed resistivity of 10M Ω -cm or more for direct use in WAPA's power generating equipment.
- (d) Notwithstanding anything to the contrary in this Agreement, Seven Seas shall not be responsible for (i) a complete outage at the Facility or, (ii) a decrease in the amount or quality of Water produced by the Facility, including any failure to satisfy the Safe Drinking Water Standards or the other standards set forth on Schedule 5 and Schedule 7, caused by any reason that includes (a) an Uncontrollable Circumstance, or (b) the failure of WAPA to perform its obligations set forth in Section 3.5(a) and elsewhere in this Agreement, or (c) the unavailability of power, fuel or other utilities or supplies necessary for Seven Seas to operate the Facility. If a complete outage occurs at the Facility or there is a decrease in the amount or quality of Water produced by the Facility for which Seven Seas is not responsible as contemplated by the preceding sentence, the Contract Term shall automatically be extended by periods equal to the number of Days such interruptions occurred. If any of the events described in this Section 4.3(d) should occur and result in a complete outage at the Facility or a decrease in the amount or quality of Water produced by the Facility, WAPA and Seven Seas shall use their respective commercially reasonable efforts to find a solution to such interruption.

Section 4.4 Scheduling and Dispatch

- (a) Seven Seas shall schedule the availability of the Facility to produce and deliver Water to the applicable Delivery Points in accordance with the procedures set forth on Schedule 11.
- (b) WAPA's assigned representative(s) shall coordinate with Seven Seas' representative to determine the dispatch through the control valves at the applicable Delivery Points in accordance with the procedures set forth on Schedule 11.

Section 4.5 Scheduling and Dispatch Obligations

JRB
AH.

- (a) Commencing on the Commercial Operation Date and continuing throughout the Contract Term and subject to the terms and conditions of this Agreement, for each Billing Period.
 - (i) Seven Seas shall schedule, deliver and sell to WAPA water amounts determined in accordance with Schedule 5.
 - (ii) WAPA shall schedule, accept and purchase from Seven Seas water amounts determined in accordance with Schedule 5.
- (b) Seven Seas shall ensure that the actual quantity of Water delivered from the Facility to the Delivery Point shall be as determined in accordance with Schedule 11.

Section 4.6 Exceptions to Obligation to Dispatch Water

- (a) Without limiting the provisions of Section 4.6(b), WAPA shall not be obligated to accept Test Water, or to dispatch the Facility and accept or purchase Water in accordance with this ARTICLE 4, to the extent any of the following circumstances apply:
 - (i) WAPA's Storage and Distribution Facilities are loaded to their maximum capacity;
 - (ii) During any Water System Emergency if WAPA has reduced interconnection service or disconnected the Facility, or if such purchases would contribute to such Water System Emergency or if the Facility must be disconnected;
 - (iii) With respect to First Pass Water only, during any period of time when the Facility does not comply with the requirements for First Pass Water set forth in Section 4.3(a), or Section 4.3(b) with respect to Ultrapure Water only, during any period of time when the Facility does not comply with the requirements for Ultrapure Water set forth in Section 4.3(c);
 - (iv) WAPA intentionally interrupts acceptance of the Facility's Water (A) to conduct planned maintenance of WAPA's Storage and Distribution Facilities; or (B) to conduct maintenance or testing; or (C) to install or replace equipment of the Interconnection Facilities; or
 - (v) Without limiting the provisions in ARTICLE 12, during any period in which performance by either Party is prevented by Uncontrollable Circumstances.
- (b) WAPA shall not be obligated to purchase Water, nor be liable for damages of any kind to Seven Seas due to WAPA's failure to dispatch or accept the Facility's Water, due to the circumstances described in Section 4.6.
- (c) Where practicable, each Party shall give the other Party reasonable advance notice of any event that would require interruption, curtailment or reduction effected pursuant to this Section 4.6, the circumstances requiring or necessitating


H.H.

the interruption, curtailment or reduction of Seven Seas' scheduling, delivery or sale, or WAPA's dispatch, acceptance or purchase of the Facility's Water and, if able, the reasons therefore, and the extent and duration thereof. In the event that a Party is unable, for any reason, to give the other Party such advance notice, such Party shall, as soon thereafter as practicable, contact the other Party explaining the circumstances requiring or necessitating the interruption, curtailment or reductions, and, if able, furnish the reasons therefore and the extent and duration thereof. WAPA shall resume the acceptance of the Facility's Water when the cause for the interruption, curtailment, or reduction no longer exists.

- (d) WAPA shall not be liable for damages of any kind to Seven Seas or any third party due to WAPA's failure to dispatch or accept the Facility's Water pursuant to Section 4.6.
- (e) Seven Seas shall not be responsible or liable for damages of any kind to WAPA or any third party for a failure to deliver Water pursuant to Schedule 5 and Schedule 7 due to WAPA's failure to meet any of its requirements in Section 3.5 and elsewhere in this Agreement.

Section 4.7 Risk of Loss

As between the Parties, Seven Seas shall be deemed to be in control of the Water output from the Facility up to and until delivery and receipt at the Delivery Point, and WAPA shall be deemed to be in control of Water from and after delivery and receipt at the Delivery Point. Risk of loss related to the Water shall transfer from Seven Seas to WAPA at the Delivery Point.

Section 4.8 Exclusivity

- (a) Neither Seven Seas nor any Affiliate shall sell any water capacity, water, or other products or services generated or produced at the Facility to any Person, or sell to or permit the use of the Facilities by or for the benefit of any Person, other than WAPA, except:
 - (i) As agreed to in writing by the Parties;
 - (ii) As provided in Section 4.8(d) and Section 4.8(e); or
 - (iii) If WAPA has breached this Agreement or the Lease.
- (b) Seven Seas' and any Affiliate's existing water supply contracts and agreements in the U.S. Virgin Islands shall remain in full force and effect until such time as said contract expires.
- (c) After the execution of this Agreement, Seven Seas and any Affiliate shall provide to WAPA the name(s), address(es) and telephone number(s) of Seven Seas' and any Affiliate's existing customers and any new Persons located in the U.S. Virgin Island of St. Croix who seek to purchase water supply services, water capacity, water, or other products from Seven Seas or any Affiliate.
- (d) New and Existing Customer's.


H.H.

- (i) Neither Seven Seas nor any Affiliate may enter into any new water supply services agreement or water purchase agreement or extend the term of any existing water supply services agreement or water purchase agreement in St. Croix, Virgin Islands without first notifying WAPA of the potential new or extended agreement and affording WAPA the right of first refusal to provide said services. WAPA shall provide, within (30) days from receipt of the first refusal notification, a written response regarding WAPA's intent concerning the potential new or extended agreement. In the event that WAPA states its intent to service said customer, but WAPA is unable economically or technically to provide water to any such potential new customer or existing customer then commercially reasonable efforts will be utilized to seek a mutually beneficial solution whereby Seven Seas or an Affiliate may initially supply the aforementioned water supply services until such time as WAPA is in a position to do so; or an alternative mutually beneficial solution may be implemented. The mutually beneficial solution shall be documented by executing a Memorandum of Agreement with regard to each new customer or existing customer.
- (ii) Seven Seas or an Affiliate shall have no obligation under this section if WAPA fails to respond within (30) days from receipt of the above-referenced notification. In the event that there is a failure to reach a mutually agreeable Memorandum of Agreement within thirty (30) days from receipt of the above referenced notification, Seven Seas or an Affiliate shall have the right to enter into an agreement with the potential or existing customer and shall then use commercially reasonable efforts to seek a mutually beneficial solution for WAPA to service said customer once WAPA is economically or technically capable to do so.
- (c) Exception to Exclusivity.
- (i) As the sole exception to the Exclusivity found in Section 4.8(a)-(d) above, the Parties hereby agree that Seven Seas may contract with HOVENSA, L.L.C., its affiliates, successors, or assignees (together, "Hovensa") solely for the sale of Industrial Grade Water to Hovensa. It is further understood and agreed by both Parties that Seven Seas will be utilizing seawater as feedwater for the above-mentioned Industrial Grade Water supplied to Hovensa. This exception does not include the sale of First Pass Water to Hovensa which shall be covered under Section 4.8(a)-(d).
- (f) Pursuant to this Agreement, WAPA shall purchase solely from Seven Seas all of WAPA's water supply requirements needed by WAPA for the island of Croix, Virgin Islands, (including for First Pass Water and Ultrapure Water), with no minimum take-or-pay guarantee, up to 125% of the initial Contract Capacity of both First Pass Water and Ultrapure Water ("Expanded Capacity"). If WAPA purchases any water from sources other than Seven Seas or produces any of its own water ("Purchased Water") within the Expanded Capacity on the island of

 HH

St. Croix, Virgin Islands, WAPA shall pay to Seven Seas, in addition to any cost it might have incurred for the Purchased Water, an amount equal to the Water Charges determined in accordance with Schedule 2 for each gallon of the Purchased Water, which payments shall be made as if the Purchased Water had been produced by the Facility and dispatched to WAPA, and Seven Seas had provided Invoices for such Water, in each case as contemplated by this Agreement.

- (g) Without limiting the provisions as set forth in Section 4.8(f), throughout the term of this Agreement and any extension thereof, WAPA may keep and maintain operationally available its Thermal Distillation Plants located at the Richmond Plant and may dispatch up to 60 kgal of water per calendar quarter produced by its Thermal Distillation Plants to the Storage and Distribution Facilities until the second (2nd) anniversary of the Commercial Operation Date for maintenance purpose ("Distillation Plant Maintenance"). Water produced by WAPA during its quarterly Distillation Plant Maintenance shall be metered by utilizing WAPA's existing dual meters on the Thermal Distillation Plants and shall be subject to audit and calibration by Seven Seas. Except for the aforementioned quarterly Distillation Plant Maintenance, said Thermal Distillation Plant may only be used and operated by WAPA in the event and so long as Seven Seas fails to meet WAPA's demand requirements for First Pass Water. WAPA shall cease to operate its Thermal Distillation Plants upon the date on which Seven Seas demonstrates that it can meet WAPA's demand requirements for First Pass Water. Notwithstanding anything herein to the contrary, WAPA's right to use and operate the Thermal Distillation Plants under this Section 4.8(g) is subject to: (i) WAPA providing prior written notice to Seven Seas of any such use and operation and (ii) the limitation that WAPA may only produce a quantity of First Pass Water which, when combined with the First Pass Water produced by Seven Seas, is in accordance with its forecast obligations under Schedule 11.1(b) hereto. In addition, Seven Seas shall have the right to replenish the depleted storage tanks prior to WAPA operating its Thermal Distillation Plants if WAPA failed to perform its obligations under this Agreement or an Uncontrollable Circumstance affected either Party's ability to perform under this Agreement.

Section 4.9 Government Grants, Credits, Incentives, or Abatements

- (a) Events. In the event that the United States federal government or the government of the U.S. Virgin Islands or any department or agency thereof provides or makes available to Seven Seas any grant, credit, rebate, incentive, or abatement, excluding any tax credits or tax exemptions, then WAPA and Seven Seas shall consider the impacts of such on the Water Charges and shall make acceptable changes to the Water Charges based on an equal sharing of the net value of such grant, credit, rebate, incentive, or abatement actually realized by either Party.
- (b) Procedures. Seven Seas or WAPA shall promptly give notice to the other Party of the availability or receipt of any such grant, credit, rebate, incentive, or abatement and shall provide the other Party with any information necessary for

J.R. A.H.

the other Party to calculate the amount of such grant, credit, incentive, rebate, or abatement and the amount of the rate reduction or other benefit provided in this Section 4.9. Both Parties shall use commercially reasonable efforts to obtain and utilize any such grant, credit, incentive, rebate, or abatement that may be available.

- (c) **Monetization.** The Parties agree that the monetization any such grant, credit, rebate, incentive, or abatement may be accomplished in the following manner:
- (i) a reduction in the Water Charges in an amount equal to the WAPA portion of such grant, credit, rebate, incentive, or abatement; or,
 - (ii) a direct payment by Seven Seas to WAPA in an amount equal to the WAPA portion thereof, upon receipt or monetization of such grant, credit, rebate, incentive, or abatement by Seven Seas. In the event that any monetization or other transaction is necessary or advantageous for Seven Seas and WAPA to be able to utilize fully any such grant, credit, rebate, incentive, or abatement, WAPA and Seven Seas shall cooperate to cause such monetization or other transaction to occur in a timely manner.

Section 4.10 Audit

During the Contract Term, WAPA shall have the right, upon reasonable notice and during normal business hours, to cause a reputable third-party accounting firm or WAPA personnel to audit supporting evidence necessary to substantiate charges related to this Agreement including water meter readings, invoice dates, payment dates, and late payment interest calculations. For the purpose of this provision, only Seven Seas' records that fall within 36 months prior to the date of the audit shall be subject to review. WAPA shall bear the expense of such audit. In the event that WAPA exercises its Step-in-rights, as defined herein, Seven Seas shall have the right, upon reasonable notice and during normal business hours, to cause a reputable third-party accounting firm or Seven Seas' personnel to audit supporting evidence necessary to substantiate charges related to this Agreement including water meter readings, invoice dates, payment dates, and late payment interest calculations. For the purpose of this provision, only WAPA's records with regard to its Step-in-Rights operation of Facility that fall within 36 months prior to the date of the audit shall be subject to review. Seven Seas shall bear the expense of such audit.

ARTICLE 5. BILLING AND PAYMENT

Section 5.1 Meter Reading; Invoicing

Not more than ten (10) Days prior to the end of each Billing Period, the Water Meter Devices shall be read and the quantity of Water delivered by Seven Seas to WAPA at the Delivery Point shall be recorded for billing purposes by representatives of Seven Seas and WAPA, simultaneously, as set forth in Schedule 6.3, unless such quantity is determined by electronic means as contemplated by Schedule 6.

Section 5.2 Invoicing


A.H.

Promptly following the end of each Billing Period, Seven Seas shall provide to WAPA such information available to Seven Seas as reasonably may be required to enable Seven Seas to prepare an invoice respecting the Water dispatched by WAPA and delivered by Seven Seas hereunder. Such information may be provided by electronic means, through telemetering of data available from the Water Meter Devices or remote terminal units, or as may be provided by such other methods as agreed by the Parties in the Project Management Procedures.

- (a) **Invoices.** Promptly following the end of each Billing Period, Seven Seas shall prepare and deliver to WAPA, an invoice (hereinafter "Invoice") for the total Water Charges for such Billing Period as determined in accordance with this Agreement. All Invoices shall be accompanied by such supporting documentation as WAPA reasonably may request.
- (b) **Itemization.** Each Invoice shall be itemized substantially in the manner set forth in Schedule 14, or in such other form and format as WAPA reasonably may request, and shall state:
 - (i) the amount and type of Water dispatched by WAPA and delivered to the Delivery Points during the Billing Period;
 - (ii) the Water Charges with respect to such amount and type of Water;
 - (iii) any adjustment for governmental grants, credits, incentives, or abatements, as provided in Section 4.9, if applicable;
 - (iv) an adjustment for costs and expenses for meter calibration, as provided in Schedule 6;
 - (v) an adjustment for excess energy consumption above the performance guarantees as set forth in Schedule 15;
 - (vi) an adjustment for Purchased Water as provided in Section 4.8(f);
 - (vii) an adjustment for an environmental credits as provided for in Section 8.6; and,
 - (viii) an adjustment for any additional equipment and increased operating costs required to meet changes in Safe Drinking Water Standards as determined in accordance with Section 4.3(b).
- (c) **Test Water.** Test Water delivered by Seven Seas to the Delivery Point in accordance with the terms of this Agreement, in each calendar month or portion thereof prior to and including the Commercial Operation Date, shall be invoiced by Seven Seas and paid by WAPA in accordance with the procedures set forth in Section 3.10, Schedule 2, and Schedule 7 with the necessary changes having been made.

Section 5.3 Payment of Invoices

Unless otherwise specified herein, payments due under this Agreement shall be due and payable in Dollars on or before the thirtieth (30th) Day following receipt of the Invoice. Remittances received by mail will be considered to have been paid when due if the postmark

DB
A.H

indicates that the payment was mailed on or before the thirtieth (30th) Day following receipt of the Invoice. If any payment remains outstanding for more than thirty (30) days, then Seven Seas will provide written Notice to WAPA of the amounts due. If WAPA does not pay Seven Seas within sixty (60) days of receipt of such Notice of Amounts Due then Seven Seas may declare an immediate default under this Agreement, cease to provide water to WAPA and/or dismantle and remove the Facility from the premises. In such event, Seven Seas is entitled to any monies owed for service previously rendered under this Agreement. Such termination shall not be construed to waive or release any rights of Seven Seas to seek any remedies to which it may be entitled, including breach of contract. Overdue amounts will bear interest at the Applicable Interest Rate. Any interest charge will be calculated on the outstanding amount from the due date until the date paid. WAPA agrees that Seven Seas may discontinue providing water to WAPA in the event WAPA does not pay Seven Seas within ninety (90) days of receipt of any Invoice.

Section 5.4 Invoice Disputes

In the event of a bona fide dispute about the correctness of an Invoice, WAPA shall pay the undisputed amount in accordance with Section 5.3 pending the resolution of the dispute. Additional amounts owed by WAPA or refunds due to WAPA upon resolution of the billing dispute shall accrue interest at the Applicable Interest Rate.

ARTICLE 6. FACILITY SPECIFICATIONS RATING

Section 6.1 Water Measurement

First Pass Water and Ultrapure Water shall be measured and invoiced in kgal increments and as set forth in Schedule 2, Schedule 6 and Schedule 14.

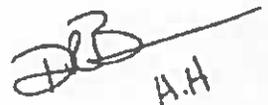
Section 6.2 Facility Specifications Rating Criteria

Water capacity shall be determined by the Water Capacity Test, water quality shall be determined by the Water Quality Test, and water pressure shall be determined by the Water Pressure Test (collectively, the "Water Test").

Section 6.3 Initial Facility Specifications Rating

Seven Seas shall give WAPA twenty-one (21) Days prior written notice when it is ready to perform its first Water Test consistent with the milestones as set forth in Schedule 4. Seven Seas shall grant the WAPA representative reasonable access to observe the performance of Seven Seas' Facility during the Water Test. To be deemed successful during the (contiguous) 48-hour initial Water Test, Seven Seas shall demonstrate the following:

- (a) Water Capacity Test. The Facility meets or exceeds the Contract Capacity as guaranteed by Seven Seas for First Pass Water and Ultrapure Water.
- (b) Water Quality Test. The Facility has met or exceeded the Water Quality Specifications as set forth in Schedule 7. The procedures for the Water Quality Test are as follows:
 - (i) Seven Seas shall install a permanent tap for sampling First Pass Water and Ultrapure Water in a mutually agreeable location in proximity of the Delivery Point.


A.H.

- (ii) Only certified sampling personnel of Seven Seas, WAPA, or the Parties' representative will be allowed to grab samples and analyze for the record.
 - (iii) Seven Seas and WAPA shall utilize their respectively owned and calibrated instruments to independently grab samples, analyze, compare and record the following values onsite: temperature, pH, conductivity, turbidity, and – in the case of Ultrapure Water – resistivity.
 - (iv) Seven Seas or the Party's certified sampling personnel shall grab samples and package said samples for analysis by a mutually agreed upon independent certified lab. The independent lab shall analyze First Pass Water and the Water Quality Test shall be deemed successful unless, within five (5) business days from the sampling, the independent lab provides a written report to the Parties indicating the sample does not meet the Water Quality Specifications set forth in Schedule 7 – specifications in effect at the Commercial Operation Date. Microbial and copper and lead values – despite the treatments thereof being the responsibility of WAPA – shall be separately analyzed by the independent lab, which record will be used for post treatment analysis by WAPA. For avoidance of doubts the costs of these First Pass Water Quality tests performed by the independent lab shall be the responsibility of WAPA.
- (c) **Water Pressure Test.** Conclude the initial Water Test by performing a Water Pressure Test to ensure that each of the installed protective devices, as graphically depicted in Exhibit G, can protect against an increase in water pressure of no greater than 10 PSI above the static Water Pressure as set forth in Schedule 1(g). The Parties' representatives shall reasonably agree on what methods will be used to force the increase of pressure.
- (d) **Written Report.** At the conclusion of the Initial Facility Specifications Rating as specified in Section 6.3(a)-(c), Seven Seas shall provide WAPA with a written report of the initial Water Test results and related test data. Seven Seas may request as many contiguous 48-hour Water Tests it deems necessary to bring the Facility up to the specifications as set forth in Section 6.3(a)-(c), but must be consistent with the milestones as set forth in Schedule 4. The Commercial Operation Date shall not occur until Seven Seas has corrected or repaired any discrepancies and demonstrated that the Facility has met all the criteria as set forth in Section 6.3(a)-(c).

Section 6.4 Facility Specifications Rerating

The Facility shall be subject to Rerating annually on the anniversary of the Commercial Operation Date, at such time, the Parties' authorized representatives, in good faith, shall review the Facility's historical performance records for the past twelve (12) months leading up to the anniversary date. Facility Specifications Rerating shall be limited to Water Capacity and Water Pressure Tests.


H.H

- (a) **Facility Specifications Met.** Each Party shall notify the other in writing stating their satisfaction with the findings and that no Rerating of the Facility will be required, when:
- (i) There is sufficient evidence demonstrating that the Facility has met or exceeded the Contract Capacity during any contiguous 48-hour period. Where there was no opportunity for Seven Seas to demonstrate the Contract Capacity, WAPA shall grant Seven Seas every opportunity to do so prior to the anniversary date.
 - (ii) WAPA grants Seven Seas every opportunity to demonstrate that the Facility is capable of meeting the requirements of Section 6.3(c) within the twelve (12) month period leading up to the anniversary date.
 - (iii) When applicable, Seven Seas will grant WAPA's representative reasonable access to observe the performance of Seven Seas' Facility during the Water Capacity and/or Water Pressure Tests.
- (b) **Facility Specifications Not Met.** In the event that Rerating of the Facility is required under Section 6.4(a) above, Seven Seas may request as many Water Capacity Tests and Water Pressure Tests as it deems necessary to Re-rate its Facility – which shall not exceed ninety (90) days after the anniversary date. If Seven Seas fails to achieve the Re-rating of its Facility within the time afforded, Seven Seas shall be in default – as set forth in ARTICLE 13 of this Agreement.

Section 6.5 Water Quality Rerating

No annual Water Quality Rerating shall occur because the Facility will be subject to daily scrutiny as samples will be taken to satisfy regulatory and WAPA boiler feed requirements. Remedies to address Water Quality issues are addressed elsewhere in this Agreement.

Section 6.6 Water Test Interruptions

If any Water Test is interrupted during its 48-hour testing period due to Uncontrollable Circumstances or WAPA's failure to perform its obligations as set forth in Section 3.5 and elsewhere in this Agreement, Seven Seas shall be credited for the contiguous hours performed prior to such interruption. For example, if a Water Test is interrupted after thirty-six (36) contiguous hours, Seven Seas shall only be required to continue the Water Test an additional twelve (12) contiguous hours after the interruption in which to complete the Water Test.

