



TO: Honorable Mayor and City Councilmembers

FROM: Joan L. Flynn, City Clerk *JLF*

DATE: 8/5/2013

SUBJECT: SUPPLEMENTAL COMMUNICATION FOR THE AUGUST 5, 2013 REGULAR CITY COUNCIL/PFA MEETING AND THE SPECIAL MEETING OF THE SUCCESSOR AGENCY

Attached is Supplemental Communication to the City Council (received after distribution of the Agenda Packet):

Study Session

#1. PowerPoint communication received from Travis Hopkins, Director of Public Works, entitled *FY 2013/2014 Capital Improvement Program (CIP)*.

Ordinances for Introduction

#25. Communication received from Peggy Dern, dated August 5, 2013 supporting proposed Ordinance No. 3985.

Ordinances for Adoption

#27. Communication received from Len Herman, President, Orange County Association of Realtors, dated August 2, 2013 entitled *Proposed Mobile Home Park Senior Age Restriction Overlay Zone*.

#27. Communication received from Vickie Talley, Executive Director, Manufactured Housing Education Trust dated August 4, 2013, entitled *City Council Item 27, Oppose Adopt Ordinance No. 3986, an Interim Ordinance Establishing a Moratorium on Conversion of Senior Mobile Home Parks*.

Councilmember Items

#28. PowerPoint communication received from Councilmember Joe Shaw entitled *Boondoggle*.

#28. Communication received from Michael R. Markus, General Manager of the Orange County Water District, dated August 2, 2013 regarding the confidentiality agreement between the Orange County Water District and Poseidon Resources.

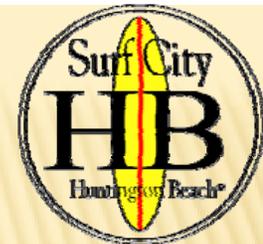
#28. Communication received from Orange County Water District seeking applicants to serve on the Ocean Desalination Citizens' Advisory Committee.



CITY OF HUNTINGTON BEACH PUBLIC WORKS DEPARTMENT

FY 2013/2014

CAPITAL IMPROVEMENT PROGRAM (CIP)



CAPITAL IMPROVEMENT PROGRAM

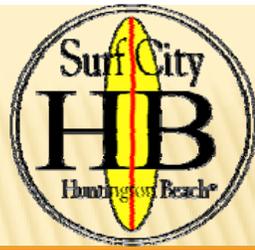
➤ Budget

➤ New Appropriations ⁽¹⁾ :	\$28.5M
➤ Continuing Appropriations:	<u>\$9M</u>
Total	\$37.5M

➤ Funding sources include:

- Infrastructure Fund
- Enterprise Funds (*Water and Sewer*)
- Special Revenue Funds (*Measure M, Gas Tax, Prop 42, and AQMD*)
- Grants (*Federal, State, & OCTA*)

(1) Does not include \$18.5M of funding for Senior Center which is currently unidentified which is also one of the new strategic plan goals to determine the funding source



CIP PROJECTS BY CATEGORY

❖ Drainage & Storm Water	\$1.2M
❖ Facilities	\$1M
❖ Neighborhood	\$3M
❖ Parks and Beaches	\$2.8
❖ Sewer	\$4.6M
❖ Streets & Transportation	\$14.5M
❖ Water	\$9.5M



FUNDING SOURCES

❖ Water Fund	\$7.2M
❖ Grants/Other	\$6M
❖ Sewer Service Fund	\$4.1M
❖ General Fund	\$3M
❖ Proposition 42	\$2.8M
❖ Measure M	\$2M
❖ Water Master Plan	\$1.7M
❖ Gas Tax	\$900K
❖ Sewer Development Fee	\$400K
❖ CDBG	\$150K

DRAINAGE & STORM WATER \$650K

- ❖ Median Water Quality Projects-\$270k
 - Landscape medians at Banning St. & Bushard/Adams to treat urban runoff.
- ❖ First Street Diversion/SCADA-\$163k
 - Monitor and control low flow diversion
- ❖ Meredith P.S. Expansion-\$358k
 - To accommodate new engines
- ❖ Heil Pump Station-\$1.3M
 - State/Federal Grant pending

Future Heil Pump Station



FACILITIES \$1M

- ❖ City Council Chamber Renovations \$50k
- ❖ Police Dept. Elevator Modernization \$68k
- ❖ Main Street Library ADA Improvements \$165k
- ❖ Central Library Automated Handling System \$151k
- ❖ Various Roof Replacements \$340k
 - Oak View Library, Murdy Fire Sta., and Bushard Fire Sta.
- ❖ Pier Piling Maintenance \$200k
 - \$200k/year for 5 years for a total of \$1M
- ❖ Paving for Murdy and Magnolia Fire Stations \$50k
- ❖ Magnolia Fire Station Block Wall and Security Gate \$58k

Oak View Library Roof



Bushard F.S. Roof



NEIGHBORHOOD \$3M

- ❖ Concrete Replacement \$250k
- ❖ Pedestrian Crossing @ Bella Terra \$200k
- ❖ Residential Streets Overlay/Slurry \$2.1M
- ❖ Tree Petition Streets (*Edmonds Cr. & Craig Ln.*) \$450k
- ❖ Sunset Beach Improvements \$100k
 - ❖ Warner Turnaround and Entry Signs

