

**AGREEMENT BETWEEN CONTRA COSTA COUNTY AND MIRANT MARSH
LANDING, LLC, FOR FEES COMPLIANCE VERIFICATION AND ENFORCEMENT
AT MARSH LANDING GENERATING STATION PROJECT**

Effective January 11, 2011 (“Effective Date”), Contra Costa County, a political subdivision of the State of California (“County”), and Mirant Marsh Landing, LLC a Delaware limited liability corporation authorized to do business in California (“Mirant”), mutually agree and promise as follows:

RECITALS

- A. Mirant Marsh Landing, LLC owns the Marsh Landing Generating Station Project site, located on Wilbur Avenue, one mile northeast of the City of Antioch on the southern shore of the San Joaquin River, in the unincorporated area of Contra Costa County. Mirant intends to construct and operate the Marsh Landing Generating Station (“Project”), a proposed 760-megawatt facility consisting of four combustion turbines operating in simple-cycle mode.
- B. The California Energy Commission (“CEC”) has the exclusive power to certify all thermal electric power plants 50 megawatts (MW) or larger in the State of California and all sites on which power plants are located. The issuance of a certificate by the CEC is in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for the use of a power plant and its site, and the certificate supersedes any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by law.
- C. The CEC has delegated its authority for compliance verification and its authority as Chief Building Official to the County, through its Deputy Director of Conservation and Development, Building Inspection Division, pursuant to the following: Title 20, California Code of Regulations, section 1770; and the Memorandum of Understanding between the California Energy Commission and Contra Costa County for Design Review, Plan Check and Construction Inspection of the Marsh Landing Generating Station Project 08-AFC-3C (effective May 27, 2010).
- D. The purpose of this Agreement is to confirm the County’s authority as the CEC’s delegate for compliance verification and enforcement and as the Chief Building Official of the Project, and to otherwise specify the rights and obligations of the parties as they pertain to the Project.
- E. The CEC adopted its decision on the Marsh Landing Generating Station Project, CEC Docket No. 00-AFC-3C (“Decision”), on August 25, 2010. In the Decision, the CEC approved Mirant’s application for certification for the Project, subject to the timely performance of the conditions of certification and compliance verification enumerated in the text of the Decision. As part of the Decision, the CEC adopted a compliance plan, which includes the following: a set of general compliance conditions setting forth and explaining the duties and responsibilities of the staff, the licensee, delegate agencies and

others; the procedures for setting disputes; the requirements for handling confidential records and maintaining the compliance record; and the requirements for verification, including periodic reports and any other administrative procedures that are necessary to verify that all the conditions will be satisfied.

- F. Pursuant to the Decision, Mirant is responsible for ensuring that the general compliance conditions and the conditions of certification are satisfied. Failure to comply with any of the conditions of certification or the general compliance conditions may result in the CEC's revocation of certification, imposition of an administrative fine, or other action as deemed appropriate by the CEC. The ultimate responsibility for facility design, construction, and operation compliance is with Mirant.
- G. As the CEC's delegate, the County, through its Deputy Director of Conservation and Development, Building Inspection Division, is authorized to enforce local building codes as adopted by the County, the California Building Code, conditions of certification in the technical areas of facility design, geology, and transmission system engineering, and other engineering laws, ordinances, regulations, and standards of the County applicable to the project to ensure health and life safety. As the CEC's delegate, the County, through its Deputy Director of Conservation and Development, Building Inspection Division, is authorized to perform the following tasks: design review, plan checking, and construction inspection of the foundation, anchorage, and connections for those buildings and non-building structures, process-related systems and equipment required for power generation, and equipment located either inside or outside of buildings that are designated in Facility Design condition of certification GEN-2. As the Chief Building Official, the County through its Deputy Director of Conservation and Development, Building Inspection Division, is authorized by CEC to take any action allowed by law to ensure compliance with the terms and conditions of the decision relating to local building codes, the California Building Code, the conditions of certification for facility design, geology and transmission system engineering, and applicable engineering laws, ordinances, regulations, and standards of the County.
- H. The CEC has final authority and responsibility to enforce the terms and conditions of its Decision.
- I. Mirant has represented to the County that the Project will cost an estimated \$550 million and that the planned Project construction period will be twenty-seven (27) months.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

- 1. Definitions. As used in this Agreement, the following terms shall have the following meanings:
 - A. "CBO" – Chief Building Official. The powers and duties of the CBO include those set forth in the 2007 California Building code, Section 104.2. The CEC has

delegated its authority as CBO for the Project to the County, through its Director of Building Inspection.