ARTICLE 7. FACILITY LOCATION AND WATER SYSTEM INTERCONNECTION

Section 7.1 Facility Location

The Facility shall be located on the Site as determined by Section 3.1 above and as will be set forth on on Exhibit A, which said Site shall be leased by Seven Seas from WAPA pursuant to the Lease Agreement.

Section 7.2 Facility Design Plans to be provided by Seven Seas

On or before sixty (60) Days after the Contract Date, Seven Seas shall submit to WAPA design plans for the Facility. WAPA shall specify areas of concern within 30 days of Seven Seas'

JLB HH

submittal in writing; and Seven Seas shall address any concerns by correcting or explaining their reasoning thereof in writing within 30 days of WAPA's response.

Section 7.3 Interconnection Facilities

- (a) Seven Seas shall, at its sole cost and expense, complete the design, construction and installation of the Interconnection Facilities within the time frames set forth in Schedule 4, in accordance with WAPA's specifications, as specified in Exhibit F, and Good Engineering and Operating Practices. Upon Commercial Operation, Seven Seas shall transfer to WAPA full ownership and control, including any applicable Permits and Approvals, of the Interconnection Facilities beyond the Delivery Point(s).
- (b) On or before sixty (60) Days after the Contract Date, Seven Seas shall submit to WAPA design plans for the Interconnection Facilities. WAPA shall specify areas of concern within 30 days of Seven Seas' submittal in writing; and Seven Seas shall address any concerns by correcting or explaining their reasoning thereof in writing within 30 days of WAPA's response.

Section 7.4 Seven Seas' Obligations

Seven Seas shall be responsible for the design, construction, installation, maintenance and ownership of the Facility, which includes the design, construction, installation, operation and maintenance of the Interconnection Facilities, from Seven Seas' Facility up to and including the Delivery Point(s).

Section 7.5 Soil Conditions of the Site

- (a) The Parties acknowledge that WAPA has conducted soil tests to determine the Lot Property's soil compaction condition. Said soil tests have concluded that the Lot Property's soil does not meet a compaction level of at least 1,000 pounds per square foot (psf) for the construction and permanent location of the Facility without additional civil work. Regardless of said test, neither Party has made any statements, representations or warranties regarding the Lot Property's soil compaction condition or the suitability of the Lot Property for the construction and permanent location of the Facility. The Parties agree that, in the event Lot Property is chosen as the Site as contemplated in Section 3.1, an Additional Civil Work Charge as specified in Schedule 2.1(c) shall be added to the initial Base Water Charge to compensate Seven Seas for the additional civil work required to construct the Facility at the Lot Property.
- (b) The Parties acknowledge that WAPA will conduct soil tests to determine Devcon's soil compaction condition in the event Devcon is chosen as the Site as contemplated in Section 3.1. It is understood by the Parties that Good Engineering Practices and Standards require that the Site's soil meet a compaction level of at least 1,000 pounds per square foot (psf) for the construction and permanent location of the Facility. The Parties agree that WAPA will be responsible for all costs associated with remedying any soil conditions (including but not limited to unfavorable soil compaction and/or soil

JB A.H.

contamination) at Devcon that may delay the project and/or adversely impact the cost of Devcon Civil Works for the Facility as specified in Section 3.1(e). WAPA alone shall be responsible for any required remediation of any environmental contamination, conditions or matters at Devcon.

- (c) Except for the cost as specified in Section 3.1(e), both Parties hereby forever waive, to the fullest extent possible, any and all claims against the other, whether at law or in equity including, but not limited to, any and all claims for breach of good faith, in failing to reach an amicable, reasonable, economically prudent and technologically feasible solution to correct any soil compaction condition deficiencies at the Site pursuant to this Section 7.5.

Section 7.6 WAPA's Obligations

Upon the completion of the transfer contemplated by Section 7.3, WAPA shall be responsible for the operation, maintenance and ownership of Interconnection Facilities beyond the Delivery Point(s) in accordance with Good Engineering and Operating Practices.

Section 7.7 Technical Requirements and Operations

- (a) The Parties agree that the interconnection with, and delivery of Water into, WAPA's Water System shall be accomplished in accordance with the standards set forth in Exhibit F.
- (b) WAPA shall notify Seven Seas, or Seven Seas shall notify WAPA, promptly by telephone, or as may be agreed in the Project Management Procedures, when either Party becomes aware of a Water System Emergency that may reasonably be expected to affect Seven Seas' operation of the Facility, the Interconnection Facilities, or WAPA's Water System. To the extent such information is known, the notification shall describe the Water System Emergency, the extent of the damage or deficiency, the expected effect on the operation of Seven Seas' or WAPA's facilities and operations, its anticipated duration and the corrective action taken or to be taken. The initial notice shall be followed as soon as practicable with written notice. Each Party agrees to take promptly whatever appropriate corrective action is necessary to correct any hazardous or unsafe conditions associated with such Water System Emergency.

Section 7.8 Site Access

In order to help ensure the continuous, safe, reliable and compatible operation of the Facility, WAPA hereby grants Seven Seas, for the period of this Agreement and 180 days after the termination of this Agreement, the reasonable right of ingress and egress to Seven Seas' Facility, including the Interconnection Facilities from Seven Seas' Facility up to and including the Delivery Point(s). Ingress and egress to Seven Seas' Facility shall be as depicted in Exhibit A and as may be agreed in the Project Management Procedures.

ARTICLE 8. OPERATION AND MAINTENANCE

Section 8.1 Operations Schedule

JB HH

At least ninety (90) Days prior to the Commercial Operation Date and prior to all Commercial Operation Date anniversaries thereafter, WAPA shall provide Seven Seas, in writing, its planned Water outage schedule and a non-binding forecasted dispatch schedule for the following year; and Seven Seas shall provide to WAPA, in writing, its planned Scheduled Maintenance Outages for the same period, to include the annual Water Test, and a good faith estimate of the amount of Water to be produced by the Facility and delivered to WAPA for each Billing Period. The Parties shall endeavor in good faith to negotiate a mutually acceptable schedule of the Facility's Scheduled Maintenance Outages and annual Water Test by the date thirty (30) Days prior to the beginning of such succeeding Commercial Operation Date anniversary. Upon the conclusion of such negotiations, WAPA shall provide Seven Seas with a revised schedule of the Facility's Scheduled Maintenance Outages, annual Water Test, and expected dispatch. WAPA may revise such schedule upon reasonable notice to Seven Seas; provided, that any such revisions to the schedule of the Facility's Scheduled Maintenance Outages and annual Water Test shall not have a material adverse effect on Seven Seas or the Facility. Seven Seas may reschedule a Scheduled Maintenance Outage or annual Water Test upon WAPA's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 8.2 Scheduled Maintenance Outages

Seven Seas shall exercise all reasonable efforts to coordinate Scheduled Maintenance Outages with WAPA to avoid, where reasonably possible, overlap with WAPA's planned outages of its water production equipment and Storage and Distribution Facilities. Seven Seas shall not schedule any maintenance outages for the Facility, except for outages associated with Water System Emergencies, without the prior written approval of WAPA, such approval not to be unreasonably withheld.

Section 8.3 Operation and Maintenance

Seven Seas shall operate and maintain the Facility in all respects, including the handling and disposal of any discharge effluent, waste, byproduct(s), or hazardous materials, if any, in accordance with Good Engineering and Operating Practices, the Codes and Standards, and Applicable Law.

Section 8.4 Operating Representatives

At least sixty (60) Days prior to the scheduled Commercial Operation Date, each Party shall appoint a member and two (2) alternate members as operating representatives and provide written notice of such appointments to the other Party (the "Operating Representatives"). Such appointments may be changed at any time by similar written notice. The respective Operating Representatives shall meet as necessary at a mutually agreeable time and place upon prior written notice. Each Operating Representative and alternate shall be a responsible person working with the day-to-day operations - in the case of WAPA - of WAPA's Water System and - in the case of Seven Seas - of the Facility.

(a) The duties of the Operating Representatives shall include those specifically identified elsewhere in this Agreement, and the following:

(i) Coordinate operation and outage schedules;



- (ii) Establish control and operating procedures consistent with the provisions of this Agreement;
 - (iii) Provide a list of Operating Representatives of each Party; and
 - (iv) Such other duties as may be delegated to them by mutual agreement of the Parties; provided, that such Operating Representatives shall not have the authority to amend this Agreement.
- (b) Each Party shall cooperate in providing to the Operating Representatives all information required in the performance of their duties. If the Operating Representatives are unable to agree on any matter that is delegated to them in accordance with this Agreement, such matter shall be referred by the Operating Representatives to their principals for decision. All decisions and agreements made by the Operating Representatives or principals shall be evidenced in writing.

Section 8.5 Project Management Procedures

The Parties' Representatives shall negotiate an agreement in good faith on standing procedures, (the "Project Management Procedures"), consistent with this Agreement, respecting such matters as coordination, scheduling, or rescheduling of planned outages of their respective facilities; coordination of production and deliveries of water; metering; reporting; response to Water System Emergencies; and such other matters as may be contemplated by this Agreement or the Parties otherwise may agree therein. Said Project Management Procedures shall be agreed upon no later than Thirty days (30) prior to the scheduled Commercial Operation Date. In the event of any conflict between the provisions of this Agreement and the Project Management Procedures, this Agreement shall control. The Parties may, from time to time, agree on the standing procedures consistent with this Agreement.

Section 8.6 Environmental Credits

The Parties acknowledge that current or future legislation or regulation may create value in the ownership, use or allocation of environmental credits. To the extent applicable, both Parties shall equally share the net value of all environmental credits resulting from Seven Seas' production at or delivery of Water or Water Capacity from the Facility during the Contract Term to the extent such credits may actually arise or exist during the Contract Term. In all cases "environmental credits" as used in this Section 8.6 shall exclude any grant, credit, incentive, or abatement governed by the provisions of Section 4.9 resulting from ownership, use, operation or maintenance of the Facility. For purposes of this section, "environmental credits" means any environmental, energy, or water quality credits, off-sets or other benefits related to the ownership or operation of the Facility or the production of water at the Facility, the sale of Water to WAPA hereunder or the other transactions contemplated by this Agreement, or the reduction, displacement or off-set of any emissions resulting from the combustion of fuel at any location, pursuant to any foreign, federal, state, territorial or local legislation or regulation, or voluntary market, and the aggregate amount of credits, offsets or other benefits related to any WAPA marketing program, any green pricing program or other environmental credit trading program, or

JRS
A.H

any similar program pursuant to any foreign, federal, state, territorial or local legislation or regulation, or voluntary market.

Section 8.7 Equal Opportunity Employment Certification

Seven Seas acknowledges that as a government contractor WAPA is subject to various federal and/or U.S. Virgin Islands laws, executive orders and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seven Seas as a subcontractor to WAPA. All applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal and U.S. Virgin Islands laws, executive orders, and regulations, including 41 C.F.R. §60-1.4(a)(1-7).

ARTICLE 9. METERING

Section 9.1 Installation of Meter

Seven Seas shall obtain, install, calibrate and test the meters as provided for in Schedule 6.

Section 9.2 Measurement and Invoicing of Water Delivered; Testing of Water Meter

The quantity, quality, and pressure of the Water delivered to WAPA shall be measured, monitored, tested and recorded by the Parties in accordance with the methods specified in Schedule 6.

Section 9.3 Facility's Electrical Consumption

Electrical consumption of the Facility shall be metered as set forth in Schedule 15.

ARTICLE 10. AUDITS

Section 10.1 Audit Rights

During the Contract Term, WAPA shall have the right, upon reasonable notice and during normal business hours, to cause a reputable third-party accounting firm or WAPA personnel to audit supporting evidence necessary to substantiate charges related to this Agreement including water meter readings, invoice dates, payment dates, and late payment interest calculations. For the purpose of this provision, only Seven Seas' records that fall within thirty-six (36) months prior to the date of the audit shall be subject to review. WAPA shall bear the expense of such audit.

Section 10.2 Operating Records

Seven Seas and WAPA shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including such records as may be required by Applicable Law or by Governmental Authorities.

Section 10.3 Operating Log

Seven Seas shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility with records of Water production for each day; changes in operating status; and results of scheduled maintenance. Seven Seas shall maintain accurate and up-to-date logs of

[Handwritten signature] 14.14.

dispatched and scheduled Water, including Test Water, and other records needed in order to comply with this Agreement.

Section 10.4 Billing and Payment Records

To facilitate payment and audit, Seven Seas and WAPA shall keep all books and records necessary for billing and payments in accordance with this Agreement. All records of Seven Seas pertaining to the operation of a Facility shall be maintained on the premises of the Facility.

ARTICLE 11. INSURANCE

Section 11.1 Seven Seas' Insurance Requirements

- (a) Seven Seas shall carry and maintain the insurance as set out in Schedule 10.1.
- (b) Seven Seas' liability is not limited to the amount of insurance coverage required herein.
- (c) Neither Seven Seas nor WAPA shall be responsible for any consequential damages arising out of or related to Seven Seas or WAPA's performance under this Agreement.

Section 11.2 WAPA's Insurance Requirements

- (a) WAPA shall carry and maintain the insurance as set out in Schedule 10.2.

ARTICLE 12. UNCONTROLLABLE CIRCUMSTANCES

Section 12.1 Effect of Uncontrollable Circumstance

Neither Party shall be liable to the other Party for failure to perform any obligation hereunder, when such failure is the result of the occurrence of an Uncontrollable Circumstance which arises after the Contract Date; provided, that neither Party shall be excused from any obligation to pay amounts due under this Agreement for services rendered or products delivered before the occurrence of the Uncontrollable Circumstance. Upon becoming aware of the occurrence of an Uncontrollable Circumstance, or that any such event is reasonably expected to occur, the affected Party shall promptly notify the other Party of such event, or such pending event, as the case may be. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required as a result of the Uncontrollable Circumstance. The non-performing Party shall proceed with reasonable diligence to remedy, if a remedy is available, its inability to perform and shall provide weekly progress reports to the other Party describing actions taken to implement such remedy. When the non-performing Party is able to resume performance of its obligations under this Agreement, said Party shall give the other Party written notice to that effect.

Section 12.2 Changes Due to Uncontrollable Circumstance

As soon as practicable following the initial written notice of the Uncontrollable Circumstance by the Party seeking to suspend performance due to the Uncontrollable Circumstance, such Party shall provide the other Party with a written preliminary evaluation of the extent of the adverse effect upon the performance obligations under this Agreement. Upon

JOB AH

completion of the notifying Party's final analysis of such adverse impact, including completion of engineering estimates, if necessary, and of any necessary modifications or repairs to the Facility, the Interconnection Facilities and WAPA's Storage and Distribution Facilities or other remedial action, the notifying Party shall provide the other Party with a final written report of the overall impact on the operation of this Agreement.

Section 12.3 Termination Due to Uncontrollable Circumstance

In the event that Seven Seas' delay or failure of performance caused by an Uncontrollable Circumstance continues for an uninterrupted period of twelve (12) months, either Party may terminate this Agreement upon written notice to the other Party. In the event that WAPA's delay or failure of performance caused by an Uncontrollable Circumstance continues uninterrupted for a period of twelve (12) months, either Party may terminate this Agreement upon written notice to the other Party. If the Agreement is terminated pursuant to this Section 12.3, neither Party shall have any further obligations hereunder, except as to the payment of all costs and balances incurred prior to the effective date of such termination and as to provisions expressly surviving termination pursuant to Section 18.8.

Section 12.4 Destruction

In the event that the Facility shall be destroyed or substantially damaged by an Uncontrollable Circumstance, Seven Seas shall, within thirty (30) Days of the destruction or damage, assess the damage to determine whether or not the Facility can be repaired or rebuilt, and advise WAPA, accordingly. If the Facility cannot be repaired or rebuilt, either party may terminate the Agreement upon thirty (30) Days prior written notice without liability or charge, except that both Parties shall remain obligated to pay all monies due under this Agreement, including, but not limited to, charges for Water produced and dispatched through the date of termination of this Agreement. If the Facility can be repaired or rebuilt, provided that such rebuilding can be accomplished within twelve (12) months, WAPA and Seven Seas' obligations under the Agreement shall be suspended until such time as the Facility is rebuilt and capable of producing Water in accordance with this Agreement, after which the Parties' obligations under this Agreement shall resume. If the Facility's ability to produce First Pass Water is not so destroyed or substantially damaged but the Facility's ability to produce Ultrapure Water is so destroyed or substantially damaged, the provisions of this Section 12.4 shall only apply to the Facility as it relates to Ultrapure Water and not as it relates to First Pass Water. In the event WAPA's water system is substantially damaged or destroyed by Uncontrollable Circumstances, WAPA shall, within thirty (30) Days of the destruction or damage, determine whether or not to repair or rebuild WAPA's water system, and advise Seven Seas accordingly. If WAPA's water system cannot be repaired or rebuilt, either party may terminate this Agreement upon thirty (30) Days' prior written notice without liability or charge, except that WAPA shall remain obligated to pay all monies due to Seven Seas under this Agreement for Water produced and dispatched through the date of termination of this Agreement. If WAPA's water system can be repaired or rebuilt, provided such repair or rebuilding can be accomplished within twelve (12) months, WAPA and Seven Seas' obligations under this Agreement shall be suspended unless and until such time as WAPA's water system is repaired or rebuilt to be capable to take the Water Seven Seas is producing, after which the Parties' obligations under this Agreement shall resume.

 44

ARTICLE 13. DEFAULT AND TERMINATION

Section 13.1 Seven Seas Default

WAPA may declare Seven Seas in default of the Agreement if any of the following shall occur and continue for the time specified:

- (a) Seven Seas is unable to deliver from the Facility to the applicable Delivery Points the lesser of (i) the amount of Water then dispatched by WAPA in accordance with this Agreement or (ii) the Facility's Contract Capacity, for an aggregate of one hundred and eighty (180) Days, in any rolling period of twelve (12) consecutive Billing Periods.
 - (i) Exceptions: Seven Seas shall not be in default pursuant to Section 13.1(a) under the following conditions or events:
 - 1) An Uncontrollable Circumstance;
 - 2) The failure of WAPA to fully and timely perform all of its obligations set forth in Section 3.5 and elsewhere in this Agreement; or,
 - 3) The unavailability of power, fuel or other utilities or supplies necessary for Seven Seas to operate the Facility.
- (b) Seven Seas fails to pay undisputed amounts due to WAPA under this Agreement within thirty (30) Days following written notice from WAPA demanding payment thereof. Seven Seas shall have the right to offset against amounts otherwise owed to Seven Seas by WAPA which offsets shall be deemed a payment for the purpose of this Agreement.
- (c) Seven Seas fails to maintain solvency, including:
 - (i) inability, failure, or refusal to pay debts as they mature; entry into an arrangement with or for the benefit of all or substantially all of its creditors; consent to or acquiescence in the appointment of a receiver, trustee, or liquidator for all or substantially all of Seven Seas' assets;
 - (ii) bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding, in each case for relief of Seven Seas' debts, instituted by or against Seven Seas under the laws of any jurisdiction, which proceeding is not dismissed within ninety (90) Days;
 - (iii) any action or answer in a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding, in each case for relief of Seven Seas' debts, in which Seven Seas approves of, consents to, or acquiesces in, any such proceeding; or
 - (iv) the levy of any distress, execution, or attachment upon Seven Seas' property which shall substantially interfere with Seven Seas' performance hereunder; provided, that this form of insolvency shall not be deemed to have occurred if the insolvency is caused primarily by WAPA's failure to

 All.

make any payment due pursuant to this Agreement within thirty (30) Days of when it becomes due and payable.

- (d) If WAPA has fully and timely performed all of its obligations under Section 3.5(a) and elsewhere in this Agreement and Seven Seas fails to achieve the Commercial Operation Date including any extensions of the Commercial Operation Date permitted under Section 3.3;
- (e) Seven Seas fails to maintain adequate insurance in accordance with ARTICLE 11;
- (f) Seven Seas fails to perform any material obligations under this Agreement, other than the defaults addressed in (a) through (e) above, which remain uncured for sixty (60) Days after Seven Seas receives written notice from WAPA of such failure, with such notice describing in reasonable detail the nature of the failure; or,
- (g) An event of default under the Lease Agreement and said default remains uncured as specified by the Lease.

Section 13.2 WAPA Default

Seven Seas may declare WAPA in default of the Agreement if any of the following shall occur and continue for the time specified:

- (a) WAPA fails to pay any amounts, except for amounts disputed in good faith, due to Seven Seas pursuant to the terms of this Agreement as found in Section 5.3. WAPA shall have the right to offset against amounts otherwise owed to WAPA by Seven Seas which offsets shall be deemed a payment for the purpose of this Agreement.
- (b) WAPA fails to maintain solvency, including:
 - (i) inability, failure, or refusal to pay debts as they mature; entry into an arrangement with or for the benefit of all or substantially all of its creditors; consent to or acquiescence in the appointment of a receiver, trustee, or liquidator for all or substantially all of WAPA's assets;;
 - (ii) bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding, in each case for relief of WAPA's debts, instituted by or against WAPA under the laws of any jurisdiction, which proceeding is not dismissed within ninety (90) Days;
 - (iii) any action or answer in a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding, in each case for relief of WAPA's debts, in which WAPA approves of, consents to, or acquiesces in, any such proceeding;
 - (iv) the levy of any distress, execution, or attachment upon WAPA's property which shall substantially interfere with WAPA's performance hereunder;
- (c) WAPA fails to perform fully and timely any obligation under Section 3.5(a);

 H.H.

- (d) WAPA fails to perform any material obligations under this Agreement, other than the defaults addressed in (a) through (c) above, which remains uncured for sixty (60) Days after WAPA receives written notice from Seven Seas of such failure, with such notice describing in reasonable detail the nature of the failure; or,
- (e) An event of default under the Lease Agreement and said default remains uncured as specified by the Lease.