Residential Street – Before



Residential Street – After

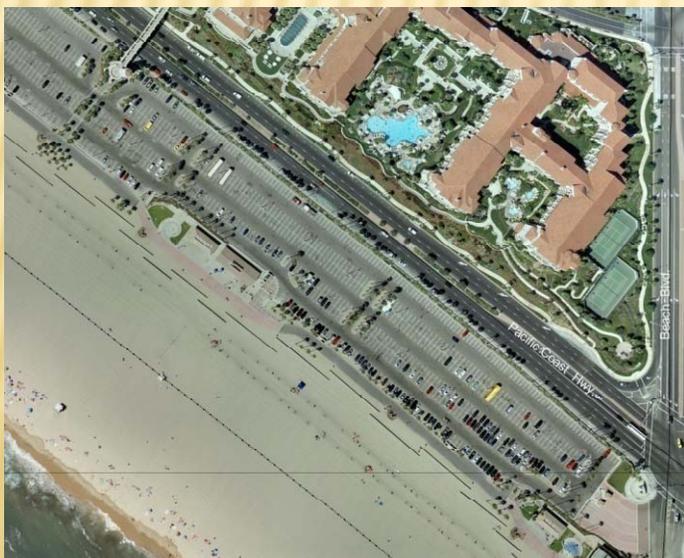


PARKS AND BEACHES \$2.7M

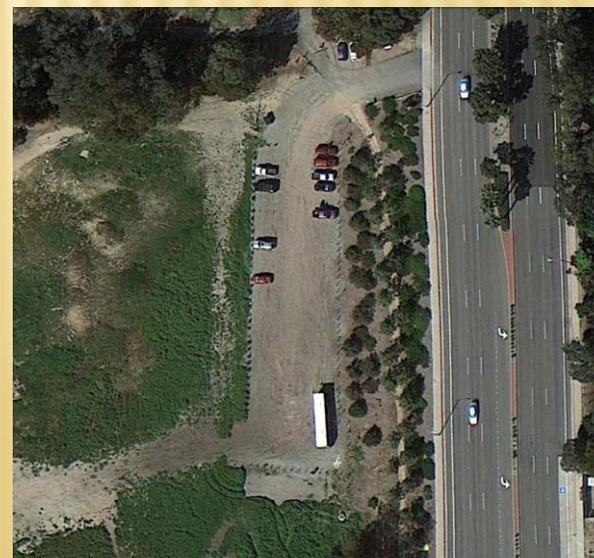
- ❖ Bartlett Park Design \$130k
- ❖ South Beach Parking Lot Phase 1 \$450k
- ❖ Gun Range EIR/RAP \$50k
- ❖ Lebard Park Design \$20k
- ❖ New Senior Center (1) \$1.5M
- ❖ Central Park Underground Electrical Upgrades \$325k
- ❖ Shipley Parking Lot Design and Construction \$270k
- ❖ Worthy Park Design \$138k

(1) Does not include \$18.5M of unidentified funding for Senior Center

Beach Parking Lot



Shipley Parking Lot



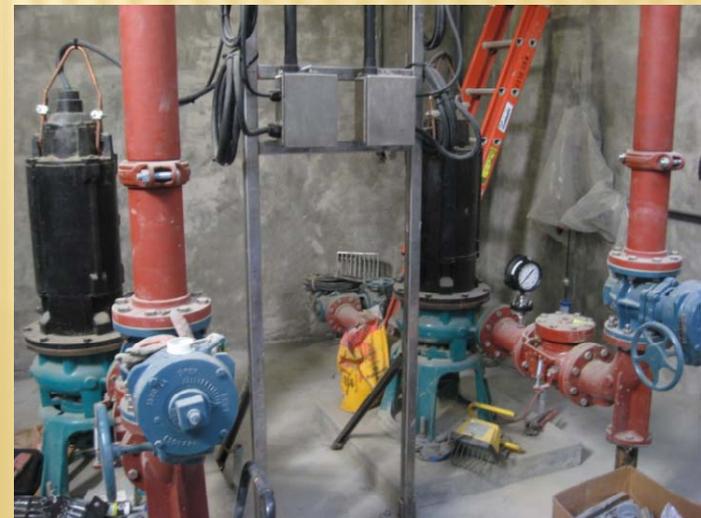
SEWER IMPROVEMENTS \$4.5M

- ❖ Trinidad Sewer Lift Station Construction \$1.7M
- ❖ Edgewater Sewer Lift Station Design \$400k
- ❖ Sewer Lining – Various Locations \$250k
- ❖ Sewer Main Replacements – Var. Loc. \$400k
- ❖ Sewer Main Replacement Beach Blvd. \$1.7M

Sewer Lining



Sewer Lift Station



STREETS & TRANSPORTATION \$14.5M

- ❖ Arterial Rehabilitation \$3.2M
 - Design (Main St., Lake St., Indianapolis)
 - Construction (Argosy, Yorktown, 6th)
- ❖ Bridge Rehabilitation Program \$3.3M
 - BPMP (*Warner, Magnolia, and Brookhurst*)
 - HBRR (*Admiralty, Humbolt, Davenport, & Gilbert*)
- ❖ Atlanta Ave. Widening \$2.9M

Arterial Rehab – Before



Arterial Rehab – After





STREETS & TRANSPORTATION

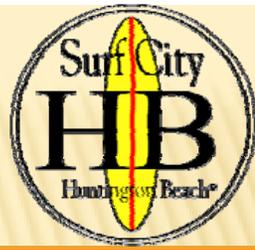
(CONTINUED)