- B. “CEC” – California Energy Resources Conservation and Development Commission.
 - C. “Decision” – The CEC Final Decision on the Marsh Landing Generating Station Project, CEC Docket 08-AFC-3C.
 - D. “Deputy Director of Building Inspection” – The Deputy Director of Conservation and Development, Building Inspection Division, or his or her designee.
 - E. “MOU” – The Memorandum of Understanding Between the California Energy Commission and Contra Costa County for Design Review, Plan Check and Construction Inspection of the Marsh Landing Generating Station Project 08-AFC-3C (effective May 27, 2010). The MOU is attached to this Agreement.
 - F. “Power Plant Site Complex” – The location of the Marsh Landing Generating Station. The Power Plant Site Complex is located on Wilbur Avenue, one mile northeast of the City of Antioch, on the southern shore of the San Joaquin River in the unincorporated area of Contra Costa County, California.
 - G. “Premises” – The Project, Power Plant Site Complex, and related facilities.
 - H. “Project” – The Marsh Landing Generating Station Project. The Project is a proposed 760 MW facility consisting of four combustion turbines operating in simple-cycle mode adjacent to the recently-completed Gateway Power Station and the existing Contra Costa Power Plant (CCPP). The project is located on approximately 27 acres of the Power Plant Site Complex.
2. Term. Unless sooner terminated as provided in this Agreement, the term of this Agreement shall be from its Effective Date until both of the following occur: the County’s obligations to the CEC under the MOU have been completed and Mirant has paid the entire Fee as described in section 4, below.
3. County Authority. Mirant acknowledges and agrees that the County, through its Deputy Director of Conservation and Development, Building Inspection Division, is the CEC’s delegate for purposes of compliance verification and is the CBO for the Project. Mirant acknowledges and agrees that the CEC has authorized the County to take the actions described below pertaining to the Project. Mirant agrees to cooperate with the County and follow all County orders and directives regarding the Project.
- A. The County has the right to enforce all local building codes, the California Building Code, conditions of certification in the technical areas of facility design, geology, and transmission system engineering, and other engineering laws, ordinances,

regulations and standards of the County applicable to the Project as necessary to ensure health and life safety.

- B. The County has the right to perform design review, plan checking and construction inspection of the foundation, anchorage, and connections for building and non-building structures, process-related systems and equipment required for power generation, and equipment located either inside or outside of buildings that are designated in Facility Design condition of certification GEN-2.
 - C. The County will provide CBO services for the Project as delegated by the CEC.
 - D. The County also has the right to undertake other CEC duties and authority as may be delegated to the County by the CEC.
4. Fees. Mirant acknowledges and agrees that the County is entitled to receive fees for the services provided to the Project by the County as the CEC's delegate. Mirant agrees to pay these fees directly to the County. The parties have agreed that the amount of the required fees is as follows and shall be paid as described herein:
- A. Subject to Section 9, Mirant shall pay the County a fee of \$2,150,000.00 ("Fee") for the services provided to the Project by the County as the CEC's delegate. Mirant and the County agree that the Fee is reasonable and is based upon an estimated Project construction cost of \$550 million and a planned Project construction period of twenty-seven (27) months. Payment of the Fee in successive monthly installments shall commence in the first month in which plans are submitted by Mirant to the County for review. In addition, in the first month in which plans are submitted by Mirant to the County for review, Mirant shall make advance payment to the County of the final monthly installment payment. Therefore, the County will invoice Mirant for an amount equal to two of the twenty-seven (27) monthly installments, as set forth in Section 4.B, in the first month in which plans are submitted by Mirant to the County for review, this amount representing both the first and final monthly installment payments.
 - B. Subject to Section 9 and Section 4.A above, the Fee is payable in twenty-seven (27) successive monthly installments, with each installment in the amount of \$79,630 unless the Fee is increased as provided herein. Mirant shall make each payment within thirty (30) days of receipt of an invoice from the County.
 - C. Mirant's obligation to make installment payments is not subject to conditions precedent, but is subject to Section 9.
 - D. Mirant agrees to pay the Fee in consideration of the County's services as delegate of the CEC so long as the terms of the MOU are in effect.
 - E. The Fee may be increased if, after consulting with the California Energy Commission Compliance Project Manager assigned to the Project, the Deputy

Director of Conservation and Development, Building Inspection Division determines that the actual Project construction scope or activities have increased relative to the construction scope or activities contemplated in the California Energy Commission Final Decision for the Project. Any Fee increase shall be in proportion to increases in the Project construction costs resulting from the increase in the actual Project construction scope or activities.