Section 13.3 Termination for Seven Seas or WAPA Default

- (a) If Seven Seas shall default under and pursuant to Section 13.1 of this Agreement and such default shall be continuing, WAPA may, at its option, by sixty (60) Days' prior written notice to Seven Seas, terminate this Agreement, at which time WAPA's obligations herein shall cease; provided, however, that WAPA shall not have the right to terminate this Agreement pursuant to the terms and conditions of this Section 13.3(a) at any time when WAPA is in default under this Agreement as specified in Section 13.2 or is otherwise in material breach of this Agreement whether or not Seven Seas has declared such default. If the default however is of such nature that it cannot, with due diligence and adequate resources, be cured within sixty (60) days, WAPA's right to terminate shall be suspended during an additional sixty day (60) period (the "Cure Period") as Seven Seas is diligently and continuously engaged with adequate resources in effecting a cure. If Seven Seas successfully cures any default within the Cure Period, then WAPA's right to terminate will be waived and this Agreement will continue without interruption. If a termination of this Agreement pursuant to the terms and conditions of this Section 13.3(a) shall occur, WAPA shall be responsible for the payment of Invoices for Water dispatched under the terms of this Agreement through the termination date.
- (b) If WAPA shall default under and pursuant to Section 13.2 of this Agreement and such default shall be continuing, Seven Seas may, at its option, by sixty (60) Days' prior written notice to WAPA, terminate this Agreement, at which time Seven Seas' obligations herein shall cease; provided, however, that Seven Seas shall not have the right to terminate this Agreement pursuant to the terms and conditions of this Section 13.3(b) at any time when Seven Seas is in default under this Agreement as specified in Section 13.1 or is otherwise in material breach of this Agreement whether or not WAPA has declared such default. If the default however is of such nature that it cannot, with due diligence and adequate resources, be cured within sixty (60) days, Seven Seas' right to terminate shall be suspended during an additional sixty day (60) period (the "Cure Period") as WAPA is diligently and continuously engaged with adequate resources in effecting a cure. If WAPA successfully cures any default within the Cure Period, then Seven Seas' right to terminate will be waived and this Agreement will continue without interruption. If a termination of this Agreement pursuant to the terms and conditions of this Section 13.3(b) shall occur, in addition to all other legal remedies available to Seven Seas, WAPA shall be responsible for the

JRB HH.

payment of Invoices for Water dispatched under the terms of this Agreement through the termination date.

Section 13.4 WAPA's Right to Control and Operate Facility

- (a) Upon an event of default by Seven Seas under Section 13.1(a), but subject to the passage of the Cure Period and prior to any termination of this Agreement by WAPA under Section 13.3, WAPA shall have the right (but not the obligation) to assume control of and operate the Facility solely as agent for Seven Seas during the Contract Term or during the Extension of Contract Term period in accordance with all of the obligations imposed on Seven Seas in connection with the operation of the Facility pursuant to the terms and conditions of this Agreement ("Step-in Rights"). Both Parties agree that such Step-in Rights shall be subordinate in all respects to any similar rights or other interests that may be granted to one or more lenders or financing sources by the Seven Seas, presently or in the future, or that may otherwise be available to such lenders or financing sources.
- (b) During any period that WAPA has assumed control of and is operating the Facility in exercise of its Step-in Rights, WAPA shall purchase Water from the Facility pursuant to the terms and conditions of this Agreement and at the price stated herein, without any penalty or premium or the payment of any additional consideration. WAPA shall use the proceeds from any such sales: (i) first, to reimburse WAPA for any and all incremental expenses reasonably and directly incurred by WAPA in operating the Facility (which expenses shall be specifically accounted for by WAPA in accordance with ARTICLE 10 hereof); and (ii) any balance of payments for Water remaining after application as provided in the foregoing sentence shall be promptly remitted to Seven Seas.
- (c) During any period that WAPA has assumed control of and is operating the Facility in exercise of its Step-in Rights, Seven Seas shall retain legal title to and ownership of the Facility and WAPA shall assume management control solely as agent for Seven Seas it being understood and agreed that during the period of WAPA's management of the Facility, Seven Seas shall have the same audit rights provided to WAPA under Section 10.1 hereof. Upon exercise of WAPA's Step-in Rights, and subject to any subordination as set forth in Section 13.4(a), Seven Seas agrees to grant WAPA, its employees, and contractors, rights, licenses and easements, solely during the period in which WAPA is entitled to exercise, and is exercising its Step-in Rights under this Section 13.4, to enter upon the Site for the purpose of operating the Facility as provided herein.
- (d) In the event WAPA is entitled and is exercising its Step-in-Rights in accordance with Section 13.4, Seven Seas shall execute appropriate documentation necessary to designate WAPA as Seven Seas' attorney-in-fact solely to operate the Facility during the period in which WAPA is entitled to exercise its Step-in-Rights and is exercising its Step-in-Rights. As Seven Seas' attorney-in-fact during the entitled Step-in-Rights period, WAPA shall have the right to execute such certificates and

JLB AH

documents and take all necessary other actions as may be required to operate the Facility in accordance with Section 13.4. The designation of WAPA as Seven Seas' attorney-in-fact shall immediately cease upon the termination of WAPA's Step-in-Rights pursuant to Section 13.4(e).

- (e) Seven Seas may resume operation of the Facility and WAPA's Step-in-Rights shall automatically terminate upon the date on which Seven Seas demonstrates that it has cured the default under Section 13.1(a) that triggered WAPA's exercise of its Step-in Rights.
- (f) WAPA's exercise of its rights hereunder to control and operate the Facility, including its designation and use of its attorney-in-fact rights, shall not be deemed an assumption by WAPA of any liability attributable to Seven Seas. For the period during which WAPA is in control of and is operating the Facility, each Party shall indemnify, save harmless and defend the other Party against all claims, demands, judgments and associated costs and expenses, related to property damage, bodily injuries or death suffered by third parties resulting from any act or failure to act by the indemnifying Party related to this Agreement.

Section 13.5 Remedies Cumulative

Except as provided in Section 14.4, each right or remedy of the Parties under this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided herein, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

ARTICLE 14. LIMITATION ON LIABILITY AND INDEMNIFICATION

Section 14.1 Exclusion of Consequential Damages

Without limiting any obligation to pay damages or any other express remedy otherwise specifically provided for in this Agreement, in no event, whether because of a breach of any provision contained in this Agreement or any other cause, whether based upon contract, negligence, including tort or strict liability, warranty, or otherwise, shall either Party be liable for or obligated in any manner to pay incidental, special, punitive, consequential, exemplary, or indirect damages of any nature whatsoever incurred by either Party.

Section 14.2 Indemnification by Seven Seas

Seven Seas agrees to indemnify and hold harmless WAPA and its officials, employees, agents and contractors, in each case solely in their capacities as such, from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorney's fees) caused by or resulting from (1) any negligent or willful act or omission of Seven Seas, or its directors, officers, employees, agents or contractors, in each case solely in their capacities as such, in the performance of Seven Seas' obligations under this Agreement or (2) the breach by Seven Seas of any covenants, representations or warranties of Seven Seas contained in this Agreement; provided, that Seven Seas shall not indemnify WAPA or any of its officials, employees, agents or

Handwritten signature and initials, possibly "LBI" and "HH".

contractors from any loss, liability, penalty, fine, forfeiture, demand, cause of action, suit, and costs and expenses incidental thereto, including cost of defense, settlement and reasonable attorney's fees, caused by or arising out of any negligent or willful act or omission of, or the breach of this Agreement by, WAPA or any of its officials, employees, agents, or contractors, acting in their capacities as such.

Section 14.3 Indemnification by WAPA

WAPA agrees to indemnify and hold harmless Seven Seas, and its directors, officers, employees, agents and contractors, in each case solely in their capacities as such, from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto, including cost of defense, settlement and reasonable attorney's fees, caused by or resulting from (1) any negligent or willful act or omission of WAPA or its officials, employees, agents or contractors, in each case solely in their capacities as such, in the performance of WAPA's obligations under this Agreement, or (2) the breach by WAPA of any covenants, representations or warranties of WAPA contained in this Agreement; provided, that WAPA shall not indemnify Seven Seas, or its directors, officers, employees, agents or contractors, from any loss, liability, penalty, fine, forfeiture, demand, cause of action, suit and cost and expense incidental thereto, including cost of defense, settlement and reasonable attorney's fees, caused by or arising out of any negligent or willful act or omission of or breach of this Agreement by Seven Seas, or any of its directors, officers, employees, agents, or contractors, acting in their capacities as such.

Section 14.4 Termination Remedy; Liquidated Damages

TO THE EXTENT ANY DAMAGES UNDER THIS AGREEMENT ARE EXPRESSLY IDENTIFIED AS LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT: (i) THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, (ii) OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, (iii) THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS AND NOT A PENALTY, AND (iv) EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, SUCH LIQUIDATED DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF THE INJURED PARTY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

Section 14.5 Limitation on Liability

- (a) WAPA's liability to Seven Seas under this Agreement, whether based on contract, warranty or tort, including intentional acts, errors or omissions, negligence, indemnity, strict liability, or otherwise, or any other claim or cause of action shall not in the aggregate exceed Ten Million Dollars (\$10,000,000.00) per year.
- (b) Seven Seas' liability to WAPA under this Agreement, whether based on contract, warranty or tort (including intentional acts, errors or omissions, negligence, indemnity, strict liability, or otherwise), or any other claim or cause of action shall not in the aggregate exceed Ten Million Dollars (\$10,000,000.00) per year.

Section 14.6 Subrogation

JAB 14.4

WAPA waives all rights of subrogation and recovery against Seven Seas and any of its subcontractors of all tiers to the extent of any loss or damage to WAPA's property situated at WAPA's power generation plant on St. Croix. Seven Seas waives all rights of subrogation and recovery against WAPA to the extent of any loss or damage to Seven Seas' property, which is situated at WAPA's power generation plant on St. Croix. Seven Seas will require all of its subcontractors to similarly waive their rights of subrogation and recovery in each of their respective construction contracts with respect to their work on the Project. WAPA's property insurance policy shall contain a waiver of subrogation clause stating that the insurance companies will waive their rights of subrogation against any party that the insured's or loss payees have waived their rights of action prior to any loss.

ARTICLE 15. REPRESENTATIONS AND WARRANTIES

Section 15.1 Representations and Warranties of Seven Seas

Seven Seas represents and warrants as of the date hereof as follows:

- (a) Seven Seas is a corporation duly organized and validly existing under the laws of the U. S. Virgin Islands, is duly qualified to conduct business in the U.S. Virgin Islands, and has full legal right, power and authority to enter into and perform its obligations under this Agreement.
- (b) Seven Seas has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by Seven Seas and constitutes the legal, valid and binding obligation of Seven Seas in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.
- (c) Neither the execution nor the delivery by Seven Seas of this Agreement nor the performance by Seven Seas of its obligations hereunder, assuming all Permits and Approvals are obtained and remain in effect: (i) conflicts with, violates, or results in a breach of any Applicable Law applicable to Seven Seas; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, franchise, material agreement, including the certificate of formation of Seven Seas, or material instrument to which Seven Seas is a party or by which Seven Seas or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, material agreement or material instrument.
- (d) There is no action, suit or other proceeding as of the date hereof at law or in equity, before or by any Governmental Authority, pending or, to its knowledge, threatened against Seven Seas, which is likely to result in an unfavorable decision, ruling, or finding which would materially and adversely affect the validity or enforceability of this Agreement or any agreement or instrument entered into by Seven Seas in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by Seven Seas of its obligations hereunder or under any such other agreement or instrument.

 HK

Section 15.2 Representations and Warranties of WAPA

WAPA represents and warrants as of the date hereof as follows:

- (a) WAPA is a public authority duly established and validly existing under the constitution and laws of the U.S. Virgin Islands, is duly qualified to conduct business in the U.S. Virgin Islands, and upon the approval of this Agreement by the Virgin Islands Public Services Commission, will have full legal right, power and authority to enter into and perform its obligations under this Agreement.
- (b) WAPA has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by WAPA and upon the approval of this Agreement by the Virgin Islands Public Services Commission, will constitute a legal, valid and binding obligation of WAPA enforceable against WAPA in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors rights generally.
- (c) Neither the execution nor the delivery by WAPA of this Agreement nor the performance by WAPA of its obligations hereunder, to the knowledge of WAPA: (i) upon the approval of this Agreement by the Virgin Islands Public Services Commission will conflict with, violate, or results in a breach of any Applicable Law applicable to WAPA; or (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, franchise, material agreement or material instrument to which WAPA is a party or by which WAPA or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, material agreement or material instrument.
- (d) There is no action, suit or other proceeding as of the date hereof at law or in equity, before or by any Governmental Authority, pending or, to its knowledge, threatened against WAPA, which is likely to result in an unfavorable decision, ruling, or finding which would materially and adversely affect the validity or enforceability of this Agreement or any agreement or instrument entered into by WAPA in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by WAPA of its obligations hereunder or under such an agreement or instrument.

ARTICLE 16. DISPUTE RESOLUTION

Section 16.1 Continued Performance

Each Party shall continue to perform its obligations under this Agreement pending resolution of any dispute pursuant to this ARTICLE 16. Neither Party shall be required to make any disputed payment(s) to the other Party so long as such dispute has been referred in good faith to the process for resolution pursuant to this ARTICLE 16; provided, that to the extent any amounts owed to either Party by the other Party are not disputed in good faith and can be segregated from amounts with respect to which there is a dispute, such undisputed amounts shall, in good faith, be identified by the Parties and paid as required by this Agreement. To the extent that any disputed amount was withheld from a Party, and such Party is ultimately found to be

DRB HIT

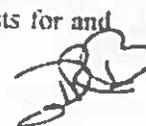
entitled to all or any portion of such disputed amount pursuant to this ARTICLE 16, then such Party shall be entitled to the payment of interest on any withheld amount, at the Applicable Interest Rate, from the original due date for payment of such amount until the payment of such disputed amount.

Section 16.2 Negotiations

If any dispute, controversy or claim arises under or relates to this Agreement or the breach, termination or validity thereof (the "Dispute"), such Dispute shall be referred by each Party to its designated senior officer for resolution upon five (5) Days' written notice from either Party (the "Dispute Notice"). If the designated senior officers of the Parties are unable to reach agreement within thirty (30) Days of the Dispute Notice, upon the request of either Party, such Dispute shall be referred to arbitration in accordance with Section 16.3. The Parties agree to attempt to resolve all Disputes promptly and equitably and to provide each other with reasonable access during regular business hours to any and all non-privileged records, information and data pertaining to any such Dispute.

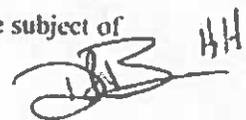
Section 16.3 Arbitration

- (a) **Submission to Arbitration.** Within sixty (60) days after the expiration of the thirty (30) Day period noted above in Section 16.2, either Party may submit any Dispute to arbitration by providing the other Party a written notice of arbitration, (the "Demand for Arbitration") specifying the matter to be arbitrated.
- (b) **Arbitration Proceedings.** The arbitration shall be held in St. Thomas, U.S. Virgin Islands and shall be governed by the American Arbitration Association ("AAA") Commercial Arbitration Rules, then in effect, except as modified herein. If the amount in Dispute (including claims and counterclaims) is One Million Dollars (\$1,000,000) or less, there shall be one arbitrator chosen by agreement of the Parties within thirty (30) Days of receipt by respondent of a copy of the demand for arbitration. If the amount in Dispute is greater than One Million Dollars (\$1,000,000), there shall be three (3) arbitrators, one chosen by each party within thirty (30) Days of receipt by respondent of a copy of the demand for arbitration and the third chosen by the two arbitrators so selected within twenty (20) Days of the appointment of the second arbitrator. If any arbitrator is not timely appointed, on the request of any Party such arbitrator shall be appointed by the AAA in accordance with the listing ranking and striking provision in its Commercial Arbitration Rules. Any arbitrator appointed by the AAA shall be a retired judge experienced with large, complex commercial cases or an attorney admitted to practice for at least fifteen years, who is experienced in the arbitration of large, complex commercial cases, if possible with experience with water-related transactions or disputes.
- (c) **Discovery.** The arbitrator(s) shall permit each Party to conduct reasonable discovery as promptly and expeditiously as possible and both Parties shall cooperate to this end. Discovery shall be limited to requests for the production of documents and examination upon deposition by each Party of up to five (5) witnesses for no more than eight (8) hours each. Each Party's requests for and

 HA

responses to discovery including examination upon deposition shall be completed within sixty (60) Days of the arbitrators' selection. The Parties may modify the terms of discovery by mutual agreement. The arbitrator(s) shall resolve any discovery disputes between the Parties that the Parties cannot resolve themselves and may modify or extend any limit or time period contained in this Section 16.3 for good cause.

- (d) Evidence. The hearing shall begin as promptly and expeditiously as possible and, if practicable, not more than sixty (60) Days after the conclusion of the discovery period. Each Party shall file written direct testimony with the arbitrator(s) and serve a copy on the other Party. The written testimony shall be received by the arbitrator(s) and the other Party no later than ten (10) Days prior to the commencement of the hearing. Each Party shall be permitted to make opening statements with the Party demanding arbitration presenting its opening statement first. Immediately after opening statements, the Party demanding arbitration shall then present evidence in support of its position. The other Party then shall present evidence in support of its position. Both Parties may present rebuttal witnesses. All witnesses shall testify under oath, and a stenographic record and transcript of the hearing shall be made. Each Party shall have an opportunity to cross-examine the other Party's witnesses, including the witnesses for whom written direct testimony has been filed. The Parties shall be permitted to make closing statements. The Party demanding arbitration shall present its statement first. The arbitrator(s) shall, if practicable, conclude and close the hearing within thirty (30) calendar days of its commencement. The period for concluding the hearing may be modified by mutual agreement of the Parties.
- (e) Determination. The determination and/or award of the arbitrator(s) shall be made no later than thirty (30) Days from the date of the completion of the hearing or, if applicable, the date when post-hearing briefs were received by the arbitrator(s) and the Parties. Such determination and/or award shall be conclusive, final, and binding. To the extent that an award includes an amount of money, such award shall include interest at the Applicable Interest Rate, and such interest shall accrue from the date(s) on which such money was originally due to have been paid to the prevailing Party or was incorrectly paid by that Party.
- (f) Costs. The costs of the arbitration proceedings, other than the Parties' own expenses and attorneys' fees, shall be shared equally by the Parties.
- (g) Arbitral Awards. The arbitrator(s) shall apply U.S. Virgin Islands law and shall have no power to amend or add to this Agreement, but shall have the authority to interpret the language of this Agreement and make findings of fact, order specific performance and provide injunctive relief or any other remedy available under the terms of this Agreement as if the arbitrator(s) were a court. Subject to such limitation, the decision and award of the arbitrator(s) shall be final and binding. Judgment on an award may be enforced in any court of competent jurisdiction. Upon request of either Party, the arbitrator(s) may issue such orders for interim relief as may be deemed necessary to safeguard the property that is the subject of

 HH

arbitration or otherwise to avoid irreparable harm to a Party, without prejudice to the rights of the Parties in the final determination of the Dispute. Either Party may, without inconsistency with this Agreement, seek from any court of competent jurisdiction any interim or provisional relief that may be necessary to protect the rights or property of that Party or prevent irreparable harm, pending the establishment of the arbitration tribunal. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitral tribunal's orders to that effect.

- (h) Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

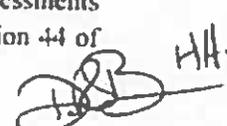
ARTICLE 17. TAXES

Section 17.1 Seven Seas' Liability for Taxes

Seven Seas shall be solely responsible for any and all present or future taxes relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, and all ad valorem taxes relating to the Site or the Facility, and Seven Seas shall be obligated to pay all federal, state, territorial, and local taxes imposed on or with respect to the generation or sale of Water by Seven Seas to WAPA under this Agreement. Notwithstanding the foregoing, in the event the taxes, duties, or fees imposed by the local government change (including but not limited to Gross Receipts Taxes), the changes will be passed through directly to WAPA by an increase in the then applicable Water Charges as determined in Schedule 2; provided, however, that Seven Seas shall retain responsibilities for all taxes generally applicable to all business doing business in the Virgin Islands, including but not limited to corporate income taxes, property taxes and gross receipt taxes on receipts by Seven Seas. In no event, however, shall Seven Seas be responsible for any gross receipts, income tax, or other tax that is based upon the receipts or income of WAPA or its successors. In no event shall any change reduce the Water Charge to an amount lower than that found in Schedule 2 as adjusted from time to time. Further provided that any increase in water rates which is above the Authority's avoided cost must be approved by Public Services Commission before such rates can become effective.

Section 17.2 Gross Receipt Taxes

Title 33, Section 44 of the Virgin Islands Code requires WAPA, when making a payment under this Agreement, to deduct and withhold from such payment, gross receipts taxes equal to five percent (5%) of such payment. Seven Seas agrees that the calculation and payment of gross receipt taxes shall be its sole responsibility. WAPA shall not be responsible in any manner for miscalculation of the gross receipts due under this Agreement or for any additional assessments by the Bureau of Internal Revenue. For the purposes of complying with Title 33, Section 44 of

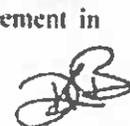
 HH.

the Virgin Islands Code, WAPA shall withhold and forward to the Bureau of Internal Revenue an amount equal to five percent (5%) of the total amount of each Invoice subject to gross receipts taxes. Moreover, in determining the amount of gross receipts taxes that Seven Seas is subject to hereunder, should Seven Seas qualify and receive any tax exemptions and/or benefits providing for the reduction or total waiver of applicable gross receipts tax liabilities, a certificate or other such document indicating same and signed by the appropriate party shall be sufficient proof of Seven Seas' gross receipts tax liability hereunder.

ARTICLE 18. MISCELLANEOUS

Section 18.1 Seven Seas' Assignment Rights

- (a) Seven Seas shall not assign or otherwise transfer this Agreement, except upon WAPA's prior written consent; provided, however, that, upon prior written notification to WAPA, Seven Seas may assign or otherwise transfer this Agreement without WAPA's consent, (i) to an Affiliate, (ii) in connection with a merger, consolidation, or reorganization involving Seven Seas, or (iii) in connection with a sale of all or substantially all of the assets or voting stock of Seven Seas involving any Person having equal or better financial creditworthiness and equal or more industry experience as the Seven Seas. In addition, Seven Seas may assign or otherwise transfer this Agreement without WAPA's consent in connection with an initial public offering by Seven Seas or its Affiliate or in connection with any debt financing. However, nothing herein shall relieve Seven Seas, its successor, its assignee or any new entity formed as a result of (i - iii) above of its obligations hereunder to WAPA. Seven Seas agrees to provide prompt written notice to WAPA of any assignment covered by this Section 18.1(a).
- (b) Seven Seas or its successors and/or assigns may from time to time, without the prior written consent of WAPA, encumber the interest of Seven Seas or a successor and/or assignee in this Agreement and the rights granted hereunder by one or more security instruments (a "Security Interest"), including, without limitation, by a collateral assignment of this Agreement, provided that any Security Interest and all rights acquired under it shall be subject to each and all of the covenants, conditions and restrictions stated in this Agreement and to all rights and interests of WAPA and further provided, that Seven Seas or an assignee shall promptly upon the execution of any Security Interest deliver a written notice thereof to WAPA.
- (c) Without limiting the generality of the foregoing, nothing contained in such Security Interests shall release or be deemed to relieve Seven Seas from full and faithful observance and performance of the terms, covenants and conditions herein contained to be observed and performed by Seven Seas or from any liability for the non-observance or non-performance of any of the terms and conditions hereof, nor be deemed to constitute a waiver of any rights of WAPA hereunder, except as expressly provided for herein. WAPA agrees upon request of Seven Seas or the holder of a Security Interest to execute an agreement in

 AH.

reasonable form which contains provisions and protections reasonably requested by the holder of such Security Interest.