❖ Intersection Improvements	\$954k
▪ Beach/Edinger	
▪ Beach/Warner	
▪ Brookhurst/Adams	
▪ Ellis/Main	
▪ Yorktown/Huntington	
❖ Traffic Signal Synchronization Projects	\$1.86M
▪ Adams Ave (<i>Lake St. to Fairview</i>)	
▪ Goldenwest (<i>SR 22 to PCH</i>)	
▪ Warner Ave (<i>PCH to Red Hill</i>)	
▪ Edinger Ave (<i>Bolsa Chica to SR55</i>)	
▪ Talbert Ave (<i>Beach to SR55</i>)	
❖ Traffic Signal Modifications	\$2.1M
▪ Bolsa Chica/Bolsa	
▪ Main/Florida	
▪ Magnolia/Yorktown	
▪ Adams/Bushard	
▪ Gothard/Talbert	
▪ Gothard/Heil	
▪ Springdale/McFadden	
❖ Safe Route to Schools	\$473k
▪ Stacey Middle School / Clegg Elementary	



WATER IMPROVEMENTS \$9.55M

❖ Watermain Extensions - Var. Loc.	\$1.0M
❖ Corrosion Control - Var. Loc.	\$150k
❖ Water Production Imp. – Var. Loc	\$1.25M
❖ Peck Reservoir Pump and Fac. Mod.	\$1.5M
❖ Water Engineering Studies	\$100k
❖ Water Facilities Security	\$686k
❖ Water Main Replacement	\$4.5M
❖ Well No. 8 Irrigation Project	\$165k
❖ Well No. 9 Treatment	\$200k



TIMELINE OF PROPOSED BUDGET/CIP FOR FY 2013/14

- ❖ Budget reviewed by City Administrator June
- ❖ Public Works Commission June
- ❖ Final budget adjustments made July
- ❖ GP Conformance by Planning Commission August
- ❖ City Council Study Session August 5
- ❖ Budget Public Hearing September 2
- ❖ Budget can be deliberated and voted September 2 or 16

QUESTIONS?

Esparza, Patty

From: Surf City Pipeline [noreply@user.govoutreach.com]
Sent: Monday, August 05, 2013 12:01 PM
To: CITY COUNCIL; Agenda Alerts
Subject: Surf City Pipeline: Comment on an Agenda Item (notification)

Request # 15398 from the Government Outreach System has been assigned to Agenda Alerts.

Request type: Comment

Request area: City Council - Agenda & Public Hearing Comments

Citizen name: Peggy Dern

Description: Dear Joe Shaw,

I hope you will support to change the Ordinance #3985 (section 7.12.010) at the city council meeting tonight. We would like your vote for the new ordinance #3985

7.12.010 Bees. No person shall keep or maintain, or suffer or permit to be kept or maintained, upon premises owned or controlled by him in the City, any hive bees within two hundred (200) feet of any dwelling.

Thanks
Peggy Dern
8888 Lauderdale Ct. 217-G
HB 92646
714-310-4320

Expected Close Date: 08/06/2013

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

**SUPPLEMENTAL
COMMUNICATION**

Meeting Date: 8/5/2013
Agenda Item No. 25

August 5, 2013
Sent via E-Mail to jflynn@surfcity-hb.org

August 2, 2013

The Honorable Connie Boardman
Mayor, City of Huntington Beach
The Honorable Matthew Harper
Mayor Pro Tem, City of Huntington Beach
Members of the City Council
2000 Main Street
Huntington Beach, CA 92648

Subject: Proposed Mobile Home Park Senior Age Restriction Overlay Zone

Dear Mayor Boardman:

As President of the Orange County Association of REALTORS®, I am writing to express concern with Council Member Katapodis's proposal to impose zoning restrictions on existing senior mobile home park communities to prevent park owners from changing the age status of the community.

In general, our association advocates for the protection of private property rights, however, we are also aware that there are circumstances whereby the rights of a protected class need to be elevated.

In this case, we are not aware that such evidence exists that would require the city to subordinate the rights of park owners by forcing them to serve only seniors. We would encourage the city to consider and exhaust all other options before imposing such a drastic and not uncontroversial zoning scheme.

Sincerely,

Len Herman
President



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Chelu Travieso
Larz McAdoo
James Jones
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Craig Houser
Robert Olander II
Stan Magill, Jr.
Eileen Cirillo

Lifetime Achievement Award Recipients

Norm McAdoo
John Crean
R.J. Brandes
Robert N. West
Ed Evans
Logan A. Boggs
Jerry Golden
Harry E. Karsten
Jess Maxcy
CMPA
WMA

Above and Beyond Award Recipients

Willis Miller
Stan Magill
Dan Jacobs
Paul Bostwick
C. Brent Swanson
Jim Martin
James Jones
Chelu Travieso
Keith Casenhiser
James B. Bostick

Executive Director

Vickie Talley

August 4, 2013

Sent via E-Mail to jflynn@surfcity-hb.org

Mayor Connie Boardman
Mayor Pro Tem Matthew Harper
Members of the City Council
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648

**RE: City Council Item 27 - OPPOSE
Adopt Ordinance No. 3986, an Interim Ordinance Establishing a
Moratorium on Conversion of Senior Mobile Home Parks**

Honorable Mayor Boardman and Council Members:

MHET is a non-profit association dedicated to the preservation the manufactured housing lifestyle and to the protection of the property rights of the mobile home park business owners who provide housing in the seventeen privately owned mobile home parks in the City of Huntington Beach.

We are opposed to the City enacting any regulations that will restrict the property rights of the owners of these parks. This includes the enactment of any restrictions by the City that will require the private business owner to discriminate against potential customers based on age. Specifically, MHET opposes the adoption of any zoning ordinance, urgency ordinance or moratorium that would restrict a property owner from renting their property to any age group they choose.

We further oppose the adoption of Ordinance 3986 based on the following:

- Findings cannot be made that there is a need to preserve the fewer than 1500 mobile home units in Huntington Beach mobile home parks that may be occupied by seniors. These 1500 units make up only 2% of the total 78,000 total housing units in the City that are available to seniors city-wide. Additionally, the seniors living in these mobile homes are an extremely small special interest group of only .03% of all of the 47,426 seniors living in the City. And, residency by families and children, per se, cannot possibly pose a serious or immediate threat to public health and safety.
- Prior to this issue being raised by the City Council, no mobile home parks in the City were contemplating changing the age rules. As a result of the City Council's action, at least one mobile home park owner has served legal notices to the park residents in order to vest their rights to change from a senior park to an all age park. This park owner has repeatedly stated on the record that they do not want to change to an all

age park at this time, but under the circumstances they feel they have no choice but to take action to protect their property rights.

- This precipitous action to protect less than .03% of the seniors living in the City is a potentially extremely costly action for a City with far more important and pressing financial challenges and, as previously stated, is completely unnecessary. The City Attorney has already put on the Council's agenda discussions regarding the threat of litigation by mobile home park owners over this issue.
- The City should not be in the business of telling property and business owners how to run their business operations when it comes to who they must choose as customers. Would the City adopt a similar ordinance that would require apartment owners, restaurant owners, and other businesses to serve only seniors who make up only 25% of the City's population?
- There are many factors for a business to consider when choosing who its customers are. In Huntington Beach the City's mobile home parks are almost evenly split between all-age and senior communities. The free market system is working. The City does not have to "fix" it. Apparently, at this time, there are enough seniors interested in living in a mobile home in Huntington Beach.

However, as time changes and demographics change, the owner of a business should be able to modify the business to accommodate the changes. To the case in point, there may be increasing opportunity for seniors regarding housing options in the future and mobile homes may become less desirable for seniors than the other options. In that case, the owners of the mobile home parks that are currently senior would need to consider a change in their business.

- There is no need to force a very small segment of the City's housing providers to provide housing only for seniors. There are currently a significant number of senior housing opportunities in Huntington Beach to provide for the seniors. A quick search for "senior housing in Huntington Beach" resulted in a variety of senior apartments, condominiums, and other facilities. Of course, the vast majority of Huntington Beach seniors live in single family detached housing.
- A mobile home park that is designated a "senior" community or, "housing for 'older persons' over 55 years of age", are not required to have 100% of the occupants be 55 years of age or older. According to federal law, up to 20% of the residents of the community may be all-ages. Seniors living in the "senior" parks are not now living in communities that are all seniors. The City refers to parks with occupancy by eighty percent older persons; however, there is no mention of qualified parks for "older persons," which requires compliance with a comprehensive litany of requirements and conditions. Mere occupancy is not enough; the City cannot force

owners to become “older persons” housing without establishing evidence of compliance with ALL federal requirements of the affected parks.

- When a park is a senior park, the mobile home owners who want to sell their homes are restricted to selling to only 25% of the buyers and are not allowed to sell to the other 75% of willing buyers who are not seniors. Countywide the senior population is only 16.5%. Without the senior restriction, the seller has access to 100% of the buyers. This is a dramatic disadvantage to the owners of mobile homes.
- Moreover, the elder communities in Huntington Beach parks all appear to be homogenous enclaves of Caucasian residency. Excluding families is to cause a disparate impact of shutting out families. Families are a disproportionately minority (protected classes under federal law). The disparate impact caused by the moratorium results in an unmistakable but clear secondary effect: the denial of housing based on national origin, color and race.
- When a park is designated as a senior park homes may only be sold to seniors. If an underage person inherits a mobile home upon the death of a tenant, the underage person may not move into the park and is forced to sell the home. This is only one example of the “unintended consequences” of the City trying to regulate who can and cannot live in mobile home parks. Who will police and enforce the regulations? Conduct required surveys? Qualify new tenants? Defend the park owners in housing discrimination complaints? Advertise housing to conform to zoning as required? Undertake all the requirements of the operation of the parks required of the city when a zoning law is proposed? The City assumes all responsibilities for intent to operate, yet there is no direction, budgeting, or manpower devoted to paying for these new city services.

We urge the City Council to reject the proposal to regulate mobile home park housing and to not adopt a moratorium or other regulations restricting who can live in the City’s mobile home parks.

Sincerely,



Vickie Talley
Executive Director

cc: Huntington Beach Mobile Home Park Owners

Boondoggle:

a project that is considered a useless waste of both time and money, yet is often continued due to extraneous policy motivations.

Adelaide Australia Desalination Plant



- * Cost: \$1.8 billion
- * Fully operational but expected to be mothballed at a cost of \$30 million a year
- * Water rates for Adelaide ratepayers tripled
- * This plant is expected to be the third source of water but as of now is not needed (after two other natural sources)
- * Rates stay the same whether water is used or not

Some Australian Headlines

- * Double or nothing: water prices create thirsty poor
- * Desal plants inflate household power bill
- * Water charges are set to spiral in desalination squeeze
- * Water bills set to rise under proposed changes
- * Australia has overinvested in desalination says government report:

The report, titled Australia's Urban Water Sector, concludes that "much of the recent investment in supply augmentation using desalination could have been smaller in scale and from a source other than desalination, while maintaining security of supply." Lower-cost sources were available in many areas, says the commission, but large investments in desalination were preferred.