Section 18.2 WAPA's Assignment Rights

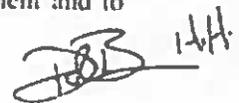
- (a) WAPA shall not assign or otherwise transfer this Agreement, except upon Seven Seas' prior written consent; provided, however, that, upon prior written notification to Seven Seas, WAPA may assign or otherwise transfer this Agreement without Seven Seas' consent to any agency, authority or other Person having equal or better financial creditworthiness and similar responsibilities, authority, and independence. In addition, WAPA may assign or otherwise transfer this Agreement as required by any act of the Virgin Islands Government and shall provide prompt written notice thereof to Seven Seas. However, nothing herein shall relieve WAPA, its successor, its assignee or its assignee of its obligations hereunder to Seven Seas.

Section 18.3 Ownership of Facility

Seven Seas is the sole legal and beneficial owner and the operator of the Facility, free and clear of any liens or other interests in favor of WAPA. The Facility shall remain the personal property of Seven Seas and shall not attach to or be deemed a part of, or become a fixture to, the Site regardless of the manner of affixation to the Site. Without limiting the generality of the foregoing, WAPA hereby waives any statutory or common law lien that it might otherwise have in or to the Facility or any part thereof and agrees that, Seven Seas (i) shall maintain ownership of the Facility and (ii) from and after the occurrence of an event of default by WAPA under this Agreement and the completion of all applicable notice and cure periods, Seven Seas may remove the Facility at any time from the Site, whether or not affixed or attached to the realty, any building or any other equipment or property of WAPA or any other party. WAPA shall execute and furnish any instrument (including, without limitation, any financing statements or similar public documents) and/or take any action reasonably requested by Seven Seas to perfect, confirm or maintain Seven Seas' right, title and interest in the Facility. WAPA acknowledges and agrees that, neither by the execution of nor by reason of performance under this Agreement, does it obtain any title to the Facility or any of their components, nor any property right or interest, legal or equitable, in the Facility or any of their components, whether or not affixed or attached to the realty or any structure thereon other than WAPA's Intake structures. Seven Seas shall be liable for any damage caused by the removal of the Facility to the realty or any structure thereon or to any other property located on or at the Site. Seven Seas acknowledges that the Site on which the Facility will be located are not part of the Facility.

Section 18.4 Further Assurances

Each Party agrees to, and shall use all reasonable efforts to, provide such information, execute and deliver any instruments and documents and take such action as may be necessary or reasonably requested or required by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement in order to give full force and effect to this Agreement and to carry out its intent.



Section 18.5 Relationship of Parties

Except as otherwise explicitly provided herein, no Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other Party and nothing in this Agreement shall be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create any fiduciary relationship between or among the Parties.

Section 18.6 Notices

Any notices required to be given hereunder shall be deemed delivered when deposited in the United States mail, certified and return receipt requested, by nationally recognized express courier, or by personal delivery, addressed to the following persons or such other persons as the Parties may designate in writing:

If to WAPA:

Hugo V. Hodge, Jr.
Executive Director
The Virgin Islands Water and Power Authority
P.O. Box 1450
St. Thomas, Virgin Islands, USA 00804-1450

If to Seven Seas:

Seven Seas Water Corporation (USVI)
7410 Estate Bovoni, 2-2 #9
St. Thomas, VI 00802
Attention: Operations Manager

with copies (which shall not constitute notice) to:

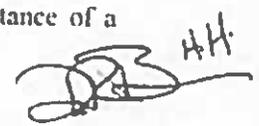
Seven Seas Water Corporation
14400 Carlson Circle
Tampa, FL 33626
Attention: Chief Financial Officer

and

Goodwin Procter LLP
Exchange Place
53 State Street
Boston, MA 02109
Attention: Mark H. Burnett

Section 18.7 Waiver

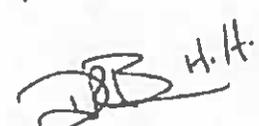
No waiver of any provision of this Agreement shall be effective against a Party except as expressly set forth in a writing signed by such Party. The waiver by either Party of a default or a breach by the other Party of any provision of this Agreement shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a

Handwritten signature and initials, possibly "AH", in the bottom right corner of the page.

payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

Section 18.8 Confidential Information

- (a) Any Confidential Information of a transferring Party (the "Disclosing Party") which is disclosed to or otherwise received or obtained by the other Party (the "Receiving Party") incident to this Agreement shall be held in confidence, and the Receiving Party shall not publish or otherwise disclose such Confidential Information to any Person or use any such Confidential Information, except as reasonably may be required in connection with the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, each Party shall observe the same safeguards and precautions with regard to Confidential Information of the Disclosing Party which such Party observes with respect to its own information of the same or similar kind.
- (b) If the Receiving Party receives a Request from any Person, entity, governmental agency or legislative body (in each case, a "Required Disclosure"), and such Request is made pursuant to Applicable Law, including, without limitation, 3 V.I.C. §§881-884; provided that, prior to making any Required Disclosure to disclose any Confidential Information of the Disclosing Party, the Receiving Party shall promptly notify the Disclosing Party of the Request with prompt written notice of any such request or requirement and shall provide the Disclosing Party with a copy of the Request, so that the Disclosing Party, at its own expense, may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.
- (c) If the Receiving Party receives any Request other than a Required Disclosure (a "Public Request"), the Receiving Party shall promptly notify the Disclosing Party of the Public Request and shall provide the Disclosing Party with a copy of the Public Request. Upon receipt of such notice from the Receiving Party, the Disclosing Party may either (i) contest the Public Request at its sole expense, and agree to indemnify and hold harmless the Receiving Party for any liability (including cost of defense and reasonable attorneys' fees) arising out of or relating to such Public Request, or (ii) consent to the disclosure of Confidential Information.
- (d) The Receiving Party shall not disclose any Confidential Information requested pursuant to the Public Request until the earlier to occur of (i) the provision by the Disclosing Party of its written consent to the disclosure of Confidential Information in response to the Public Request, or (ii) the Receiving Party is served with a Disclosure Order. If the Disclosing Party fails to respond to the notice from the Receiving Party regarding the Public Request within ten (10) Days of receipt of such notice, it shall be deemed to have consented to the Receiving Party's disclosure of the Confidential Information requested pursuant to the Public Request.

 H.H.

- (c) If disclosure is required pursuant to this Section 18.8, the Receiving Party shall limit such disclosure only to the Confidential Information explicitly requested in the Request.
- (f) The obligation to retain Confidential Information in confidence shall continue in full force and effect until the earlier of (i) the second (2nd) anniversary of the disclosure of such information, or (ii) the second (2nd) anniversary of the expiration or earlier termination of this Agreement, with respect to any information obtained by any Party prior to such termination.

Section 18.9 Public Utility

Nothing in this Agreement shall be construed to mean that Seven Seas is a "Public Utility" as defined in Title 30 of the Virgin Islands Code Section 1. If, however, attempts are made by the Public Services Commission, hereinafter referred as the "PSC," to regulate Seven Seas as a Public Utility due to its activities under this Agreement, Seven Seas may, at its sole discretion, upon one hundred eighty (180) Days' prior written notice, terminate this Agreement and remove the Facility. In such an event, Seven Seas agrees that it will look to WAPA only for monies due for services to the date of termination of this Agreement, not any indemnification or damages, costs or fees arising out of any attempt to regulate Seven Seas as a Public Utility.

Section 18.10 Subcontracting

Seven Seas shall have the right to subcontract work to be performed, but shall remain liable for full performance hereunder. Seven Seas shall instruct the subcontractors to abide by the same standards of behavior, rules and regulations which are required of Seven Seas. Provided that WAPA shall have the right to require the removal from the site of any employee of Seven Seas or of any subcontractor, if in the judgment of WAPA such removal is necessary to protect the interest of WAPA. Seven Seas shall pay all subcontractors engaged by Seven Seas.

Section 18.11 Employees of Seven Seas

WAPA specifically acknowledges that it has been informed of Seven Seas' policy of requiring that all Seven Seas employees agree neither to compete with Seven Seas nor to work for clients of Seven Seas located in the US Virgin Islands for a period of eighteen (18) months after termination of employment with Seven Seas. WAPA agrees that it will not employ any of Seven Seas' current or former employees, until a period of eighteen (18) months has elapsed since the termination of the person's employment with Seven Seas. This provision shall survive the termination of this Agreement.

Section 18.12 Survivals

Notwithstanding anything provided herein to the contrary, Articles 2, 5, 10, 11, 12, 13, 14, 16, 17, and 18 shall survive the expiration or termination of this Agreement.

Section 18.13 Posting of Vacancies

In accordance with 27 V.I. Code Ann. § 303b, any Contractor having a business license in the Territory is required to notify the Employment Security Agency, Virgin Islands Department of Labor of its intent to fill an existing position, now vacant or soon to become vacant, or a new previously unfilled position.


44

Section 18.14 Headings

The headings or titles of the sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Agreement.

Section 18.15 Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the U.S. Virgin Islands.

Section 18.16 Third Party Rights

Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in third persons not parties to this Agreement.

Section 18.17 Counterparts

This Agreement and any amendment hereto may be executed and delivered in one or more counterparts and by different Parties in separate counterparts. All of such counterparts shall constitute one and the same agreement and shall become effective (unless otherwise therein provided) when one or more counterparts have been signed by each Party and delivered to the other Party. This Agreement may be delivered by facsimile transmission.

Section 18.18 Severability

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the Parties shall negotiate in good faith and agree to such amendments, modifications, or supplements to this Agreement, or such other appropriate actions, as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

Section 18.19 Terms Generally

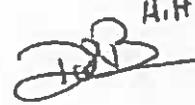
Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation."

Section 18.20 Entire Document

This Agreement and each Schedule as hereinafter specified shall constitute the entire agreement between the Parties with respect to the development, financing, design, construction and operation of the Facility and the other transactions contemplated hereby, and all prior agreements, negotiations, representations, and understandings with respect thereto, including RFP and Seven Seas' bid proposal, are expressly superseded. No amendment, modification, or change to this Agreement or its Schedules shall be effective unless the same shall be in writing, duly executed, authorized and approved by the Parties. In the event of any conflict between the terms and conditions of this Agreement and that of any exhibit, schedule or other document referenced herein, this Agreement shall govern and control. The following Schedules and Exhibits are incorporated herein by reference as if set forth in full, whether or not attached hereto:


A.H.

- Exhibit A – Description of the Facilities
- Exhibit B – Permits and Approvals
- Exhibit C – Feed Water Characteristics (Standard Seawater)
- Exhibit D – [Reserved]
- Exhibit E – Form of Lease
- Exhibit F – Interconnection Specifications
- Exhibit G – Description of Facility Metering and High Pressure Protective Devices
- Exhibit H – Safe Drinking Water Standards
- Exhibit I – Seven Seas' Financial Statement
- Schedule 1 – Facility Specifications
- Schedule 2 – Charges for Water
- Schedule 3 – Requirements for Commercial Operation Date
- Schedule 4 – Construction Milestones
- Schedule 5 – Dispatch Obligations
- Schedule 6 – Metering
- Schedule 7 – Specifications for Water
- Schedule 8 – [Reserved]
- Schedule 9 – [Reserved]
- Schedule 10 – Insurance Requirements
- Schedule 11 – Scheduling and Dispatch
- Schedule 12 – [Reserved]
- Schedule 13 – [Reserved]
- Schedule 14 – Form of Invoice
- Schedule 15 – Electrical Consumption

 A.H.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives as of the date first set forth above.

ATTEST:
(USVI)

SEVEN SEAS WATER CORPORATION

John F. Curtis
John F. Curtis
Director

By: *[Signature]*
Name: Douglas R. Brown
Title: CHAIRMAN

ATTEST:

VIRGIN ISLANDS WATER AND POWER
AUTHORITY

[Signature]

By: *[Signature]*
Name: Hugo Hodse Jr.
Title: Executive Director / CEO

APPROVED AS TO LEGAL FORM AND
CONTENT

By: *[Signature]* 4-23-2012
COUNSEL TO THE VIRGIN ISLANDS
WATER AND POWER AUTHORITY

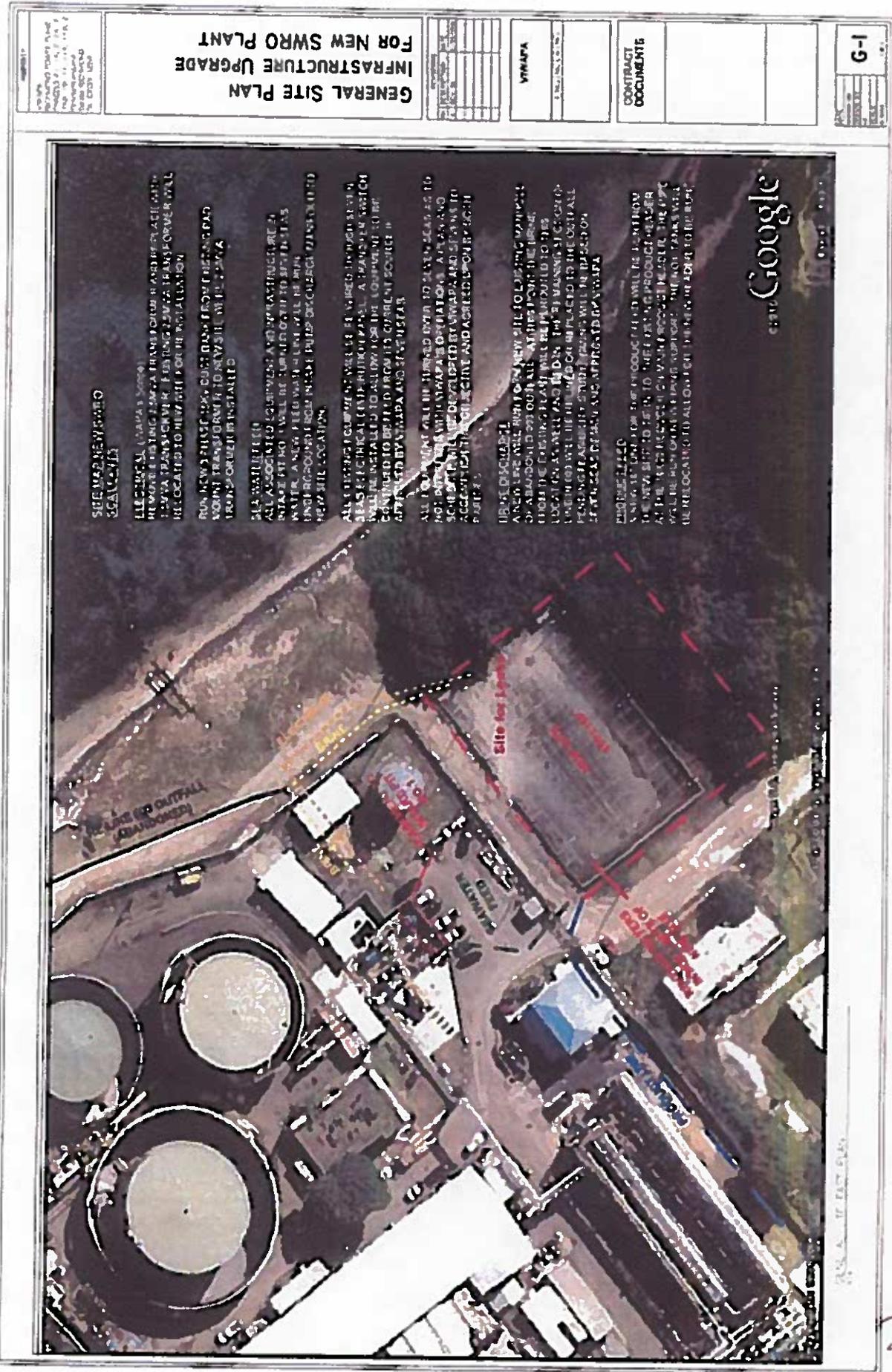
EXHIBIT A - DESCRIPTION OF THE FACILITIES

See Exhibits A-1 through A-6 attached hereto

All drawings in Exhibit A (A-1 through A-6) are conceptual drawings. Actual installation might deviate from the drawings based on engineering designs and assessments as agreed to by both Parties. Final drawing will be attached hereto as Exhibit G.1.

JOB 44

EXHIBIT A-1



SEWER INFRASTRUCTURE UPGRADE
SCALE 1:250

THE PROPOSED NEW SWRO PLANT WILL BE LOCATED AT THE INTERSECTION OF THE EXISTING SEWER MAIN AND THE NEW SWRO PLANT. THE PROPOSED NEW SWRO PLANT WILL BE LOCATED AT THE INTERSECTION OF THE EXISTING SEWER MAIN AND THE NEW SWRO PLANT. THE PROPOSED NEW SWRO PLANT WILL BE LOCATED AT THE INTERSECTION OF THE EXISTING SEWER MAIN AND THE NEW SWRO PLANT.

ALL EXISTING UTILITIES WILL BE MAINTAINED AND PROTECTED. THE PROPOSED NEW SWRO PLANT WILL BE LOCATED AT THE INTERSECTION OF THE EXISTING SEWER MAIN AND THE NEW SWRO PLANT. THE PROPOSED NEW SWRO PLANT WILL BE LOCATED AT THE INTERSECTION OF THE EXISTING SEWER MAIN AND THE NEW SWRO PLANT.

THE PROPOSED NEW SWRO PLANT WILL BE LOCATED AT THE INTERSECTION OF THE EXISTING SEWER MAIN AND THE NEW SWRO PLANT. THE PROPOSED NEW SWRO PLANT WILL BE LOCATED AT THE INTERSECTION OF THE EXISTING SEWER MAIN AND THE NEW SWRO PLANT.

THE PROPOSED NEW SWRO PLANT WILL BE LOCATED AT THE INTERSECTION OF THE EXISTING SEWER MAIN AND THE NEW SWRO PLANT. THE PROPOSED NEW SWRO PLANT WILL BE LOCATED AT THE INTERSECTION OF THE EXISTING SEWER MAIN AND THE NEW SWRO PLANT.

THE PROPOSED NEW SWRO PLANT WILL BE LOCATED AT THE INTERSECTION OF THE EXISTING SEWER MAIN AND THE NEW SWRO PLANT. THE PROPOSED NEW SWRO PLANT WILL BE LOCATED AT THE INTERSECTION OF THE EXISTING SEWER MAIN AND THE NEW SWRO PLANT.

Google

FIG. A-1 - THE EAST PLAN

Handwritten initials: DJB, HH

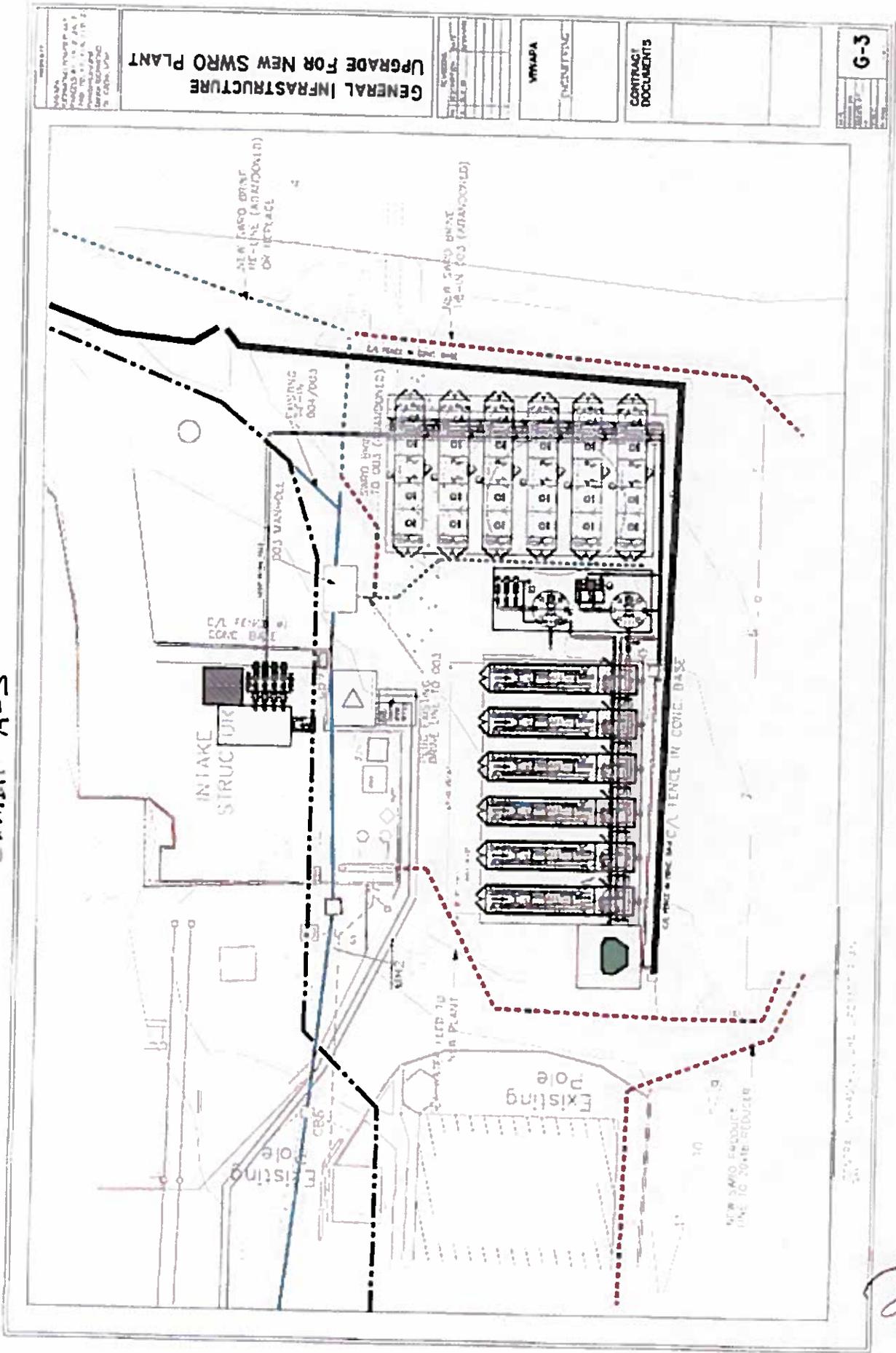
GENERAL SITE PLAN FOR NEW SWRO PLANT

CONTRACT DOCUMENTS

VIMAPA

G-1

EXHIBIT A-3



GENERAL INFRASTRUCTURE
UPGRADE FOR NEW SWRO PLANT

G-3

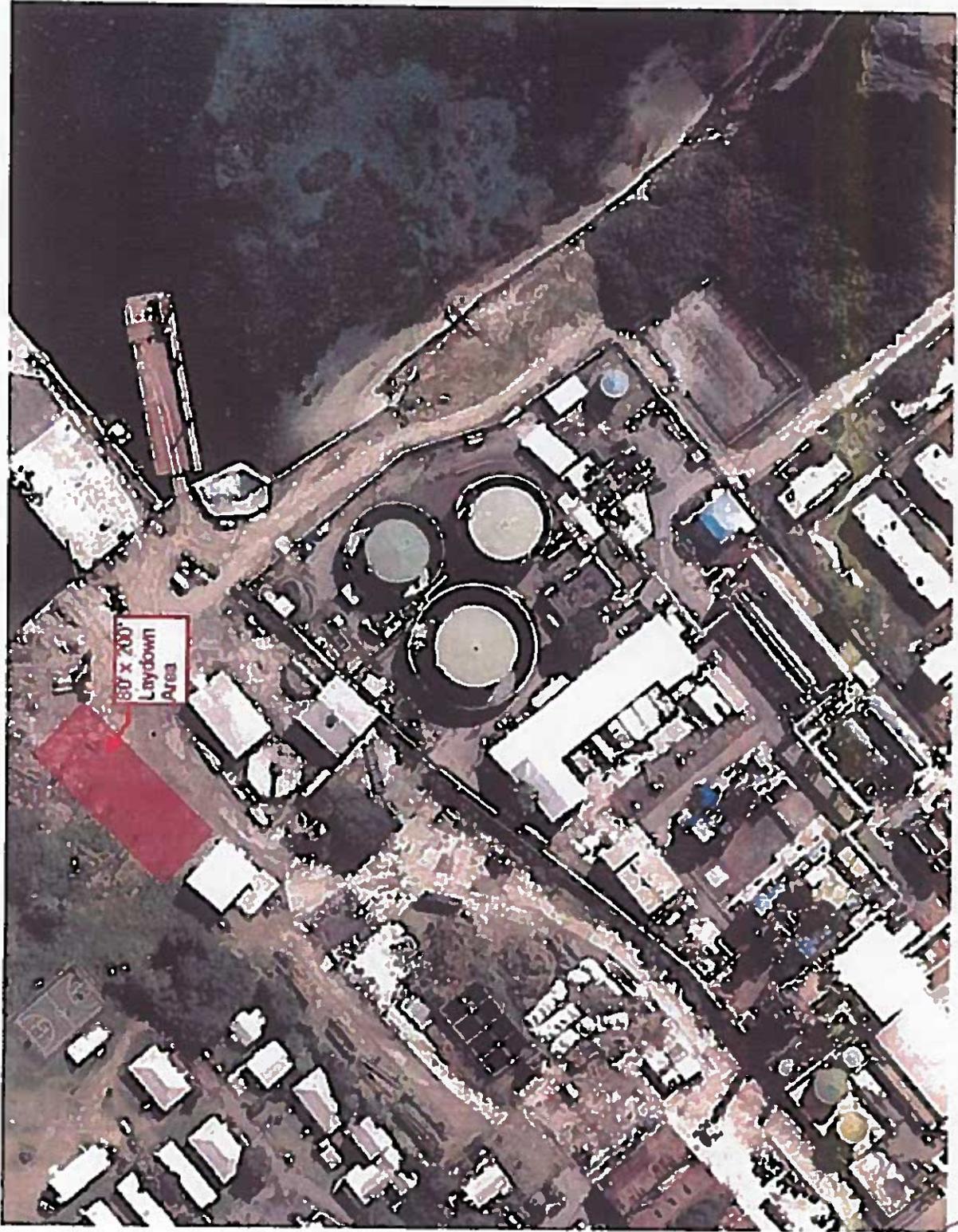
VIHAPA

PLANNING

CONTRACT DOCUMENTS

Handwritten signature
H.A.