Poseidon's water

- * Like Adelaide would also be our third source of water – after groundwater and imported water
- * OCSD expects we will be able to get 75 percent of our water from groundwater by 2015
- * Orange County ratepayers will pay for Poseidon's water whether it's needed or not and it's way more expensive than our first two sources of water

Poseidon: Not Needed

- * Orange County water agencies are starting to balk at the idea of paying for water they don't need
- * No long-term policies or standards for using desalinated water in Orange County were produced or were not studied – no one is sure what our future water needs are and how desalination fits in
- * Conservation is increasing and water usage is declining
- * What we do know: Water rates will go up precipitously if Poseidon is built

Boondoggle:

Poseidon is a waste of both time and money, yet is being considered due to extraneous policy motivations.



DIRECTORS

PHILIP L. ANTHONY
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DENIS R. BILODEAU, P.E.
SHAWN DEWANE
CATHY GREEN
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BRUCE WHITAKER
ROGER C. YOH, P.E.



SINCE 1933
Celebrating 80 Years

ORANGE COUNTY WATER DISTRICT

ORANGE COUNTY'S GROUNDWATER AUTHORITY

OFFICERS

President
SHAWN DEWANE

First Vice President
CATHY GREEN

Second Vice President
ROGER C. YOH, P.E.

General Manager
MICHAEL R. MARKUS, P.E., D.WRE

August 2, 2013

City of Huntington Beach
Mayor Connie Boardman and Councilman Joe Shaw
2000 Main Street
Huntington Beach, CA 92648

**SUPPLEMENTAL
COMMUNICATION**

Meeting Date: 8/5/2013
Agenda Item No. 28

Dear Mayor Boardman and Councilman Shaw:

This letter is in response to the Inter-Department Communication from Council Member Shaw contained in item 28 of the posted agenda for the City Council meeting to be held on August 5, 2013, regarding the confidentiality agreement between the Orange County Water District (the District) and Poseidon Resources (Poseidon).

I respectfully disagree with the accusation that the District is in any way lacking transparency regarding this matter. To the contrary, the District has posted the original confidentiality agreement and the recent amendment on its website for public viewing. I also believe it is noteworthy that there were 13 other agencies that executed the original confidentiality agreement with Poseidon Resources.

Our Board of Directors has a policy to look at all potential sources of water to ensure water supply reliability for Orange County and ocean desalination is one of those potential sources. You may not be aware but in 2003 and 2004, the District considered developing an ocean desalination plant. At that time, we requested contractors to give us pricing information to determine what such a project might cost. Additionally in the mid 1970's the District actually constructed a pipeline from the ocean to our Fountain Valley campus along with a small ocean desalination plant to consider the cost and feasibility of constructing a large-scale plant.

The study that District staff is now embarking on is going to be coordinated very closely with the current ocean desalination working group, which the City of Huntington Beach has been a participating member. In order to do a thorough evaluation, it is necessary to validate Poseidon's cost data and that is why the confidentiality agreement is necessary. It is really no different than what the City might initially do in dealing with any developer. If the District decides to consider entering into any formal arrangement with Poseidon, all of the information and data that Poseidon provides will be made available to the public.

Mayor Connie Boardman
Councilman Joe Shaw
August 2, 2013
Page 2 of 2

Our Board also suggested that a Citizens' Advisory Committee be formed to have input during the evaluation. The District is currently taking applications for this group and details on how anyone can become involved are posted on our website.

The District's Board has always been committed to openness and transparency in all its dealings and I would urge the Council not to support the recommended action regarding this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "M. Markus", written over a horizontal line.

Michael R. Markus, P.E., D.WRE, BCEE, F.ASCE
General Manager

c/c: Councilman Joe Carchio
Councilwoman Jill Hardy
Councilman Matthew Harper
Councilman Jim Katapodis
Councilman Dave Sullivan
City Manager Fred Wilson
City Attorney Jennifer McGrath
OCWD Director Phil Anthony
OCWD Cathy Green

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT ("Agreement"), entered into and made effective as of April the 7th day of 2010, is by and between Orange County Water District ("OCWD") and Poseidon Resources (Surfside) LLC ("Poseidon") (collectively the "Parties").

WITNESSETH:

WHEREAS, the Parties, along with other agencies providing water service (collectively, OCWD and such other agencies are referred to as the "Water Agencies"), have entered into discussions and negotiations concerning the possibility of a public-private partnership regarding Poseidon's Huntington Beach desalination project (the "Project"); and

WHEREAS, in order to proceed with the next stage of the discussions and negotiations, OCWD has requested, and Poseidon is willing to provide, certain information that Poseidon considers proprietary and confidential; and

WHEREAS, Poseidon wishes to protect its proprietary and confidential information against unauthorized use and disclosure by OCWD;

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, and with the intent to be legally bound hereby, the Parties agree as follows:

- I. Confidential Information. The term "Confidential Information," as used in this Agreement, shall mean information, other than information described in one or more of clauses (a) through (d) below in this Section, that is provided by Poseidon to OCWD. When Poseidon provides Confidential Information in documentary form, whether hardcopy or electronic, it shall clearly mark it "Confidential." When Poseidon provides Confidential Information to OCWD verbally, it shall notify OCWD of the confidential nature of the information in writing prior to or immediately after verbally conveying the information. In addition to the foregoing requirements, each item of Confidential Information provided either in documentary form or verbally shall be accompanied by a writing stating the grounds for Poseidon's assertion that the information is of the nature described in Section 6 below and is not within any of the exclusions listed in clauses (a) through (d) in this Section. Poseidon shall have the right to determine, in its sole judgment, what information it will provide to OCWD. Confidential Information shall not include the following:
 - (a) Information that, at the time of disclosure by Poseidon, is publicly available or generally known or available to third parties, or information that later becomes publicly available or generally known or available to third parties through no act or omission by OCWD;

- (b) Information that OCWD can demonstrate was in its possession prior to disclosure by Poseidon;
- (c) Information received by OCWD from a third party who, to OCWD's knowledge and reasonable belief, did not acquire such information on a confidential basis either directly or indirectly from Poseidon; and
- (d) Information OCWD can demonstrate was independently developed by it or a third party or for it or a third party and that was not obtained, in whole or in part, from Poseidon.