Exhibit A-6 – Laydown Area



JTB
+14

EXHIBIT B - LIST OF ANTICIPATED PERMITS AND APPROVALS
[actual Permits and Approvals will be kept on file]

1. Building Permit
2. Coastal Zone Management (CZM) Earth Change Permit
3. Outfall (TPDES) Permit


HH

EXHIBIT C - FEED WATER CHARACTERISTICS

Constituent	Units	Seawater
TDS	Mg/l	35,000
PH	Units	8.0
Oil and Grease	Mg/l	0
Chemical Pollutants	Mg/l	0
SDI	N/A	Less than 5
Turbidity	NTU	Less than 1

Feed Water Notes:

(a) The feed water shall meet the standards for "Standard Seawater" as defined by ASTM Standard D4195-88, with the following additional characteristics: 77 – 82 degrees F water temperature, clean, clear, and colorless, i.e. a maximum Silt Density Index (SDI) value of 5.0, turbidity level of 1.0 NTU, oil/grease level of 0.0 mg/l, and absent of pollutants and other non-naturally occurring substances, be they chemical or biological in origin. Notwithstanding the above, an infrequent reading of trace amounts of pollutants in feed water will not be viewed as non-performance.

(b) If any of the values found in Exhibit C herein increase by 10% and remain at said increased level for a contiguous period of 14 days (or greater), the Parties agree such an event shall constitute an Uncontrollable Circumstance. In such an event, the Parties will use commercially reasonable efforts to seek a mutually beneficial solution in a timely manner.

JB
44

EXHIBIT D - [RESERVED]

FRB
HH

EXHIBIT E - LEASE BETWEEN LANDLORD AND TENANT

JRB
AH

EXHIBIT F - INTERCONNECTION FACILITIES SPECIFICATIONS

The Parties agree that the Interconnection Facilities - beyond the Delivery Point, which routes are depicted in Exhibit A - shall become the responsibility of WAPA upon the Commercial Operation Date. As such, the design and construction of the Interconnection Facilities shall conform to WAPA's construction specifications or other standards or specifications as agreed to by the Parties.

Seven Seas shall utilize WAPA's construction specifications, attached hereto as Exhibit A-5, the specifications listed below and other applicable industry standards as a guide to propose a design relative to material types and sizes; fittings and required appurtenances; underground burials and/or overhead supports in accordance to Section 7.3 of this Agreement. WAPA shall not unreasonably withhold, condition or delay Seven Seas' proposed design, construction or acceptance of the Interconnection Facilities.

If either Party becomes aware that construction of the Interconnection Facility is not proceeding in accordance with the approved design, then construction will be halted immediately and not resume until the divergence from the plans are corrected.


H.H.

SECTION 02511

DISINFECTION OF WATER DISTRIBUTION SYSTEMS

PART 1 - GENERAL

1.01 SCOPE

- A. The work includes furnishing all labor, materials, tools, apparatus, and equipment required to chlorinate all water supply pipelines, tanks, pumps and ancillary equipment both existing and new, which have been exposed to contamination by reason of this construction, before being placed into service, in accordance with AWWA C601, "STANDARD FOR DISINFECTING WATER MAINS".

1.02 MEASUREMENT AND PAYMENT

- A. Measurement and payment for work described in this Section shall be made in accordance with the provisions of Contract.

PART 2 - PRODUCTS (NOT APPLICABLE)

PART 3 - EXECUTION

3.01 PROCEDURE

- A. The procedure to disinfect shall be approved by the Engineer prior to doing the work. The location of the chlorination and sampling points will be determined by the Engineer in the field. Taps for chlorination and sampling shall be uncovered and backfilled by the Contractor as required. The general procedure for chlorination shall be first to flush all dirty or discolored water from the lines, and then to introduce chlorine in approved dosages through a tap at one end, while water is being withdrawn at the other end of the line. The chlorine solution shall remain in the pipeline for approximately 24 hours. Following the chlorination period all treated water shall be flushed from the lines at their extremities, and replaced with water from the distribution system.

3.02 TESTING

- A. Bacteriological sampling and analysis of the replacement water shall then be made by the Contractor under the supervision of the Engineer in full accordance with AWWA Manual C601. The Contractor will be required to rechlorinate, if necessary, and the line shall not be placed in service until the appropriate requirements are met.

END OF SECTION


H11

SECTION 02700

PAVING AND SURFACING

PART 1 - GENERAL

1.01 SCOPE

- A. The work of this Section includes all labor, materials, tools and equipment necessary to furnish, install and test, as specified herein and as shown on the Contract Drawings.
- B. This section covers the construction of a base course, a level-up course, a surface course or any combination of these courses as shown on the plans, each course being composed of a compacted mixture of aggregate and asphalt cement mixed hot in a mixing plant, in accordance with the details shown on the plans and the requirements herein.

1.02 MEASUREMENT AND PAYMENT

- A. Measurement and payment for work described in this Section shall be made in accordance with the provisions of Contract.

1.03 SUBMITTALS

- A. Shop drawings, brochures and samples shall be submitted for all items to be furnished in accordance with the provisions of the General Conditions Section 700.
- B. Submittals shall include at least the following:
 - 1. Samples of each aggregate.
 - 2. The Contractor shall notify the Engineer of the source of the asphaltic material prior to design of the asphaltic mixture.
 - 3. Description of the batch mixing plant, including calibration records of equipment.
 - 4. Mix design supported by evidence of mix design procedure, complete aggregate analysis, Marshall curves, mixing and placing temperatures. Job mix design may be one successfully used in the area if supported by recent certified test reports. Mix design must be approved prior to asphalt delivery to site. Include copies of test results.
 - 5. Waybills and delivery tickets, as construction progresses.

PART 2 - PRODUCTS

DJB
AH

2.01 MATERIALS - GENERAL

- A. The Contractor shall furnish materials to the project meeting the following requirements prior to mixing.

2.02 AGGREGATE

- A. The aggregate shall be composed of a coarse aggregate, a fine aggregate, and if required or allowed, a mineral filler, and may include reclaimed asphalt pavement (RAP).
- B. Coarse Aggregate. Coarse aggregate is defined as that part of the aggregate retained on a No. 10 sieve. The aggregate shall be natural, lightweight or manufactured, and be of uniform quality throughout. Aggregate from each stockpile shall have a percent of wear not more than 40 when tested by the Los Angeles Abrasive Test (ASTM C131), and shall have a maximum deleterious material content of 1.5 percent.
- C. Lightweight aggregate is defined as expanded shale, clay or slate produced by the rotary kiln method. Manufactured aggregate is defined as any aggregate other than natural or lightweight. Lightweight or manufactured materials with the same or similar gradation whose unit weights vary by more than 6.0 percent from that used in the mixture design may require a redesign. Gravel from each source shall be so crushed as to have a minimum of 85 percent of the particles retained on the No. 4 sieve with two or more mechanically induced crushed faces. The material passing the No. 4 sieve and retained on the No. 10 sieve must be the product of crushing aggregate that was originally retained on the No. 4 sieve.
- D. Fine Aggregate. The fine aggregate is defined as that part of the aggregate passing the No. 10 sieve and shall be of uniform quality throughout. A maximum of 15 percent of the total virgin aggregate may be field sand or other uncrushed free aggregate. Stone screenings are required and shall be the result of a rock crushing operation and meet the following gradation requirements:

Percent by Weight

Passing the 3/8" sieve 100

Passing the No. 10
sieve 70-100

Passing the No. 200
sieve 0-15

Crushed gravel screenings may be used with, or in lieu of, stone screenings. Crushed gravel screenings must be the product of crushing aggregate that was originally retained on the No. 4 sieve and meet the gradation for stone screenings shown above.

2.03 RECLAIMED ASPHALT PAVEMENT (RAP)

- A. RAP is defined as a salvaged, milled, pulverized, broken or crushed asphaltic

J. B. Holt

pavement. The RAP to be used in the mix shall be crushed or broken to the extent that 100 percent will pass the 2 inch sieve. The stockpiled RAP shall not be contaminated by dirt or other objectionable materials. The maximum amount of RAP allowed in a mix is 20 percent. Only RAP from designated sources may be used in surface courses.

2.04 MINERAL FILLER

- A. Mineral filler shall consist of thoroughly dried stone dust, Portland cement, lime, fly ash, or other mineral dust approved by the Engineer. The mineral filler shall be free from foreign matter. The addition of baghouse, or other collected, fines will be permitted if the mixture quality is not adversely affected in the opinion of the Engineer. In no case shall the amount of material passing the No. 200 sieve exceed the tolerances of the job-mix formula or the master gradation limits. The measuring device for adding mineral filler shall be tied into the automatic plant controls so that the supply of mineral filler will be automatically adjusted to plant production and provide a consistent percentage to the mixture. The mineral filler shall meet the following gradation requirements. Baghouse fines are not required to meet the gradation requirements.

Percent by Weight or Volume

Passing the No. 30 sieve 95-100

Passing the No. 80 sieve, not less than 75

Passing the No. 200 sieve, not less than 55

2.05 ASPHALTIC MATERIAL

- A. Paving asphalt shall be steam-refined asphalt produced from crude asphaltic petroleum or a mixture of refined liquid asphalt and refined solid asphalt. It shall be homogeneous and free from water and residues from distillation of coal, coal tar, or paraffin oil.
- B. Prime Coat. Prime coat shall be cutback asphalt MC-30, per ASTM 2027
- C. Tack Coat. Tack coat shall be diluted emulsified asphalt, SS-1 or CSS-1, per ASTM D 977.
- D. Asphalt Cement. Asphaltic cement shall be Viscosity grade AC-20 per AASHTO M226.

2.06 ASPHALTIC CONCRETE

- A. Hot-mixed, hot-laid bituminous paving mixture per ASTM D3515.
- B. The paving mixtures shall consist of a uniform mixture of aggregate, hot asphalt


144

cement, and additives if allowed or required.

- C. Master Grading. Where two courses of asphaltic concrete are shown in the drawings, the base course shall be Type B and the surface course shall be Type D. Where only one course is shown, the grading shall be Type D.

Percent passing by weight or volume *2-8 when washed sieve analysis is used

Sieve size	Type B%	Type D%
1"	100	
7/8"	95-100	
5/8"	75-95	
1/2"		100
3/8"	60-80	85-100
No. 4	40-60	50-70
No. 10	27-40	32-42
No. 40	10-25	11-26
No. 80	3-13	4-14
No. 200	1-6*	1-6*

- D. Additives to facilitate mixing and/or improve the quality of the asphaltic mixture or tack coat may be used with the authorization of the Engineer. Contractor may choose to use either lime or a liquid antistripping agent to reduce the moisture susceptibility of the aggregate.

2.07 MIX DESIGN

- A. An asphalt mixture design is a laboratory process which includes the determination of the quality of the asphalt and the individual aggregates, the development of the job-mix formula, and the testing of the combined mixture. The job-mix formula lists the quantity of each component to be used in the mix and the combined gradation of the aggregates used.
- B. The Contractor shall furnish the mixture design for all asphaltic concretes. The Engineer will verify the proposed mixture design. Should the Engineer's tests find that the proposed mix, re design does not meet the requirements of this specification, the Contractor shall furnish another mixture design. The cost of the second mix design and any subsequent designs shall be at the expense of the Contractor.
- C. The asphalt shall meet the following requirements at a minimum when designed using the Marshall Method per AASHTO MS-2:
1. The bulk specific gravity will be determined for each aggregate to be used in the design mixture. The bulk specific gravity of aggregates in RAP will be determined on extracted aggregates.
 2. When properly proportioned, for the type specified, the blend of aggregates shall produce an aggregate gradation which will conform to the limits of the master grading shown in


H H

the table under Paragraph 2.06. The gradation of the aggregate will be determined. The master grading limits will be plotted on a gradation chart with sieve sizes raised to the 0.45 power. This plot must show that the proposed job-mix formula is within the limits of the master grading. Gaps in gradation shown by this plot should be avoided.

3. The voids in the mineral aggregate (VAMP) will be determined as a mixture design requirement only, and shall greater than 12 percent for Type B and 14 percent for Type
4. The mixture of aggregate, asphalt and additives proposed for use will be evaluated in the design stage for moisture susceptibility. To substantiate the design, trial mixtures shall be produced and tested using all of the proposed project materials and equipment prior to any placement. This requirement may be satisfied if a similar design, using the same ingredients, has proven satisfactory.
5. Density. The mixture shall be designed to produce an acceptable mixture at an optimum density of 96.0 percent. The operating range for control of laboratory density during production shall be optimum density plus or minus 1.5 percent.
6. Stability. The materials used in the mixture design shall produce a mixture with a stability value of at least 500 pounds.
7. The flow and percent air voids shall be as defined in MS-2 for Medium Traffic (Flow, 0.01 in: 8-18; Percent Air voids: 3-5 for surface course, 3-8 for base course).

PART

3

EXECUTION

3.01 INSTALLATION

- A. Equipment for the handling of materials, mixing, placing and compacting of the mixture shall be maintained in good repair and operating condition and subject to the approval of the Engineer. Any equipment found to be defective and potentially having a negative effect on the quality of the paving mixture or ride quality will not be allowed.
- B. Asphalt concrete shall be purchased from sources with an approved batch mixing plant. The plant shall have a record of producing asphaltic concrete of a quality equal to, or exceeding that specified herein.
- C. Mixing plants may be the weigh-batch type, the modified weigh-batch type, the drum-mix type, or the specialized recycling type. All plants shall be equipped with satisfactory conveyors, power units, mixing equipment, aggregate handling equipment, bins and dust collectors. Automatic proportioning devices are required for all plants. Records of calibration (at least annually) shall be submitted to the Engineer.
- D. Asphalt concrete pavement shall be placed using a self-propelled spreading and finishing paving machine. The spreading and finishing machine shall be approved by the Engineer and shall meet the requirements indicated below.


HH.

1. Screed Unit.
 - a. The spreading and finishing machine shall be equipped with a heated compacting screed. It shall produce a finished surface meeting the requirements of the typical cross sections and the surface tests.
 - b. Extensions added to the screed shall be provided with the same compacting action and heating capability as the main screed unit, except for use on variable depth tapered areas and/or as approved by the Engineer. The spreading and finishing machine shall be equipped with an automatic screed control system.
 - c. Control points shall be established for the finished work. The Contractor shall furnish all equipment required for grade reference. It shall be maintained in good operating condition by personnel trained in the use of this type of equipment.
 2. Tractor Unit.
 - a. The tractor unit shall be equipped with a hydraulic hitch sufficient in design and capacity to maintain contact between the rear wheels of the hauling equipment and the pusher rollers of the finishing machine while the mixture is being unloaded.
 - b. No portion of the weight of hauling equipment, other than the connection, shall be supported by the asphalt paver. No vibrations or other motions of the loading equipment, which could have a detrimental effect on the riding quality of the completed pavement, shall be transmitted to the paver.
 - c. The use of any vehicle which requires dumping directly into the finishing machine and which the finishing machine cannot push or propel to obtain the desired lines and grades without resorting to hand finishing will not be allowed.
- E. Material Transfer Equipment
1. Windrow Pick-Up Equipment. Windrow pick-up equipment shall be constructed in such a manner that substantially all the mixture deposited on the roadbed is picked up and loaded into the spreading and finishing machine. The mixture shall not be contaminated with foreign material. The loading equipment shall be designed so that it does not interfere with the spreading and finishing machine in obtaining the required line, grade and surface without resorting to hand finishing.
 2. Material Feeding System. Material feeding systems shall be designed to provide a continuous flow of uniform mixture to the spreading and finishing machine.
- F. Motor Grader. The motor grader, when used, shall be a self-propelled power motor grader and shall be equipped with smooth tread pneumatic tired wheels unless otherwise directed. It shall have a blade length of not less than 12 feet and a wheelbase of not less than 16 feet.
- G. Rollers. Rollers provided shall meet the requirements for their type as follows:

 H.H.

1. Pneumatic-Tire Roller. The roller shall be an acceptable medium pneumatic tire roller conforming to the requirements of Item 213, "Rolling (Pneumatic Tire)". Type B, unless otherwise specified on the plans. Pneumatic-tire rollers used for compaction shall provide a minimum 80 psi ground contact pressure. When used for kneading and sealing the surface only, they shall provide a minimum of 55 psi ground contact.
 2. Two-Axle Tandem Roller. This roller shall be an acceptable self-propelled tandem roller weighing not less than 8 tons.
 3. Trench Roller. This roller shall be an acceptable self-propelled trench roller equipped with a sprinkler for keeping the wheels wet and an adjustable road wheel so that the roller may be kept level during rolling. The drive wheel shall be not less than 20 inches wide. The roller under working conditions shall produce not less than 325 pounds per linear inch of roller width and be so geared that a speed of approximately 1.8 miles per hour is obtained in low gear.
 4. Vibratory Steel-Wheel Roller. This roller shall have a minimum weight of 6 tons. The compactor shall be equipped with amplitude and frequency controls and shall be specifically designed to compact the material on which it is used.
- II. Straightedges and Templates. When directed by the Engineer, the Contractor shall provide acceptable 10 foot straightedges for surface testing. Satisfactory templates shall be provided as required by the Engineer.
- I. Alternate Equipment. When permitted by the Engineer, equipment other than that specified herein which will consistently produce satisfactory results may be used.

3.02 PREPARATION

- A. The subgrade shall be smooth and free of foreign matter.
- B. A prime coat shall be applied at a rate of 0.10 to 0.20 gal. per sq. yd., over compacted flexible base. Apply material to penetrate and seal, but not flood, surface. Cure and dry as long as necessary to attain penetration and evaporation of volatile.
- C. Tack Coat. The surface upon which the tack coat is to be placed shall be cleaned thoroughly to the satisfaction of the Engineer. The surface shall be given a uniform application of tack coat using asphaltic materials of this specification. This tack coat shall be applied with an approved sprayer at a rate not to exceed 0.05 gallon residual asphalt per square yard of surface. Where the mixture will adhere to the surface on which it is to be placed without the use of a tack coat, the tack coat may be eliminated by the Engineer. All contact surfaces of curbs and structures and all joints shall be painted with a thin uniform application of tack coat. Existing asphalt shall be saw cut before applying tack coat. A tack coat shall be placed between asphalt layers. During the application of tack coat, care shall be taken to prevent splattering of adjacent pavement, curb and gutter and structures. The tack coat shall be rolled with a pneumatic tire roller when directed by the Engineer.
- D. The tack coat, prime coat, or asphaltic mixture shall be placed only when the humidity, general weather conditions and temperature and moisture condition of the

DB
14H

base, in the opinion of the Engineer, are suitable.

3.03 TRANSPORTING ASPHALTIC CONCRETE

- A. The asphaltic mixture shall be hauled to the work site in tight vehicles previously cleaned of all foreign material. The dispatching of the vehicles shall be arranged so that all material delivered is placed and all rolling completed during daylight hours unless specified otherwise elsewhere in these specifications. If necessary, to prevent the mixture from adhering to the body, the inside of the truck may be given a light coating of release agent satisfactory to the Engineer.

3.04 PLACEMENT

- A. The asphaltic mixture shall be placed and spread on the approved prepared surface with the spreading and finishing machine. Asphalt shall be placed in layers no more than 2 inches deep. Make joints between successive days' work, to ensure continuous bond between adjoining work. The placing of the asphaltic mixture shall be done without tearing, shoving, gouging or segregating the mixture and without producing streaks in the mat.
- B. Unloading into the finishing machine shall be controlled so that bouncing or jarring the machine shall not occur and the required lines and grades shall be obtained without resorting to hand finishing.
- C. Dumping of the asphaltic mixture in a windrow and then placing the mixture in the finishing machine with windrow pick-up equipment will be permitted. The windrow pick-up equipment shall be operated in such a manner that substantially all the mixture deposited on the roadbed is picked up and loaded into the finishing machine without contamination by foreign material. The windrow pick-up equipment will be so operated that the finishing machine will obtain the required line, grade and surface without resorting to hand finishing. Any operation of the windrow pick-up equipment resulting in the accumulation and subsequent shedding of accumulated material into the asphaltic mixture will not be permitted.
- D. Level-up courses may be spread with a motor grader.
- E. The spreading and finishing machine shall be operated at a uniform forward speed consistent with the plant production rate, hauling capability, and roller train capacity to result in a continuous operation. The speed shall be slow enough that stopping between trucks is not ordinarily required. If, in the opinion of the Engineer, sporadic delivery of material is adversely affecting the mat, the Engineer may require paving operations to cease until acceptable methods are provided to minimize starting and stopping of the paver.
- F. The hopper flow gates of the spreading and finishing machine shall be adjusted to provide an adequate and consistent flow of material. The augers shall provide means to supply adequate flow of material to the center of the paver. Augers shall supply an adequate flow of material for the full width of the mat. Augers should be kept approximately one-half to three-quarters full of mixture at all times during the paving

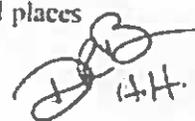
RS
HH

operation.

- G. When the asphaltic mixture is placed in a narrow strip along the edge of an existing pavement, or used to level up small areas of an existing pavement, or placed in small irregular areas where the use of a finishing machine is not practical, the finishing machine may be eliminated when authorized by the Engineer.
- H. Adjacent to flush curbs, gutters and structures, the surface shall be finished uniformly high so that when compacted it will be slightly above the edge of the curb or structure.
- I. Construction joints of successive courses of asphaltic material shall be offset at least 6 inches. Construction joints on surface courses shall coincide with lane lines, or as directed by the Engineer.
- J. If a pattern of surface irregularities or segregation is detected, the Contractor shall make an investigation into the causes and immediately take the necessary corrective action. With the approval of the Engineer, placement may continue for no more than one full production day from the time the Contractor is first notified and while corrective actions are being taken. If the problem still exists after that time, paving shall cease until the Contractor further investigates the causes and the Engineer approves further corrective action to be taken.

3.05 COMPACTING

- A. The pavement shall be compacted thoroughly and uniformly with the necessary rollers to obtain the compaction and cross section of the finished paving mixture meeting the requirements of the plans and specifications.
- B. Rolling shall start by first rolling the joint with the adjacent pavement and then continue by rolling longitudinally at the sides and proceed toward the center of the pavement, overlapping on successive trips by at least one foot, unless otherwise directed by the Engineer. Alternate trips of the roller shall be slightly different in length.
- C. When rolling with vibratory steel-wheel rollers, equipment operation shall be in accordance with the manufacturer's recommendations. Vibratory rollers shall not be left vibrating while not rolling or when changing directions. Vibratory rollers shall not be allowed in the vibrating mode on mats with a plan depth of less than 1-1/2 inches.
- D. The motion of the rollers shall be slow enough to avoid other than usual initial displacement of the mixture. If any displacement occurs, it shall be corrected to the satisfaction of the Engineer. The roller shall not be allowed to stand on pavement which has not been fully compacted. To prevent adhesion of the surface mixture to the steel-wheel rollers, the wheels shall be kept thoroughly moistened with water, but an excess of water will not be permitted. Necessary precautions shall be taken to prevent the dropping of diesel, gasoline, oil, grease or other foreign matter on the pavement, either when the rollers are in operation or when standing.
- E. The edges of the pavement along curbs, headers and similar structures, and all places


J.H.

not accessible to the roller, or in such positions as will not allow thorough compaction with the rollers, shall be thoroughly compacted with lightly oiled tamps.

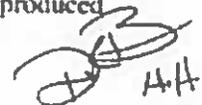
- F. Rolling with a trench roller will be required on widened areas, in trenches and other limited areas where satisfactory compaction cannot be obtained with the approved rollers.
- G. Regardless of the method required for in-place compaction control, all rolling for compaction shall be completed before the mixture temperature drops below 175 F.

3.06 JOB-MIX FORMULA ADJUSTMENTS

- A. The Contractor shall produce a mixture of uniform composition closely conforming to the approved job-mix formula.
- B. If, during initial days of production, it is determined that adjustments to the mixture design job-mix formula are necessary to achieve the specified requirements, or to more nearly match the aggregate production, the Engineer may allow adjustment of the mixture design job-mix formula within the following limits without a laboratory redesign of the mixture. The adjusted job-mix formula shall not exceed the limits of the master grading for the type of mixture specified nor shall the adjustments exceed 5 percent on any one sieve, 1/2 inch size and larger, or 3 percent on the sieve sizes below the 1/2 inch sieve.
- C. When the considered adjustments exceed either the 5 or 3 percent limits, and the Engineer determines that the impact of these changes may adversely affect pavement performance, a new laboratory mixture design will be required.
- D. The asphalt content will be adjusted as deemed necessary by the Engineer to maintain desirable laboratory density near the optimum value while achieving other mix requirements.

3.07 FIELD TESTS

- A. General: Contractor shall provide its own quality control to ensure that the work meets the requirements of this specification. All quality control readings and measurements made by the Contractor shall be recorded and submitted to the Engineer.
- B. Samples of the asphalt concrete will be taken by the Contractor at points designated by the Engineer and tested by an approved independent lab for bulk specific gravity, stability, flow, density, and voids analysis, in conformance with the Marshall Method. Contractor shall pay for these analyses. A minimum of one test for the above referenced parameters shall be taken for every 1,000 feet of trench work which requires repaving with asphaltic concrete and for every 500 square yards of paved area not associated with trench work. If portions of the pavement significantly differ from the mix design, the affected portion must be replaced or overlaid with a proper mix, at the Engineer's discretion and at Contractor's expense.
- C. Tolerances. The gradation of the aggregate and the asphalt cement content of the produced

A handwritten signature, possibly 'DAB', is written over the text 'produced' in item C. Below the signature are the initials 'A.H.'.

mixture shall not vary from the job-mix formula by more than the tolerances allowed herein. When within applied tolerances, the gradation of the produced mixture may fall outside the master grading limits for any of the sieve sizes from the largest sieve size on which aggregate may be retained down through the No. 80 sieve. Only the quantity of aggregate passing the No. 200 sieve is further restricted to conform to the master grading limitations. A tolerance of 2 percent is allowed on the sieve size for each mixture type which shows 100 percent passing.

Tolerance, Percent by Weight or Volume as Applicable

Passing the 1-1/4" to No. 10 sieve	Plus or Minus 5
Passing the No. 40 to No. 200 sieve	Plus or Minus 3
Asphalt, weight	Plus or Minus 0.5
Asphalt, volume	Plus or Minus 1.2

- D. Engineer will test in-place hot-mixed asphalt courses for compliance with requirements for thickness and surface smoothness. A field density less than 95% shall not be accepted. Placement area determined to have field densities less than 95% shall be removed and replaced at Engineer's discretion and Contractor's expense.
- E. Thickness: In-place compacted thickness tested in accordance with ASTM D 3549 -511 not be acceptable if exceeding following allowable variations: 1. Base Course: minus 1/4 inch. 2. Surface Course: minus 1/4 inch.
- F. Surface Smoothness: Test finished surface of each hot-mixed asphalt course for smoothness, using 10-foot straightedge applied parallel with and at right angles to centerline of paved area. Surfaces will not be acceptable if exceeding the following tolerances for smoothness:
1. Base Course Surface: 1/4 inch.
 2. Wearing Course Surface: 3/16 inch.
 3. Crowned Surfaces: Test with crowned template centered and at right angle to crown. Maximum allowable variance from template is 1/4 inch.
- G. Repair or remove and replace unacceptable paving as directed by Engineer at Contractor's expense.
- H. All templates, straightedges, core drilling equipment, scales and other weighing and measuring devices necessary for the proper construction, measuring and checking of the work shall be furnished, operated and maintained by the Contractor at his expense.

END OF SECTION


AH

SECTION 15130

GAUGES

PART 1 - GENERAL

1.01 SCOPE

- A. This Section serves as a General Specification applicable to all gauges to be furnished and installed as shown on the Drawings and called for in the Specifications including but not limited to those to be furnished under other sections making reference to this Section. At a minimum, gauges shall be provided on all pumps and elsewhere as indicated or specified.
- B. Gauges specified herein include pressure, vacuum, and compound gauges of the dial-indicating Bourdon tube type.

1.02 MEASUREMENT AND PAYMENT

- A. Measurement and payment for work described in this Section shall be made in accordance with the provisions of Contract.

1.03 SUBMITTALS

- A. Shop drawings, brochures and samples shall be submitted for all items to be furnished in accordance with the provisions of the General Conditions Section.
- B. Submittals shall include at least the following:
 - 1. Shop drawings showing complete fabrication and construction details, materials, weights, dimensions, clearances and anchorage locations.

1.04 PRODUCT HANDLING

- A. All materials and equipment shall be shipped, stored, handled and installed in such a manner as not to degrade quality, serviceability or appearance. The equipment shall be stored in a clean, dry location free from construction dust, precipitation and excess moisture or condensation. If stored for more than two weeks, the equipment shall be lubricated and all maintenance considerations required by the manufacturer for proper storage of the equipment.

1.05 DESIGN CRITERIA (SYSTEM DESCRIPTION)

- A. All materials and equipment covered by this specification are intended to be standard materials and equipment of proven ability as manufactured by reputable concerns.


H-H

- B. Provide pressure, vacuum, or compound gauges of the liquid filled type required which utilizes a Bourdon tube as the measuring element.
- C. The gauge ranges shall be appropriate for use in intended operating conditions, as directed by the Engineer.
- D. Provide pressure gauges to indicate pressures above atmospheric pressure only.
- E. Provide vacuum gauges to indicate pressures below atmospheric pressure only.
- F. Provide compound gauges to indicate pressures above and below atmospheric pressure.

2.02 ACCURACY

- A. Gauges shall conform to the requirements of ANSI B40.1.
- B. Submit manufacturer's certification indicating that the gauges provided have met the accuracy requirements specified.
- C. Gauges shall be ANSI B40.1, Grade 1A, with an error not to exceed +/- 1% of full scale.
- D. Gauges mounted to a diaphragm seal shall have an overall error not exceeding +/-2% of full scale.

2.03 GAUGE CONSTRUCTION

- A. Construct gauges of sound, durable material free from all defects and imperfections that in any way may affect the accuracy and serviceability of the gauges. Unless otherwise shown or specified, gauges shall be liquid filled, 4-inch nominal diameter, Model 700LFSS series by H. O. Trerice Co. or equal, and shall be constructed of the following materials:
 - 1. Case 304 or 316 stainless steel. Provide a 304 stainless steel wall mount back flange on the case when the gauge will be mounted on a remote board with a capillary tube between the gauge and a diaphragm seal.
 - 2. Case Fill Glycerin
 - 3. Dial White aluminum with black printing and pointer stop at zero, 270 degree scale, and reading in inches of mercury for vacuum gauges and pounds per square inch for pressure gauges. Compound gauges shall read in both aforementioned units.
 - 4. Lens Clear, blemish free, shatter resistant, laminated, 1/8-inch thick safety glass, or 1/8-inch thick high temperature acrylic. Lens shall be sealed to case with BUNA-N gasket and secured with a bayonet lock ring.
 - 5. Lock Ring 304 or 316 stainless steel
 - 6. Bourdon tube 316 stainless steel heliarc welded to the socket
 - 7. Socket 316 stainless steel
 - 8. Movement 300 series Stainless steel with bushing and movement stop
 - 9. Pointer Black coated aluminum with micro adjustment for zero adjustment
 - 10. Connection 1/4-inch NPT, located at bottom of gauge

2.04 GENERAL GAUGE PROTECTION AND ACCESSORIES

- A. Unless otherwise shown or specified, pressure gauges shall have under-pressure protection stops

- and over-pressure protection stops.
- B. Unless otherwise shown or specified, all pressure, vacuum and compound gauges shall provided with 1/4-inch NPT, stainless steel, sintered metal snubbers of porosity suitable for the service. Snubbers shall be H. O. Trerice Co. 872 Series snubbers, or equal.
 - C. Gauges mounted on diaphragm seals shall be provided with an over-pressure limiting valve on the instrument side of the seal to protect the gauge from being over pressurized while the gauge connecting piping is being backflushed. The pressure limiting valve shall have a stainless steel body and 1/4-inch NPT connections. The valve shall be factory set and tested to protect the gauge from damage from over pressure. The valves shall be as manufactured by Chemiquip Products Co., or Midwest Instruments, Inc., or equal.

2.05 DIAPHRAGM SEALS

- A. Provide diaphragm seals as indicated on the drawings. The diaphragm seals are intended to prevent the gauge from being clogged or corroded by process materials.
- B. Gauges mounted to a diaphragm seal shall have an overall error not exceeding +/-2% of full gauge scale.
- C. The diaphragm seal shall be of the clean-out design which will allow the process housing to be removed and cleaned without loss of the fill fluid and with the diaphragm element remaining captive in the instrument housing. For water applications the seal shall have a 316 stainless steel instrument housing with 1/4-inch NPT instrument connection, a 316 stainless steel process housing with a 3/4-inch process connection, 300 series stainless steel clamp ring (if used), 300 series stainless steel nuts and bolts, and a 1/4-inch NPT backflushing connection in the process housing. The diaphragm element shall be minimum 2-1/4 inches in diameter and shall be solid Teflon. The diaphragm seal shall be H. O. Trerice Model T516 Series, or equal. For all other applications seal construction materials shall be appropriate for use.
- D. Gauges mounted remotely from the diaphragm seal, as specified, shall be connected to the pressure limiting valve with flexible, 300 series seamless stainless steel capillary tubing. The tubing shall be connected with 300 series stainless steel fittings. A 1/4-inch NPT female fitting connected to the gauge and a 1/4-inch male fitting connected to the outlet side of the pressure limiting valves shall be provided on the capillary tubing. The capillary tubing shall be a minimum of 8 ft. long, or longer if required for the installation. The capillary tubing shall be rated for 2500 psi internal pressure.
- E. The filling fluid between the diaphragm seal and the gauge shall be silicone. The gauge/seal assembly shall be filled, tested, and calibrated at the factory. The fill fluid shall be Dow Chemical Co. DC200, or equal.

PART 3 - EXECUTION

3.01 INSTALLATION

- A. All materials and equipment shall be installed in a neat, workmanlike manner.
- B. All equipment specified herein shall be installed in accordance with the manufacturer's

JOB 44

recommendations and the contract drawings.

- C. Unless otherwise shown or specified, all pressure, vacuum, and compound gauges shall be mounted on free-standing boards. Gauges shall be mounted as shown on the drawings. Gauges shall be mounted so as to be easily read from floor level.

END OF SECTION


H-H

**EXHIBIT G - DESCRIPTION OF FACILITY METERING & HIGH PRESSURE
PROTECTIVE DEVICES**

All conceptual drawings are contained in Exhibit A. Actual installation might deviate from the drawings based on engineering designs and assessments as agreed to by both Parties. Final drawing will be attached hereto as Exhibit G.)


1/14

EXHIBIT H



National Primary Drinking Water Regulations

Contaminant	MCL or TT (mg/L)	Potential health effects from long-term exposure above the MCL	Common sources of contaminant in drinking water	Public Health Goal (mg/L)
OC Acrylamide	1.0	Nervous system or blood problems; increased risk of cancer	Added to water during sewerage wastewater treatment	0.1
OC Alachlor	0.05	Eye, liver, kidney or spleen problems; anemia, increased risk of cancer	Runoff from herbicide used on row crops	0.05
R Alpha photon emitters	1.5 mrem/yr (50 LLD) (MCL)	Increased risk of cancer	Erosion of natural deposits of certain elements that are radioactive and may emit a form of radiation known as alpha radiation	0.01
IOC Antimony	0.05	Increase in blood cholesterol, decrease in blood sugar	Discharge from petroleum refineries, fire retardants, ceramics, electronics, solder	0.05
IOC Arsenic	0.05	Skin damage or problems with circulatory system, and may have increased risk of getting cancer	Leaching of natural deposits; runoff from orchards; runoff from glass & electronics production wastes	0
IOC Asbestos (fibers > 10 micrometers)	7 million fibers per liter (MFL)	Increased risk of developing benign mesothelial polyps	Decay of asbestos cement in water mains, erosion of natural deposits	7 MFL
OC Atrazine	0.05	Cardiovascular system or reproductive problems	Runoff from herbicide used on row crops	0.05
IOC Barium	2	Increase in blood pressure	Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits	2
OC Benzene	0.05	Anemia; decrease in blood platelets; increased risk of cancer	Discharge from factories; leaking from gas storage tanks and landfills	0.05
OC Benzotriptyrene (PAHs)	0.002	Reproductive difficulties, increased risk of cancer	Leaching from linings of water storage tanks and distribution lines	0.002
IOC Beryllium	0.004	Lung cancer	Discharge from metal refineries and coal-burning facilities; discharge from electrical, aerospace, and defense industries	0.004
R Beta photon emitters	1.5 mrem/yr (50 LLD)	Increased risk of cancer	Decay of natural and man-made deposits of certain elements that are radioactive and may emit forms of radiation known as photons and beta radiation	0.01
DBP Bromate	0.05	Increased risk of cancer	Byproduct of drinking water disinfection	0.05
IOC Cadmium	0.05	Kidney damage	Corrosion of galvanized pipes; erosion of natural deposits; discharge from metal refineries; runoff from water herbicide and paints	0.05
OC Carbendazim	0.01	Problems with blood, nervous system, or reproductive system	Leaching of soil fungicide used on rice and alfalfa	0.01
OC Carbon tetrachloride	0.05	Liver problems, increased risk of cancer	Discharge from chemical plants and other industrial activities	0.05
D Chloramines (as Cl ₂)	MRLD-1.0	Eye/nose irritation, stomach discomfort, asthma	Water additive used to control microbes	MRLD-1.0
OC Chloride	0.05	Liver or nervous system problems; increased risk of cancer	Residue of bleached wood/pulp	0.05
D Chlorine (as Cl ₂)	MRLD-1.0	Eye/nose irritation, stomach discomfort	Water additive used to control microbes	MRLD-1.0
D Chlorine dioxide (as ClO ₂)	MRLD-0.8	Anemia, infants, young children, and fetuses of pregnant women: nervous system effects	Water additive used to control microbes	MRLD-0.8
DBP Chloroform	0.5	Anemia, infants, young children, and fetuses of pregnant women: nervous system effects	Byproduct of drinking water disinfection	0.5
OC Chlordane	0.1	Liver or kidney problems	Discharge from chemical and agricultural chemical factories	0.1
IOC Chloroform (total)	0.1	Allergic dermatitis	Discharge from steel and pulp mills; erosion of natural deposits	0.1
IOC Copper	1.3 (Short Term Level = 1.3)	Short-term exposure: Gastrointestinal distress. Long-term exposure: Liver or kidney damage. People with Wilson's Disease should consult their personal doctor if the amount of copper in their water exceeds the action level	Corrosion of household plumbing systems, erosion of natural deposits	1.3
M Cryptosporidium	1	Short-term exposure: Gastrointestinal illness (e.g., diarrhea, vomiting, cramps)	Human and animal fecal waste	0.01

D Disinfectant
 IOC Inorganic Chemical
 OC Organic Chemical
DBP Disinfection Byproduct
 M Microorganism
 R Radionuclides

Handwritten signature/initials: JTB HH

Contaminant	MCL or TT (mg/L)	Potential health effects from long-term exposure above the MCL	Common sources of contaminant in drinking water	Public Health Goal (mg/L)
IOC Cyanide (as free cyanide)	0.2	Nerve damage or thyroid problems	Discharge from steel/metal factories; discharge from plastic and fertilizer factories	0.2
OC 2,4-D	0.07	Kidney, liver, or adrenal gland problems	Runoff from herbicide used on lawns	0.07
OC Dieldrin	0.2	Minor kidney changes	Runoff from herbicide used on rights of way	0.2
OC 1,2-Dichloro-3-chloropropene (DCCP)	0.005	Reproductive difficulties, increased risk of cancer	Runoff leaching from and fungicide used on soybeans, cotton, pineapples, and orchards	0.005
OC o-Dichlorobenzene	0.6	Liver, kidney, or circulatory system problems	Discharge from industrial chemical factories	0.6
OC p-Dichlorobenzene	0.075	Anemia, liver, kidney or spleen damage; changes in blood	Discharge from industrial chemical factories	0.075
OC 1,3-Dichloroethane	0.005	Increased risk of cancer	Discharge from industrial chemical factories	0.005
OC 1,1-Dichloroethylene	0.007	Liver problems	Discharge from industrial chemical factories	0.007
OC cis-1,2-Dichloroethylene	0.07	Liver problems	Discharge from industrial chemical factories	0.07
OC trans-1,2-Dichloroethylene	0.6	Liver problems	Discharge from industrial chemical factories	0.6
OC Dichloroethane	0.005	Liver problems; increased risk of cancer	Discharge from drug and chemical factories	0.005
OC 1,2-Dichloropropane	0.007	Increased risk of cancer	Discharge from industrial chemical factories	0.007
OC Di(2-ethylhexyl) adipate	0.4	Weight loss, liver problems, or possible reproductive difficulties	Discharge from chemical factories	0.4
OC Di(2-ethylhexyl) sebacate	0.006	Reproductive difficulties; liver problems; increased risk of cancer	Discharge from rubber and chemical factories	0.006
OC Dursol	0.007	Reproductive difficulties	Runoff from herbicide used on soybeans and vegetables	0.007
OC Dioxin (2,3,7,8-TCDD)	0.000005	Reproductive difficulties; increased risk of cancer	Discharge from waste incineration and other combustion; discharge from chemical factories	0.000005
OC Diquat	0.02	Cancer	Runoff from herbicide use	0.02
OC Endosulfan	0.1	Stomach and intestinal problems	Runoff from herbicide use	0.1
OC Endrin	0.002	Liver problems	Residue of banned insecticide	0.002
OC Epichlorohydrin	0.7	Increased cancer risk; stomach problems	Discharge from industrial chemical factories; as impurity of turpentine treatment chemicals	0.7
OC Ethylbenzene	0.7	Liver or kidney problems	Discharge from petroleum refineries	0.7
OC Ethylene dibromide	0.0005	Problems with liver, stomach, reproductive system, or kidneys; increased risk of cancer	Discharge from petroleum refineries	0.0005
M Fecal coliform and <i>E. coli</i>	MCL	Fecal coliforms and <i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes may cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.	Human and animal fecal waste	0.0005*
IOC Fluoride	4.0	Bone disease (pain and tenderness of the bones); children may get enamel teeth	Water additive which promotes strong teeth; erosion of natural deposits; discharge from fertilizer and aluminum factories	4.0
M <i>Giardia lamblia</i>	TT	Short-term exposure: Gastrointestinal illness (e.g., diarrhea, vomiting, cramps)	Human and animal fecal waste	0.0005
OC Glyphosate	0.7	Kidney problems, reproductive difficulties	Runoff from herbicide use	0.7
DBP Haloacetic acids (HAA5)	0.06	Increased risk of cancer	Byproduct of drinking water disinfection	0.06
OC Heptachlor	0.005	Liver damage; increased risk of cancer	Residue of banned insecticide	0.005
OC Heptachlor epoxide	0.005	Liver damage; increased risk of cancer	Residue of heptachlor	0.005
M Heterotrophic plate count (HPC)	TT	HPC has no health effects, it is an early method used to measure the variety of bacteria that are common in water. The lower the concentration of bacteria in drinking water, the better maintained the water system is.	HPC measures a range of bacteria that are naturally present in the environment	0.5