2. Disclosure and Use of Confidential Information. OCWD shall not, without Poseidon's prior written consent, disclose to any third party, firm, corporation or entity such Confidential Information, provided, however, OCWD may discuss Confidential Information with other Water Agenc(ies) that have entered into a confidentiality agreement with Poseidon. Internally, OCWD shall limit the disclosure of the Confidential Information to only those officers, employees and agents (including its governing board or committees, attorneys, accountants, bankers and consultants) of OCWD reasonably necessary to evaluate the Confidential Information and/or the Project. If OCWD internally evaluates Confidential Information and/or the Project with its governing board or committees, OCWD shall do so without disclosing the Confidential Information in a public meeting, to the extent permitted by Section 54950 *et seq.* of the California Government Code. Should OCWD staff determine that a need exists to disclose Confidential Information in a public meeting, OCWD will notify Poseidon of this need and identify the information to be disclosed prior to posting the agenda for the meeting. OCWD shall use the Confidential Information received from Poseidon under this Agreement only for the purpose of its internal evaluation of the Project. In complying with its obligations under this Agreement, OCWD shall use reasonable means to prevent unauthorized disclosure and to protect the confidentiality of the Confidential Information. Notwithstanding OCWD's exercise of its right to discuss Confidential Information with another Water Agenc(ies) that have entered into a confidentiality agreement with Poseidon, OCWD shall not have any obligation with regard to limiting or preventing disclosure of Confidential Information by such other Water Agenc(ies) or with regard to such other Water Agenc(ies)' performance of their confidentiality agreements, and OCWD's and such other Water Agenc(ies)' obligations under their respective confidentiality agreements shall not be construed as joint and several.

3. Required Disclosure. In the event OCWD is requested or required by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar process to disclose any Confidential Information received pursuant to this Agreement, OCWD will notify Poseidon immediately of such request(s) and will use reasonable efforts to lawfully delay disclosure until an appropriate protective order may be sought by Poseidon and/or a waiver of

compliance with the provisions of this Agreement granted by Poseidon; provided, however, such measures shall not include initiating or defending litigation or otherwise contesting the validity of a demand for disclosure pursuant to law or order of a court or regulatory body, unless OCWD and Poseidon first reach agreement regarding the engagement of legal counsel for OCWD and the payment of OCWD's legal and related expenses in such litigation or contest. If by the earlier of seven (7) days after being notified by OCWD of such request(s) or two (2) days prior to the disclosure date, Poseidon does not either grant a waiver or seek a protective order, then OCWD may comply with the request(s) and such disclosure of Confidential Information will not constitute a breach of this Agreement.

4. Return of Documents. Either Party may elect at any time to terminate this Agreement. OCWD will return any and all Confidential Information upon written request from Poseidon, including all originals, copies, translations, transcriptions or any other form of said material, without retaining any copy or duplicate thereof. To the extent permitted by law and if Poseidon has not requested the return thereof pursuant to the preceding sentence, OCWD shall promptly destroy any and all electronic and hardcopy versions of Confidential Information, as well as any documents consisting of excerpts or portions of materials previously identified by Poseidon as Confidential Information. OCWD will not retain any Confidential Materials in its agency files.
5. Survival of Obligations. Regardless of any termination of any business relationship between the Parties, the obligations and commitments established by this Agreement shall remain in full force and effect for four (4) years from the day and year first hereinabove written or until such time as the Parties have entered into an agreement providing otherwise.
6. Nature of Information. OCWD hereby accepts the representations of Poseidon that the Confidential Information is of a special, unique, unusual, extraordinary, and intellectual character, that money damages would not be a sufficient remedy for any breach of this Agreement by OCWD, and that specific performance and injunctive or other equitable remedies for any such breach shall be available to it. The Parties also acknowledge that the interests of Poseidon in such Confidential Information may be irreparably injured by disclosure of such Confidential Information. The remedy stated above may be pursued in addition to any other remedies applicable at law or equity for breach of this Agreement. Should litigation be instituted to enforce any provision hereof, the Party that prevails will be entitled to recover all costs, including reasonable legal fees, expert costs and costs of investigation.
7. Governing Law. The laws of the State of California shall govern this Agreement.
8. No Other Agreement. It is expressly understood that this Confidentiality Agreement is not and shall not be construed as any form of a letter of intent or agreement to enter into any type of transaction.

9. No License or Rights. Neither this Agreement, nor the transfer of Confidential Information hereunder, shall be construed as granting to OCWD any license or rights to any information or data now or hereafter owned or controlled by Poseidon.
10. Except as may be required by law, without the prior consent of Poseidon, OCWD will not (a) confirm or deny any statement made by a third party regarding the Confidential Information, (b) disclose to any person the fact that Confidential Information has been made available to it by Poseidon, or (c) disclose any of the terms or conditions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement on the day and year first herein above written.