LEGEND

D Disinfectant **IOC** Inorganic Chemical **OC** Organic Chemical

DBP Disinfection Byproduct **M** Microorganism **R** Radionuclides

Handwritten signature and initials: JDB 16H

Contaminant	MCL or TT (mg/L)	Potential health effects from long-term exposure above the MCL	Common sources of contaminant in drinking water	Public Health Goal (mg/L)
OC Hexachlorobenzene	0.005	Liver or kidney problems; reproductive difficulties; increased risk of cancer	Discharge from metal refineries and agricultural chemical factories	zero
OC Hexachlorocyclopentadiene	0.005	Kidney or stomach problems	Discharge from chemical factories	zero
IOC Lead	0.05 Action Level=0.01	Infants and children: Delay in physical or mental development; children could show slight deficits in attention span and learning abilities; Adults: Kidney problems; high blood pressure	Corrosion of household plumbing systems; erosion of natural deposits	0.05
M Legionella	TT	Legionnaires' Disease, a type of pneumonia	Found naturally in water; multiplies in heating systems	zero
OC Lindane	0.0002	Liver or kidney problems	Runoff leaching from insecticide used on cattle, lumber, gardens	0.0002
IOC Mercury (inorganic)	0.002	Kidney damage	Disposal of natural deposits; discharge from refineries and factories; runoff from landfills and cemeteries	0.002
OC Methoxychlor	0.04	Reproductive difficulties	Runoff leaching from insecticide used on fruits, vegetables, alfalfa, livestock	0.04
IOC Nitrate (expressed as Nitrogen)	10	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include thinness of breast and blue-baby syndrome.	Runoff from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits	1.0
IOC Nitrite (expressed as Nitrogen)	1	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include thinness of breast and blue-baby syndrome.	Runoff from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits	1
OC Oxydiazole (Nydole)	0.2	Slight nervous system effects	Runoff leaching from insecticide used on apples, potatoes, and tomatoes	0.2
OC Pentachlorophenol	0.001	Liver or kidney problems; increased cancer risk	Discharge from wood-preserving factories	zero
OC Picloram	0.1	Liver problems	Herbicide runoff	0.1
OC Polychlorinated biphenyls (PCBs)	0.0005	It is thought, thyroid gland problems, immune deficiencies, reproductive or nervous system difficulties, increased risk of cancer	Runoff from landfills, discharge of waste chemicals	zero
R Radon-226 and Radon-228 (combined)	1.0 MBq/L	Increased risk of cancer	Erosion of natural deposits	zero
IOC Selenium	0.05	Hair or finger nail loss; weakness in fingers or toes; circulatory problems	Discharge from petroleum and metal refineries; erosion of natural deposits; discharge from mines	0.05
OC Simazine	0.05	Problems with blood	Herbicide runoff	0.004
OC Simeon	0.1	Liver, kidney, or circulatory system problems	Discharge from rubber and plastic factories; leaching from landfills	0.1
OC Tetrachloroethylene	0.001	Liver problems; increased risk of cancer	Discharge from factories and dry cleaners	zero
IOC Thallium	0.002	Hair loss; changes in blood; kidney, intestine, or liver problems	Leaching from copper-piercing pipe; discharge from electronic, glass, and drug factories	0.0005
OC Toxins	1	Nervous system, kidney, or liver problems	Discharge from petroleum factories	1
M Total Coliforms	500 per 100 mL	Coliforms are bacteria that indicate that other, potentially harmful bacteria may be present. See fecal coliforms and E. coli	Naturally present in the environment	zero
DBP Total Trihalomethanes (TTHMs)	0.08	Liver, kidney or central nervous system problems; increased risk of cancer	Byproduct of drinking water disinfection	n/a
OC Toxaphene	0.001	Kidney, liver, or thyroid problems; increased risk of cancer	Runoff leaching from insecticide used on cotton and cattle	zero
OC 2,4,5-TP (Silvex)	0.05	Liver problems	Residue of forest herbicide	0.05
OC 1,2,4-Trichlorobenzene	0.07	Changes in adrenal glands	Discharge from textile finishing factories	0.07
OC 1,1,1-Trichloroethane	0.2	Liver, nervous system, or circulatory problems	Discharge from metal degreasing sites and other factories	0.2
OC 1,1,2-Trichloroethane	0.005	Liver, kidney, or immune system problems	Discharge from industrial chemical factories	0.001
OC Trichloroethylene	0.005	Liver problems; increased risk of cancer	Discharge from metal degreasing sites and other factories	zero

LEGEND

D Disinfectant **IOC** Inorganic Chemical **OC** Organic Chemical

DBP Disinfection Byproduct **M** Microorganism **R** Radionuclides

JBS 144

Contaminant

MCL or TT (mg/L)
1.0
100.0
1.0
10

Potential health effects from long-term exposure above the MCL

Common sources of contaminant in drinking water

Public Health Goal (mg/L)

M Turbidity	1.0	Turbidity is a measure of the cloudiness of water. It is used to indicate water quality and filtration effectiveness (e.g., higher turbidity levels are often associated with higher levels of disease-causing microorganisms such as viruses, parasites and some bacteria. These organisms can cause short term symptoms such as nausea, cramps, diarrhea, and associated headaches.	Soil runoff	0.5
R Uranium	100.0	Increased risk of cancer, kidney toxicity	Erosion of natural deposits	100.0
OC Vinyl chloride	1.0	Increased risk of cancer	Leaching from PVC pipes; discharge from plastic factories	1.0
M Viruses (enteric)	1.0	Short-term exposure: Gastrointestinal illness (e.g., diarrhea, vomiting, cramps)	Human and animal fecal waste	0.0
OC Xylenes (total)	10	Nervous system damage	Discharge from petroleum facilities; discharge from chemical factories	10

LEGEND

- D** Disinfectant
- IOC** Inorganic Chemical
- OC** Organic Chemical
- DBP** Disinfection Byproduct
- M** Microorganism
- R** Radionuclides

Handwritten signature and initials: H.H.

NOTES

1 Outfalls

- **Maximum Contaminant Level Goal (MCLG)**—The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety and are non-enforceable public health goals.
 - **Maximum Contaminant Level (MCL)**—The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to MCLGs as feasible using the best available treatment technology and taking cost into consideration. MCLs are enforceable standards.
 - **Maximum Residual Disinfectant Level Goal (MRDLG)**—The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.
 - **Maximum Residual Disinfectant Level (MRDL)**—The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.
 - **Treatment Technique (TT)**—A required process intended to reduce the level of a contaminant in drinking water.
- 2 Units are in milligrams per liter (mg/L) unless otherwise noted. Milligrams per liter are equivalent to parts per million (ppm).
- 3 Health effects are from long-term exposure unless specified as short-term exposure.
- 4 Each water system must certify annually, in writing, to the state (using third-party or parent/child certification) that when it uses acrylamide and/or epichlorohydrin in its water, the combination (or product) of dose and maximum level does not exceed the levels specified, as follows: Acrylamide = 0.05 percent dose at 1 mg/L (or equivalent); Epichlorohydrin = 0.01 percent dose at 20 mg/L (or equivalent).
- 5 Lead and copper are regulated by a Treatment Technique that requires systems to control the corrosiveness of their water. If more than 10 percent of tap water samples exceed the action level, water systems must take additional steps. For copper, the action level is 1.3 mg/L, and for lead is 0.015 mg/L.
- 6 A routine sample that is fecal coliform-positive or *E. coli*-positive triggers repeat samples. If any repeat sample is total coliform-positive, the system has an acute MCL violation. A routine sample that is total coliform-positive and fecal coliform-negative or *E. coli*-negative triggers repeat samples. If any repeat sample is fecal coliform-positive or *E. coli*-positive, the system has an acute MCL violation. See also Total Coliforms.
- 7 EPA's surface water treatment rules require systems using surface water or ground water under the direct influence of surface water to (1) disinfect their water, and (2) filter their water or meet criteria for avoiding filtration so that the following contaminants are controlled at the following levels:
- Cryptosporidium: 99 percent removal for systems that filter. Unfiltered systems are required to include Cryptosporidium in their existing watershed control provisions.
 - Giardia lamblia: 99.9 percent removal/inactivation
 - Viruses: 99.99 percent removal/inactivation
 - Legionella: No limit, but EPA believes that if Giardia and viruses are removed/inactivated according to the treatment techniques in the surface water treatment rule, Legionella will also be controlled.
 - Turbidity: For systems that use conventional or direct filtration, all raw water turbidity (cloudiness of water) on higher than 1 nephelometric turbidity unit (NTU), and samples for turbidity must be less than or equal to 0.3 NTU in at least 85 percent of the samples in any month. Systems that use filtration other than conventional or direct filtration must follow state laws, which must include turbidity at no time exceeding 5 NTU.
 - HPC: No more than 500 bacterial colonies per milliliter
 - Long Term 1 Enhanced Surface Water Treatment: Surface water systems or ground water systems under the direct influence of surface water serving fewer than 10,000 people must comply with the applicable Long Term 1 Enhanced Surface Water Treatment Rule provisions (e.g., turbidity standards, individual filter monitoring, Cryptosporidium removal requirements, localized watershed control requirements for unfiltered systems).
 - Long Term 2 Enhanced Surface Water Treatment: This rule applies to all surface water systems or ground water systems under the direct influence of surface water. The rule targets additional Cryptosporidium treatment requirements for higher risk systems and includes provisions to reduce risk from uncovered finished water storage facilities and to ensure that the systems maintain elevated protection as they take steps to reduce the formation of disinfection byproducts. (Monitoring start dates are staggered by system size. The largest systems (serving at least 100,000 people) will begin monitoring in October 2005 and the smallest systems (serving fewer than 10,000 people) will not begin monitoring until October 2008. After completing monitoring and determining their treatment plan, systems generally have three years to comply with any additional treatment requirements.)
 - Filter Backwash Recycling: The Filter Backwash Recycling Rule requires systems that recycle to reduce specific recycle flows through all processes of the system's existing conventional or direct filtration system at an alternate location approved by the state.
 - No more than 5.0 percent samples total coliform-positive in a month. If a water system that collect fewer than 40 routine samples per month, no more than one sample can be total coliform-positive per month. Every sample that has total coliforms must be analyzed for either fecal coliforms or *E. coli*. If two consecutive TC-positive samples, and one is also positive for *E. coli* or fecal coliforms, system has an acute MCL violation.
 - Although there is no collective MCLG for the contaminant group, there are individual MCLGs for some of the individual contaminants:
 - Malonic acid, dichloroacetic acid (ppm); trichloroacetic acid (2.3 mg/L)
 - Trifluoroacetic acid, bromodichloroacetic acid (ppm); hexachloro (ppm); dibromodichloroacetic acid (0.05 mg/L)

LAB
HH

National Secondary Drinking Water Regulation

National Secondary Drinking Water Regulations are non-enforceable guidelines regarding contaminants that may cause cosmetic effects (such as skin or tooth discoloration) or aesthetic effects (such as taste, odor, or color) in drinking water. EPA recommends secondary standards to water systems but does not require systems to comply. However, some states may choose to adopt them as enforceable standards.

Contaminant	Secondary Maximum Contaminant Level
Aluminum	0.05 to 0.2 mg/L
Asbestos	7.0 mg/L
Color	15 (color units)
Copper	1.3 mg/L
Corrosivity	noncorrosive
Fluoride	2.0 mg/L
Foaming Agents	0.5 mg/L
Iron	0.3 mg/L
Manganese	0.05 mg/L
Oil	1.0 mg/L (total oil, grease, and sediment)
pH	6.5-8.5
Selenium	0.07 mg/L
Sulfate	250 mg/L
Total Dissolved Solids	500 mg/L
Zinc	5 mg/L

For More Information

EPA's Safe Drinking Water Web site:
<http://www.epa.gov/safewater/>

EPA's Safe Drinking Water Hotline:
 (800) 426-4791

To order additional posters or other ground water and drinking water publications, please contact the National Service Center for Environmental Publications at:
 (800) 490-9198, or
 email: nscep@bps-imit.com.

Handwritten signature and initials: JDB 4A

EXHIBIT I

DRAFT 1/25/11 8:15AM 12213PRO_09_Aquaventure

AQUAVENTURE HOLDINGS LLC AND SUBSIDIARIES
(A Limited Liability Company)

Consolidated Balance Sheets

December 31, 2010 and 2009

Assets		2010	2009
Cash			
Accounts receivable, net	\$	23,852,249	9,338,113
Inventory		3,166,885	1,655,462
Other current assets		245,598	328,340
		<u>565,613</u>	<u>250,375</u>
Total current assets		27,830,345	11,572,290
Property, plant and equipment, net		26,494,447	28,187,624
Construction in progress		23,062,823	4,773,169
Intangible assets		1,220,013	1,426,086
Goodwill		424,335	424,335
Other long-term assets		52,838	67,653
		<u>79,084,801</u>	<u>46,451,157</u>
	\$		
Liabilities and Members' Equity			
Accounts payable	\$	1,574,151	517,558
Accrued liabilities		1,974,515	724,904
Customer deposits		108,266	110,452
		<u>3,656,932</u>	<u>1,352,914</u>
Total current liabilities			
Long-term liabilities		696,000	696,000
Deferred tax liability		151,240	151,240
Members' equity:			
Redeemable convertible preferred shares. Authorized, issued and outstanding 48,700,000 shares at 2010. Authorized 28,250,000 shares; issued and outstanding 28,200,000 shares at 2009.		85,956,565	55,949,197
Common shares. Authorized 55,583,226; issued and outstanding 5,693,905 shares, at 2010 and 2009.		575,010	575,010
Additional paid-in capital		904,041	710,771
Accumulated deficit		<u>(12,854,987)</u>	<u>(12,983,975)</u>
Total members' equity		74,580,629	44,251,003
Total liabilities and members' equity	\$	<u>79,084,801</u>	<u>46,451,157</u>

See accompanying notes to consolidated financial statements.

JJB
AA

EXHIBIT J - [RESERVED]

JB
HA

Schedule 1. FACILITY SPECIFICATIONS

Seven Seas shall at all times:

- (a) Provide and maintain a Facility that is capable of producing a minimum of 3.3MGD of First Pass Water and a minimum of 0.25 MGD of Ultrapure Water meeting the water quality specifications as set forth in Schedule 7.
 - (i) In the event WAPA's actual consumption of First Pass Water exceeds an average of 3.25 MGD over any three (3) consecutive Billing Periods, WAPA shall have the right to request that Seven Seas expand the Facility from a minimum of 3.3 MGD up to a minimum of 4.4 MGD of First Pass Water ("Facility Expansion"). For clarity, First Pass Water use to initially fill up the depleted WAPA Storage Tanks shall be excluded from this consumption calculation. Subject to equipment and other resource availability, the Seven Seas shall complete the said expansion within 90 days of the written request provided by WAPA.
 - (ii) Without limiting the provisions set forth in the above paragraph (i), Seven Seas shall have the right, but not the obligation, to expand the Facility from a minimum of 3.3 MGD up to a minimum of 4.4 MGD of First Pass Water ("Facility Expansion") at any time without WAPA's written request or consent.
- (b) Provide and maintain Facility water meters.
- (c) Provide and maintain 24-hour UPS equipment for sensitive equipment such as water meters and communication systems.
- (d) Maintain a monitoring program to ensure compliance with Water Quality standards as set forth in Schedule 5 and Schedule 7 – specifically for temperature, pH, conductivity, and turbidity only.
- (e) Provide and maintain a secure and reliable ISP networking communications port at the Facility for WAPA – at its expense - to connect and gain access to the Facility's operating data.
- (f) Assist WAPA as reasonably required to ascertain if the public water production and treatment systems are in compliance with United States federal and U.S. Virgin Islands Homeland Security requirements, if applicable to public water production and treatment systems.
- (g) Provide and maintain protective devices as set forth in ARTICLE 6 and as graphically depicted in Exhibit G. Of note, WAPA's static pressure at Seven Seas' Facility shall not exceed 71 PSI for First Pass Water and 30 PSI for Ultrapure Water.

 H.H.

Schedule 2. CHARGES FOR WATER

Schedule 2.1 Water Charge. The Water Charge for each Billing Period shall be determined as the sum of the following components (a) through (c):

- (a) WAPA shall pay to Seven Seas, in respect of such Billing Period and in accordance with ARTICLE 5, a charge in the amount of \$3.43 per kgal for First Pass Water, as specified in Section 4.3(a), and delivered to WAPA as metered at the Delivery Point, hereinafter the "Base Water Charge."
- (b) WAPA shall pay to Seven Seas, in respect of such Billing Period and in accordance with ARTICLE 5, an additional \$2.30 per kgal of Ultrapure Water, as specified in Section 4.3(c), and delivered to WAPA as metered at the Delivery Point, hereinafter after the "Ultrapure Water Charge." The Ultrapure Water consumption shall be billed at an amount equal to the greater of (a) 140,000 GPD times the number of days in each Calendar Month or (b) the actual amount of Ultrapure Water consumed as measured by the meters specified in Schedule 6.
- (c) Additional Civil Work Charge: In the event the Lot Property is chosen as the Site as contemplated in Section 3.1, a charge of \$0.12 per kgal shall be added to the Base Water Charge of \$3.43 per kgal beginning from Commercial Operation Date and continuing for a period of twelve (12) years. It is agreed that Seven Seas has budgeted One Million Dollars (\$1.0 mil) for the additional civil work for the Lot Property. In the event that said additional civil work exceeds the One Million Dollars (\$1.0 mil) as budgeted by Seven Seas and said overage is caused by WAPA, then said overage costs may be paid by WAPA, at WAPA's option, in either a lump sum payment or said overage costs may be amortized as an additional water costs added onto the Additional Civil Work Charge. For clarity, the effect of the additional amortization shall be calculated as follows:

$$\begin{aligned} & (\text{Actual cost of additional civil work divided by } \$1.0 \text{ million}) \times \$0.12/\text{kgal} \\ & = \text{New Additional Civil Work Charge} \end{aligned}$$

- (d) All of the above prices exclude the cost of any electricity consumption at the Facility, the cost of which shall be borne by WAPA as set forth at Schedule 15.4(b).

Schedule 2.2 Water Charge Adjustments. The Water Charge for each Billing Period shall be adjusted as follows:

- (a) Consumer Price Index: The Water Charge will be adjusted for inflation by the change in the U.S. Consumer Price Index ("CPI Adjustment"). The first CPI Adjustment to the Water Charge shall occur on the Third (3rd) anniversary of the Contract Commencement date and will thereafter occur annually on the anniversary of the Contract commencement date. In no event shall any adjustment reduce the Water Charge to an amount lower than that found in Schedule 2.1 above.
- (b) Tax Adjustments: As set forth in ARTICLE 17.
- (c) Safe Drinking Water Adjustments: As set forth in Section 4.3(a)-(b).



- (d) **Excess Electrical Consumption Adjustment:** Shall be those charges as set forth in Schedule 15.5 and Schedule 15.6.
- (e) **Facility Expansion Adjustment:** In the event of the completion of a Facility Expansion, the Water Charge of the First Pass Water shall be reduced by \$0.20 per kgal ("Price Reduction") after WAPA's actual consumption of First Pass Water has reached an average of 3.3 MGD over the preceding 12 consecutive Billing Periods ("Consumption Level Trigger"). For avoidance of doubt, the Price Reduction will not be applied retroactively but will only be applied to future Billing Periods after the Consumption Level Trigger has been reached.
- (f) **Government Grants, Credits, Incentives, or Abatements:** As set in Section 4.9.
- (g) **Purchased Water:** As provided in Section 4.8(f);
- (h) **Environmental credits:** As provided for in Section 8.6;

Schedule 2.3 Existing Richmond Contract (SC-14-09) Water Charge

- (a) WAPA shall pay the contract price of three dollars and forty three cents (\$3.43) per kgal to Seven Seas for the delivery of the water as described in the Contract SC-14-09 beginning on the 1st day of the month immediately following the Contract Date and continuing through the time wherein Seven Seas is applying for and seeking to obtain all permits, as described in this Agreement, necessary for Seven Seas to construct, install and operate the First Pass Water Facility.
- (b) In the event that Seven Seas should fail to obtain all permits, as described in this Agreement, necessary for Seven Seas to construct, install and operate the First Pass Water Facility or WAPA should fail to select a final Site as contemplated in Section 3.1 within nine (9) months of the Contract Date, then WAPA shall pay the cost of water as described in Contract SC-14-09 for the water delivered by Seven Seas to WAPA with said cost being retroactive to the Contract Date and subject to all the water charge adjustments as contemplated in Contract SC-14-09. Seven Seas shall credit WAPA on all retroactive monies due, if any, for monies already paid by WAPA for all water previously delivered at the \$3.43 per kgal rate.

Handwritten signature and initials, possibly "HOB" and "AA", in black ink.

Schedule 3. REQUIREMENTS FOR COMMERCIAL OPERATION DATE

Schedule 3.1 The Facility shall achieve Commercial Operation Date when Seven Seas has demonstrated to WAPA, the Consulting Engineer shall have certified to WAPA, and WAPA has accepted, that each of the following conditions has been satisfied:

- (a) All Permits and Approvals, except for those that are WAPA's responsibility as specified in Section 3.6 and elsewhere in this Agreement, to construct and/or operate the Facility in compliance with Applicable Laws, as agreed to by the Parties and in accordance with this Agreement, have been obtained and are in full force and effect.
- (b) Seven Seas has successfully completed the Initial Water Test as set forth in Section 6.3, the Water quality complies with regulatory and Safe Drinking Water Standards, and the Water pressure complies with the requirements set forth in Schedule 7;
- (c) The interconnection of the Facility to WAPA's water system has been completed in accordance with this Agreement;
- (d) The Facility has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with this Agreement;
- (e) Seven Seas has connected to WAPA's effluent discharge system;
- (f) Seven Seas has made all arrangements required to deliver the Water from the Facility to the Delivery Points in accordance with the provisions of this Agreement;
- (g) All water metering and control interconnection arrangements have been completed, are in effect, and are available for the delivery and receipt at the Facility;
- (h) Certificates of insurance evidencing the coverage required by ARTICLE 11 have been obtained and submitted to WAPA;

Handwritten signature and initials, possibly "J.B." and "A.H.", located in the bottom right corner of the page.