ORANGE COUNTY WATER DISTRICT

BY Kathryn L. Barr
 Kathryn L. Barr [NAME]
 President [TITLE]

DATE _____

BY Michael R. Markus
 Michael R. Markus
 General Manager

DATE 04-02-10

POSEIDON RESOURCES (SURFSIDE) LLC

BY Scott Malow
 Scott Malow [NAME]
 Vice President [TITLE]

DATE March 26, 2010

APPROVED AS TO FORM

By [Signature]
 General Counsel for
 Orange County Water District

AMENDMENT NO. 1 TO CONFIDENTIALITY AGREEMENT

THIS AMENDMENT NO. 1 (the "Amendment") entered into and made effective as of the 24 day of July, 2013, is by and between Orange County Water District ("OCWD") and Poseidon Resources (Surfside) LLC ("Poseidon") (collectively the "Parties") and amends that certain CONFIDENTIALITY AGREEMENT (as amended, the "Agreement") dated as of April 7, 2010 by and between the Parties. Capitalized terms used in this Amendment without definition shall have the meanings set forth in the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, and with the intent to be legally bound hereby, the Parties agree as follows:

1. Term of Agreement and Survival of Obligations. Section 5 of the Agreement is amended as follows: The Parties agree that the obligations and commitments established by the Agreement shall remain in full force and effect until April 7, 2016 or such time as the Parties have entered into an agreement providing otherwise.
2. Confidential Information. The fourth sentence of Section 1 of the Agreement is amended to read as follows:

"In addition to the foregoing requirements, each item of Confidential Information provided either in documentary form or verbally shall be accompanied by a writing from Poseidon, specifying the specific legal authority that would authorize OCWD to withhold each individual item of Confidential Information from public disclosure under applicable law, and stating the grounds and factual basis for Poseidon's assertion that the information is of the nature described in Section 6 below and is not within any of the exclusions listed in clauses (a) through (d) in this Section."

3. Disclosure and Use of Confidential information. Section 2 of the Agreement is amended to read as follows:

"OCWD shall not, without Poseidon's prior written consent (which may include consent obtained from Poseidon through e-mail or text message), disclose to any third party, firm, corporation or entity such Confidential Information, provided, however, following Poseidon's written consent with respect to each specific Water Agency, which shall not be unreasonably withheld, OCWD may discuss Confidential Information with such other Water Agency(ies) that have entered into a confidentiality agreement with Poseidon, or which otherwise have expressed potential interest in entering into a future agreement with Poseidon and OCWD. Internally, OCWD shall limit the disclosure of the Confidential Information to only those officers, employees and agents (including its governing board or committees, attorneys, accountants, bankers and consultants) of OCWD reasonably necessary to evaluate the Confidential Information and/or the Project. If OCWD internally evaluates Confidential Information and/or the Project with its governing board or committees, OCWD shall do so without disclosing the Confidential Information in a public meeting, to the extent permitted by Section 54950 *et seq.* of the California Government Code. Notwithstanding the above, following consultation with Poseidon, OCWD may prepare and disclose summaries of any Confidential Information in a public meeting, the purpose of which is to evaluate, consider, deliberate, or act to approve any Project agreement(s) or necessary OCWD Board actions that precede the potential approval of any Project agreement. Should OCWD staff, in preparing for a public meeting, determine that a need exists to disclose Confidential Information that cannot be adequately summarized, OCWD will notify Poseidon of this need and identify the information to be disclosed prior to posting the agenda for the meeting. Poseidon expressly acknowledges and agrees that OCWD shall not be responsible or liable in any way to Poseidon for any losses that Poseidon may suffer from disclosure of any Confidential Information during the course of a public meeting in compliance with this Agreement. OCWD shall use the Confidential Information received from Poseidon under this

Agreement only for the purpose of its internal evaluation of the Project. In complying with its obligations under this Agreement, OCWD shall use reasonable means to prevent unauthorized disclosure and to protect the confidentiality of the Confidential Information. Notwithstanding OCWD's exercise of its right, following Poseidon's written consent, to discuss Confidential Information with other Water Agenc(ies) in accordance with this paragraph, OCWD shall not have any obligation with regard to limiting or preventing disclosure of Confidential Information by such other Water Agenc(ies) or with regard to such other Water Agenc(ies)' performance of their confidentiality agreements, and OCWD's and such other Water Agenc(ies)' obligations under their respective confidentiality agreements shall not be construed as joint and several."

4. Required Disclosure. Section 3 of the Agreement is amended to read as follows:

"In the event OCWD is requested or required by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar process to disclose any Confidential Information received pursuant to the Agreement, OCWD will notify Poseidon immediately of such request(s) and will use reasonable efforts to lawfully delay disclosure until an appropriate protective order may be sought by Poseidon and/or a waiver of compliance with the provisions of this Agreement granted by Poseidon; provided, however, such measures shall not include initiating or defending litigation or otherwise contesting the validity of a demand for disclosure pursuant to law or order of a court or regulatory body. It is Poseidon's responsibility, as the real party in interest, to defend at its sole cost any court action, or any other proceeding, related to requests for Confidential Information received by OCWD, and further, Poseidon shall hold OCWD harmless and pay any reasonable costs or attorneys' fees incurred by OCWD, and/or awarded against OCWD, in the event an action is brought to obtain Confidential Information from OCWD and OCWD withholds Confidential Information from public disclosure in accordance with this Agreement. If by the earlier of seven (7) days after being notified by OCWD of such request(s) or two (2) days prior to the disclosure date, Poseidon does not either grant a waiver or seek a protective order, then OCWD may comply with the request(s) and such disclosure of Confidential Information will not constitute a breach of this Agreement. If OCWD is in compliance with this Agreement, OCWD shall not be responsible or liable in any way for any losses that Poseidon may suffer from disclosure of any documents which are released pursuant to a court order, or other legal authority, in any lawsuit related to requests for Confidential Information."