Schedule 4. PROJECT MILESTONES

<u>Administrative Milestones</u>			
	Milestone	Estimated Completion Date	Liquidated Damages
1	Obtain legal title to a valid and binding leasehold interest in, or a valid and binding option to purchase or lease, the Site	10 Days after the Contract Date	\$0 per Day
2	Provide WAPA with evidence of complying with the insurance requirements of this Agreement	150 Days after the Contract Date	\$0 per Day
<u>Permits and Approvals Milestones</u>			
	Milestone	Estimated Completion Date	Liquidated Damages
1	Provide a list of all Permits and Approvals, as Exhibit B, necessary under Applicable Laws to enable it to construct, own and operate the Facility	15 Days after the Contract Date	\$0 per Day
2	Apply for all Permits and Approvals necessary under Applicable Laws to enable it to construct, own and operate the Facility	30 Days after the Contract Date	\$0 per Day
3	Obtain all Permits and Approvals (in final, unappealable form) necessary under Applicable Laws to enable it to construct, own and operate the Facility, as set forth on Exhibit B	18 Months plus any 6 month extension as agreed to by the Parties	\$0 per Day
<u>Construction Milestones</u>			
	Milestone	Estimated Completion Date	Liquidated Damages
1	Commercial Operation Date	450 Days after the receipt of all necessary Permits and Approvals and after the Site has been made available to Seven Seas by WAPA	\$5,000 per Day

JLB
H.A

Schedule 5. DISPATCH OBLIGATIONS

Schedule 5.1 Amounts.

- (a) 3.0 million gallons per day of First Pass Water times the number of days in each Calendar Month until Facility Expansion as set forth in Schedule 1, and at such time the amount shall be expanded to 4.0 million gallons per day of First Pass Water times the number of days in each Calendar Month.
- (b) 0.2 million gallons per day of Ultrapure Water with resistivity of 10 MΩcm or more at 25°C for direct use in WAPA's power generating equipment times the number of days in each Calendar Month which said water shall be produced by further processing First Pass Water.

Schedule 6. METERING

Schedule 6.1 Meter Selection: Seven Seas shall install three (3) identical solid state Water Meters ("set" of "meters") in series (per "Meter Installation and Security" below) to be used for measuring water produced by Seven Seas at its Facility and sold to WAPA – one set of three (3) for First Pass Water, and two sets of three (3) for Ultrapure Water (before and after the system). Additionally, Seven Seas shall install one (1) meter on each of the high pressure relief systems for the First Pass and Ultrapure Water systems as depicted in Exhibit G, to record any water relieved due to a high pressure event. The meter make and model shall be approved by WAPA in advance of purchase and installation which approval will not be unreasonably withheld, delayed or conditioned by WAPA. Seven Seas shall procure and install the meters and meter appurtenances at its expense, and WAPA shall reimburse Seven Seas for one-half (1/2) the cost to purchase the meters and meter appurtenances.

Schedule 6.2 Meter Installation and Security: Seven Seas shall install meters (per "Meter Selection") in approved enclosures or at locations which protect the meters from the elements and from tampering. Direct access to the meters will be limited to the Parties' representatives and meter calibration firms (per "Meter Performance").

- (a) The location of the meters for the First Pass Water shall be defined as the point at which the First Pass Water exits the first pass RO but before the First Pass Water enters the brackish water RO and EDI for further processing.
- (b) The location of the meters for the Ultrapure Water shall be defined as the point at which the Ultrapure Water exits the EDI and before the Ultrapure system itself.
- (c) The location of all meters shall be defined as the point approximately 15' (or as practical) of Seven Seas' assigned property lease and as set forth in ARTICLE 1 "Interconnection Facilities."
- (d) Seven Seas shall install a UPS for meters that provides a minimum of 24 hours battery power backup of the meter and meter appurtenances (per "Meter Data Acquisition"). If the meters are switched to battery power, an alarm will notify the Parties for (joint) prompt investigation and correction (if necessary) by Seven Seas.
- (e) See Exhibit G for a conceptual drawing illustrating the location of the First Pass Water and Ultrapure Water meters.

Schedule 6.3 Meter Readings: The authorized representatives of the Parties shall jointly collect and agree on the month-end readings from all meters for billing purposes, preferably on the last day of each month, or as agreed to by the Parties. The billed amount shall be the average of each set of meters, which shall be determined separately for First Pass Water and Ultrapure Water. An alternative month-end meter reading collection procedure can be found in "Meter Data Acquisition."

Schedule 6.4 Meter Data Acquisition:

- (a) The Parties shall agree on a hardwired or wireless real-time meter data acquisition communications protocol which system will be installed and maintained by Seven Seas at Seven Seas' expense.
- (b) The Parties may agree to use real-time meter readings, versus physical collection, for Seven Seas' monthly billings provided the meter installations are inspected by the Parties

for wear and tear and actual meter reading crosscheck in no less than three (3) month intervals.

- (c) The Parties shall agree to utilize the real-time system to transmit to WAPA other relevant data.

Schedule 6.5 Meter Performance: The Parties shall utilize the following procedures to address meter discrepancies, recalibrations and replacements:

- (a) The Parties shall equally bear the cost of meter recalibrations. Recalibrations shall occur no less than every 5 years on or about the anniversary of the Facility's Commercial Operation Date.
- (b) The Parties shall equally bear the cost of intermediate recalibrations provided there is a 2% or greater registration discrepancy between any two meters in a set of meters – or if one or more of the meters in a set have failed outright.
- (c) For intermediate recalibrations where there is a discrepancy equal to or less than 2% between any two meters in a set of meters, the Party requesting the meter recalibration shall bear the cost of recalibration.
- (d) Seven Seas shall replace any defective meter incapable of recalibration within 60 days of such discovery, at its expense. WAPA shall reimburse Seven Seas for one-half (1/2) the purchase cost of the replaced meter.
- (e) The Parties shall mutually agree on the independent meter calibration firm tasked with recalibrating the meters, as required.

Schedule 6.6 Meter Reading Estimations for Billings: The Parties shall use the following procedures to estimate water delivery in the event of meter failure.

- (a) One Meter is clearly out of Calibration or has Failed Outright Procedure: Seven Seas shall average the readings on the remaining two meters for billing purposes.
- (b) Two Meters are clearly out of Calibration or Have Failed Outright Procedure: Seven Seas shall use the reading on the remaining working meter for billing purposes.
- (c) Disputes: Should either Party dispute any estimation procedure, the Parties shall make a good faith effort to review WAPA's storage level and water system input data during the billing period and settle on an estimated delivery.

Schedule 7. SPECIFICATIONS FOR WATER

The Water supplied at a Delivery Point shall have the following characteristics:

Schedule 7.1 Water Quality:

- (a) **First Pass Water.** Shall be supplied at the Delivery Point and contain no more than 500 mg/L of Total Dissolved Solids and comply with the quality standards of Safe Drinking Water Act (as amended), Pub. L. 93-523 codified at 42 U.S.C. § 300f et seq., and the associated rules, regulations and standards contained in 40 C.F.R. parts 141 through 149, which is included as Exhibit H of this Agreement, except for those rules, regulations and standards that depend on chlorine sterilization and/or post treatment which shall be the responsibility of WAPA and except as otherwise provided in Section 4.3.
- (b) **Ultrapure Water** Shall be supplied at the Delivery Point and shall have a guaranteed resistivity of 10MΩcm or more at 25°C for direct use in WAPA's power generating equipment.

Schedule 8. [RESERVED]

DB
HH

Schedule 9. [RESERVED]

HB
HH

Schedule 10. INSURANCE REQUIREMENTS

Schedule 10.1 Seven Seas' Insurance Requirements

Liability and Workers Compensation Insurance Requirements				
Seven Seas shall keep in effect during the term of this Agreement and, with respect to any claims-made policy, for five years following the termination of the agreement, the policies of insurance set out below.				
Insurance Type	Minimum Limit		Maximum Deductible or Retentions	
Commercial General Liability	\$1,000,000 \$50,000 \$5,000	Combined single limit per occurrence and in the aggregate where applicable, inclusive of defense costs Fire Damage Liability Medical Expenses	\$100,000	Per occurrence
Automobile Liability	\$1,000,000	Combined single limit per accident	\$100,000	Per accident
Employers Liability	\$1,000,000	Each accident for bodily injury by accident Each employee and policy limit for bodily injury by disease	\$100,000	Each accident or employee (for disease)
Workers Compensation	Statutory requirements	Per occurrence	N.A.	N.A.
Liability Insurance Terms and Conditions				
	Occurrence vs. Claims-made Coverage	All required insurance coverages are to be written on an "occurrence" basis except Commercial General Liability insurance may be written on a "claims-made" basis. If a claims-made policy form is used, the retroactive date, if any, must be no later than the execution date of the Agreement.		
	Additional Insured	The General Liability policy and any Excess or Umbrella Liability policy must be endorsed to name WAPA as an additional insured with respect to the operations and services covered by this Agreement. Any such policy must contain language that "Such insurance as afforded by this policy for the benefit of WAPA shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by WAPA shall be excess of and noncontributing with insurance afforded by this policy".		

Handwritten initials and signature, possibly "JH" and "HH".

Liability and Workers Compensation Insurance Requirements

	Insurance Company Rating	<p>All insurance companies must be rated A- or better by A.M. Best's.</p> <p>Should an insurance company's rating fall below A- Seven Seas must replace that insurance company with a qualifying insurance company within 60 days.</p>
	Notice of Cancellation	<p>Each insurance company must provide written notification to WAPA 30 days prior to the effective date of any cancellation.</p>
	Evidence of Compliance with Insurance Requirements	<p>Evidence of insurance is to consist of two original certificates of insurance signed by an approved officer of the insurance company or its authorized representative. The certificate must show:</p> <ul style="list-style-type: none"> • The name of the insurance company • The policy period • The policy number • The description of the property • The Seven Seas/General Contractor/Subcontractor as the Policyholder • WAPA as an additional insured (General Liability and Excess or Umbrella Liability only) • The 30 days cancellation notice <p>Liability insurance certificates must be on ACORD form 25 or its equivalent. Evidence of workers' compensation insurance must be issued by the appropriate Workers' Compensation Administration bureau of the Government of the Virgin Islands.</p> <p>WAPA shall, as its discretion, have the right to obtain a complete copy of any required insurance policy.</p>
	Evidence of Renewal or Replacement Policies	<p>Seven Seas must advise WAPA of any renewals or replacements of the required insurances by providing the same documentation required in 5 above. Such evidence must be provided prior to the expiration date of the policy that is being renewed or replaced.</p>
	Failure to Comply	<p>If Seven Seas fails to meet these insurance requirements, WAPA may take any action necessary to rectify the non-compliance including: a) cancellation of the Agreement; or b) procurement of comparable insurance coverage on Seven Seas' behalf, the cost of which shall be borne by Seven Seas.</p>
	Deductible or Retentions	<p>Seven Seas shall be responsible for all deductibles or retentions applicable to any of the required insurance coverages.</p>

[Handwritten Signature]
AH

Schedule 10.2 Buyer's Insurance Requirements

Property Insurance Requirements					
<p>Prior to commencement of work at the Site, WAPA shall carry and maintain property insuring providing coverage on an "all risks of direct physical loss" basis to the property of WAPA and Seven Seas situated at the Randolph Harley Generation Plant.</p> <p>Boiler and machinery coverage on a breakdown basis is to be included in the "all risk" policy or provided in a separate policy.</p> <p>There shall be no exclusion for the perils of explosion, collapse or underground damage.</p>					
1.	<p>Builder's Risk Property Insurance (to be in place from inception of construction through final testing and acceptance at which time property insurance converts to the permanent property insurance program (see 2.)</p>				
	Coverage Type	Minimum Limit		Maximum Deductible or Retentions	
	Earth Movement including Earthquake Volcanic Activity and Subsidence.	To be determined based on values, exposure to loss and insurance market conditions, subject to a minimum limit of \$15,000,000.	Annual Aggregate	5% of Replacement Value, subject to a maximum of \$10,000,000	Per Occurrence
	Named Windstorm		Annual Aggregate	5% of Replacement Value subject to a maximum of \$5,000,000	Per Occurrence
	Flood including Tsunamis and Wind-driven Water		Annual Aggregate	5% of Replacement Value subject to a maximum of \$5,000,000	Per Occurrence
	Debris Removal	15% of the loss subject to a maximum of \$5,000,000	Per occurrence	Included	
	Ordinance or Law	\$5,000,000	Per occurrence	Included	
	Expediting Expense	\$2,000,000	Per occurrence	Included	

Handwritten initials and signature, possibly "HH" or "AH", located at the bottom right of the page.

Property Insurance Requirements

All Other Perils (including boiler and machinery perils where applicable)	\$15,000,000	Per occurrence	\$1,000,000, except \$100,000 for Seven Seas' non power generating locations and \$50,000 for Seven Seas' electronic data processing equipment	Per Occurrence	
2. Property Insurance (permanent program to be in place simultaneously with the expiration or cancellation of the Builders' Risk coverage (see .1.)					
Coverage Type	Minimum Limit		Maximum Deductible or Retentions		
Earth Movement including Earthquake Volcanic Activity and Subsidence.	To be determined based on values, exposure to loss and insurance market conditions, subject to a minimum of \$20,000,000.		Annual Aggregate	5% of Replacement Value, subject to a maximum of \$10,000,000	Per Occurrence
Named Windstorm			Annual Aggregate	5% of Replacement Value subject to a maximum of \$5,000,000	Per Occurrence
Flood including Tsunamis and Wind- driven Water			Annual Aggregate	5% of Replacement Value subject to a maximum of \$5,000,000	Per Occurrence
Debris Removal	15% of the loss subject to a maximum of \$5,000,000	Per occurrence	Included		
Ordinance or Law	\$5,000,000	Per Occurrence	Included		

[Handwritten Signature]
HH

Property Insurance Requirements					
	All Other Perils (including boiler and machinery perils where applicable)	Replacement Value of Insurable Real and Personal Property, subject to a maximum of \$50,000,000.	Per Occurrence	\$1,000,000, except \$100,000 for Seven Seas' non power generating locations and \$50,000 for Seven Seas' electronic data processing equipment	Per Occurrence
	Extra Expense / Expediting Expense Combined	\$2,000,000	Per Occurrence	Included	
Property Insurance Terms and Conditions					
a.	Coinsurance	No property policy may contain a coinsurance clause.			
b.	Ordinance or Law	Each property policy is to cover the costs incurred in repairing or replacing the damaged property to meet current building codes. Coverage is to be provided for: <ul style="list-style-type: none"> • Loss to the Undamaged Portion of the Building • Demolition Cost • Increased Cost of Construction 			
c.	Terrorism	Terrorism coverage is not required.			
d.	Loss Payee	Seven Seas is to be named a Loss Payee on the policy with respect to its insurable interests.			
e.	Insurance Company Rating	All insurance companies must be rated A- or better by A.M. Best's. Should an insurance company's rating fall below A- Seven Seas (or its general contractor or subcontractor) must replace that insurance company with a qualifying insurance company within 60 days.			
f.	Notice Cancellation	Each insurance company must provide written notification to Seven Seas 30 days prior to the effective date of any cancellation.			

JDE
AH

Property Insurance Requirements

g.	Evidence of Compliance with Insurance Requirements	<p>Evidence of insurance is to consist of two original certificates of insurance signed by an approved officer of the insurance company or its authorized representative. The certificate must show:</p> <ul style="list-style-type: none"> • The name of the insurance company • The policy period • The policy number • The description of the property • WAPA as the Policyholder • Seven Seas as a Loss Payee • The 30 days cancellation notice <p>Property insurance certificates must be ACORD form 28 or its equivalent.</p>
h.	Evidence of Renewal or Replacement Policies	<p>WAPA must advise Seven Seas of any renewals or replacements of the required insurances by providing the same documentation required in g. above. Such evidence must be provided prior to the expiration date of the policy that is being renewed or replaced.</p>
i.	Responsibility for Deductibles or Non-covered Damages and Expenses	<p>Seven Seas and WAPA shall share in the cost of deductibles and any non-covered damages or expenses in proportion to the amount of direct physical damage (not including business interruption or other time element related losses) sustained by each.</p>

[Handwritten Signature]
AH

Schedule 11. SCHEDULING AND DISPATCH

Schedule 11.1 Facility Availability Schedule.

- (a) Each Day, no later than 9:00 a.m. local time or such other time as coordinated by the Seven Seas and WAPA's representatives, Seven Seas shall provide to WAPA its good faith fifteen (15) day rolling forecast of the Facility's anticipated water production capacity.
- (b) Each Day, no later than 9:00 a.m. local time or such other time as coordinated by the Seven Seas and WAPA's representatives, WAPA shall provide to Seven Seas its good faith fifteen (15) day rolling forecast of WAPA's anticipated water demand requirements.
- (c) Seven Seas' Facility shall meet its 3.0 MGD Contract Capacity throughout each Billing Period should WAPA's First Pass Water demand requirements dictate such a need.
- (d) Seven Seas' Facility shall meet its 0.2 MGD Contract Capacity throughout each Billing Period should WAPA's Ultrapure Water demand requirements dictate such a need.

Schedule 11.2 Operating Limits.

Seven Seas' Facility shall be configured for automatic water flow shut-off, reduction or rerouting if the pressure at the applicable Delivery Point exceeds those set forth in ARTICLE 6 and Schedule 1.

Handwritten signature and initials, possibly "JH" and "AH", in the bottom right corner.

Schedule 12. [RESERVED]

 IH

Schedule 13. [RESERVED]


HA

Schedule 14. FORM OF INVOICE


HH

Schedule 15. ELECTRICAL CONSUMPTION

Schedule 15.1 Temporary Electrical Interconnection. Seven Seas shall construct the required electrical service entrance equipment required to connect to WAPA's electric power system, at Seven Seas' expense, for temporary construction service. Seven Seas shall open a typical (temporary) electrical service contract with WAPA and pay all applicable charges and fees for consumption and other services as they become due. Seven Seas shall terminate this account upon the completion of construction and transition to permanent service to test and commercially operate its Facility.

- (a) WAPA shall only connect to the Facility's weather-head upon Seven Seas satisfying all regulatory and WAPA service requirements.
- (b) WAPA reserves the right to disconnect service at any time to protect WAPA's equipment, safeguard human life, or otherwise due to Uncontrollable Circumstances. WAPA may also disconnect service for other non-threatening service violations provided Seven Seas was given 30 Days' prior written notice to correct the violation -- or as agreed to by the Parties in good faith.
- (c) The location of the temporary meter shall be defined as the point approximately 15' (or as practical) of Seven Seas' assigned property lease and as set forth in ARTICLE 1 "Delivery Point."

Schedule 15.2 Permanent Electrical Interconnection. Seven Seas shall construct the required electrical service entrance equipment required to connect to WAPA's electric power system, at Seven Seas' expense, for permanent service.

- (a) WAPA shall only connect to the Facility's weather head upon Seven Seas satisfying all regulatory and WAPA service requirements.
- (b) WAPA reserves the right to disconnect service at any time to protect WAPA's equipment, safeguard human life, or otherwise due to Uncontrollable Circumstances. WAPA may also disconnect service for other non-threatening service violations provided Seven Seas was given 30 Days' prior written notice to correct the violation -- or as agreed to by the Parties in good faith.
- (c) The location of the permanent meters shall be defined as the point approximately 15' (or as practical) of Seven Seas' assigned property lease and as set forth in ARTICLE 1 "Delivery Point."

Schedule 15.3 Electrical Consumption Measurement:

- (a) The Parties shall read the electrical meters as set forth in Schedule 6.3.
- (b) WAPA shall recalibrate, at its sole expenses, the electrical meters as necessary according to procedures set forth in Schedule 6.5.

Schedule 15.4 WAPA's Responsibility:

- (a) WAPA shall install, at its expense, two solid state electrical meters to measure electrical consumption at Seven Seas' Facility. The meter make and model shall be approved by Seven Seas in advance of purchase and installation which approval will not be unreasonably withheld, delayed or conditioned by the Seven Seas.



Handwritten signature and initials, possibly "JH" and "H.H.", located in the bottom right corner of the page.

- (b) WAPA shall absorb 100% of the production cost of electrical consumption at Seven Seas' Facility provided said consumption does not exceed the following performance guarantees, except for any adjustments as contemplated in Section 4.3(d), or any adjustments above the Water Pressure set forth in Schedule 1:
- (i) First Pass Water. The electrical consumption of First Pass Water shall not exceed 12.65 kWh per one thousand gallons of water produced, averaged over each invoicing period.
 - (ii) Ultrapure Water. The electrical consumption of Ultrapure Water shall not exceed 3.75 kWh per one thousand gallons of water produced, averaged over each invoicing period.
- (c) WAPA shall replace any defective meter incapable of recalibration within 60 days of such discovery by the independent meter calibration firm, at its expense.
- (d) In the event both electric meters are clearly out of calibration or have failed outright, WAPA shall estimate the Facility's usage based on the best information available – which estimation cannot exceed the corresponding performance guarantee provided by Seven Seas.

Schedule 15.5 Seven Seas' Responsibility. Seven Seas shall credit WAPA on its monthly billings for electrical consumption during the billing period that exceeds the performance guarantees – by multiplying the excess kWh times WAPA's applicable kWh production cost as published by WAPA in its most recent Annual Financial Statements.

Schedule 15.6 Effect of Feed Water Conditions. The Parties agree that in the event Seven Seas' electrical consumption exceeds the performance guarantee set forth in Schedule 15.4(b)(i), they shall be guided as follows:

- (a) It is understood Seven Seas will strive to deliver into its Facility membranes feed water with an SDI value of less than 5 and NTU value of less than 1, and that said values are applicable only to Seven Seas' First Pass Water process (and not to Seven Seas' Ultrapure Water process).
- (b) It is understood that natural or manmade events can occur that will force Seven Seas from time to time to increase the pressure on its pretreatment systems and to increase the frequency of Clean-In-Place operations resulting in increased electrical consumption of the Facility, and that such events are beyond the control of both Parties.
- (c) It is understood that increased pretreatment pressures and Clean-In-Place operations can result in Seven Seas exceeding its electrical performance guarantee in any given billing month (the "period in question").
- (d) Therefore, should Seven Seas exceed its electrical performance guarantee in any given billing month, the Parties shall:
 - (i) Review the feed water quality records during the period in question.
 - (ii) If, during the period in question, the feed water quality in the bay exceeds an NTU value of 1.25 or TDS value of 36,750 on any given day(s), WAPA shall

recalculate Seven Seas' electrical consumption as if Seven Seas consumed electricity at the rate of 11.75 kWh/1,000 gallons produced on that given day(s). If the recalculation produces a result in which Seven Seas averages 12.65 or less kWh per 1,000 gallons produced during the period in question, WAPA shall not be entitled to any credit as set forth in Schedule 15.5. If the recalculation produces a result in which Seven Seas averages greater than 12.65 kWh per 1,000 gallons produced during the period in question, Seven Seas shall credit WAPA as set forth in Schedule 15.5.

- (c) It is further understood that major changes in feed water quality, due to global warming, other phenomena or caused by man, which forces Seven Seas to deviate from the original Codes and Standards, Good Engineering and Operating Practices utilized at the time this Agreement was executed, may cause an increase in electrical consumption, which cause may be grounds for Seven Seas to utilize remedies as found in ARTICLE 12 of this Agreement.

Handwritten signature and initials, possibly "JD" and "HH".