5. Nature of Information. Section 6 of the Agreement is amended to read as follows:

"If OCWD disagrees with Poseidon that information disclosed is confidential under the law cited by Poseidon, OCWD shall return the information to Poseidon within fifteen (15) days, and shall not retain it. If the information is not returned within fifteen (15) days, OCWD will be considered to have accepted the representations of Poseidon that the information disclosed is confidential under the law. OCWD agrees that the Confidential Information is of a special, unique, unusual, extraordinary, and intellectual character, that money damages would not be a sufficient remedy for any breach of this Agreement by OCWD, and that specific performance and injunctive or other equitable remedies for any such breach shall be available to it. The Parties also acknowledge that the interests of Poseidon in such Confidential Information may be irreparably injured by disclosure of such Confidential Information. The remedy stated above may be pursued in addition to any other remedies applicable at law or equity for breach of this Agreement."

6. Section 10 of the Agreement is amended to read as follows:

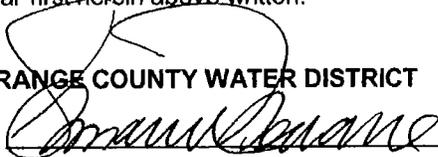
"OCWD shall use its professional discretion, with the intention of carrying out the intent and spirit of this Agreement, in responding to requests to: (a) confirm or deny any statement made by a third party regarding the Confidential Information, (b) disclose the fact that Confidential Information has been made available to it by Poseidon, or (c) disclose the existence of this Agreement and discussions with Poseidon; provided that OCWD shall not disclose the terms or conditions of this Agreement or the content of any Confidential Information except as may be required by law or otherwise in accordance with this Agreement. OCWD shall promptly notify Poseidon of such requests, and of any response provided. OCWD shall not be responsible or liable in any way for any losses that Poseidon may suffer from any disclosure made in response to such requests, except as otherwise provided for in this Agreement."

7. Each Party represents that it is duly authorized to execute this Amendment and perform its obligations hereunder.

8. All other terms, covenants, and conditions in the Agreement as amended shall remain in full force and effect and shall be applicable to this Amendment.

IN WITNESS WHEREOF, the Parties hereto have entered into this Amendment on the day and year first herein above written.

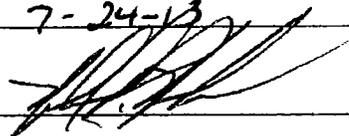
ORANGE COUNTY WATER DISTRICT

By: 

Name: Shawn Dewane

Title: President

Date: 7-24-13

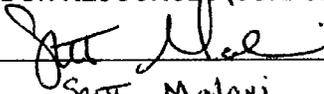
By: 

Name: Michael R. Markus

Title: General Manager

Date: 7-24-13

POSEIDON RESOURCES (SURFSIDE) LLC

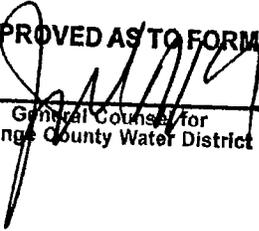
By: 

Name: Scott Maloni

Title: Vice President

Date: July 24, 2013

APPROVED AS TO FORM

By 
General Counsel for
Orange County Water District



OCWD Seeks Applicants to Serve on Ocean Desalination Citizens' Advisory Committee

Deadline to Apply is August 30, 2013

As part of a working group made up of cities and water districts in Orange County, the Orange County Water District (OCWD) executed a confidentiality agreement in April 2010 to receive information from Poseidon Resources to study its proposed ocean desalination facility in Huntington Beach. In July 2013, the OCWD Board of Directors approved executing an amendment to the agreement, giving OCWD access to additional information to study the economic feasibility of the project that may lead to a water purchase agreement for the entire production capacity of the plant.

The Board also approved establishing an Ocean Desalination Citizens' Advisory Committee to make recommendations and provide input to the Board on the proposed Huntington Beach Desalination Project. The committee will meet monthly, or as needed, without compensation.

Interested parties may apply by submitting a letter by mail, fax (714) 963-0291, or e-mail to exploreoceandesal@ocwd.com addressed to:

Michael R. Markus, P.E., D.WRE
General Manager
Orange County Water District
18700 Ward Street
Fountain Valley, CA 92708

Applications must include information about interest and qualifications to serve on the committee, a residential address, telephone number, and e-mail address. Resumes, curriculum vitae, references and/or other materials may be included. Applications must be received no later than 5 p.m. PST, Friday, August 30, 2013.

OCWD encourages members of the public to be engaged in the process as it explores ocean desalination. Changes are currently being made to OCWD's website to make it easier to access related meeting agendas, reports, studies, press releases, and other data. The most recent staff reports and the signed confidentiality agreement and amendments are available on the website. To access these documents, please visit <http://www.ocwd.com/ProgramsProjects/OceanDesalCitizensAdvisoryCommittee.aspx>.

To submit questions or comments, please call OCWD's Explore Ocean Desal Hotline at (714) 378-8243 or send e-mail to exploreoceandesal@ocwd.com.