- F. If the Project is complete before the conclusion of the twenty-seven (27) month construction period, Mirant shall not be required to pay monthly installment payments for the time between the date the Project is complete and the conclusion of the twenty-seven (27) month construction period. For purposes of this paragraph only, Project completion occurs when commercial operation of the Project begins. It is understood that the County must issue the final building permit prior to commercial operation of the project. Should Project activity decrease prior to commercial operation, Mirant may request that payment of the monthly fee in accordance with Section 4.B be changed such that Mirant shall pay the County at the hourly billing rates for County staff time identified in Attachment A, attached hereto and incorporated herein, for all subsequent County staff time spent working on the Project.
- G. If the Project is not complete at the conclusion of the twenty-seven (27) month construction period, Mirant shall pay the County at the hourly billing rates for County staff time identified in Attachment A, attached hereto and incorporated herein, for all County staff time spent working on the Project after the conclusion of the twenty-seven (27) month construction period. For purposes of this paragraph only, Project completion occurs when commercial operation of the Project begins. It is understood that the County must issue the final building permit prior to commercial operation of the project. Mirant shall pay fees pursuant to this paragraph within thirty (30) days of receipt of a monthly invoice from the County.
5. Right of Entry. The County is hereby guaranteed and granted access to the Premises, including the Project, the Power Plant Site Complex, related facilities, project-related staff, and the records maintained by Mirant, for the purpose of conducting audits, surveys, inspections, or general site visits, or otherwise acting as the CEC's delegate. Although the County will normally schedule site visits on dates and times agreeable to Mirant, the County reserves the right to make unannounced visits at any time. The County shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of the County's entry on the Premises, except as otherwise provided in Section 11 of this Agreement. Any and all personnel, designees and agents of the County shall, at all times while on the Premises, comply with the safety and security protocols of Mirant or the Engineering Procurement and Construction Contractor charged with control of the site.
6. Documents. Mirant shall give the County unrestricted access to all Project files upon the County's request. The Project files are defined as copies of all "as-built" drawings, all documents submitted as verification for conditions, plans, specifications, engineering

calculations, diagrams, soil investigation reports, special inspection and structural observation programs, and all other documents related to construction of the Project. Mirant shall maintain access to all Project files on-site during the period of construction, operation and maintenance of the Project until the Project permanently ceases operation.

7. Subcontracts and Assignments. This Agreement shall inure to the benefit of and shall be binding on the parties and their assignees. The County may subcontract any portion of the services provided by the County under this Agreement upon written consent by Mirant such consent not to be unreasonably withheld. Either Party to this Agreement may assign its rights under the Agreement upon written consent of the other Party, except that Mirant is specifically allowed to collaterally assign its rights under this Agreement to Mirant's lenders for financing of the project without County's consent. Any such collateral assignment will not relieve Mirant of its obligations under this Agreement.
8. No Third Party Beneficiaries. Nothing in this Agreement is intended, nor shall it be construed, to create rights inuring to the benefit of third parties.
9. Termination. This Agreement may be terminated by either Party, at its sole discretion, upon sixty (60) days written notice to the other Party. If either Party terminates this Agreement, Mirant shall pay to the County all installment payments due, or previously due, at the time of termination.
10. Insurance.
 - A. Mirant shall, at no cost to County, obtain and maintain during the term of this Agreement, Commercial General Liability Insurance, including Automobile Liability, Broad Form Property Damage and Blanket Contractual Liability, with minimum combined single-limit coverage of \$5 million, naming County, its officers and employees as additional insureds.
 - B. Mirant shall at no cost to County, obtain and maintain during the term of this Agreement, workers' compensation insurance, as required by state law.
 - C. Mirant shall promptly furnish to County certificates of coverage evidencing such coverage requiring 30 days' written notice to County of policy lapse, cancellation or material change in coverage.
11. Indemnification. Mirant shall indemnify, defend, save, protect and hold harmless County, its governing body, elective and appointed boards and commissioners, officers, employees, representatives and agents ("Indemnitees"), to the fullest extent not prohibited by the applicable law, from any and all demands, losses, claims, costs suits, penalties, fines, liabilities and/or expenses for any damage, injury or death (collectively "Liability") arising directly or indirectly from or connected with matters covered by this Agreement, including but not limited to the design, construction, maintenance, repair, reconstruction, alteration, replacement, removal or use of any or all of the Project by Mirant or by any other persons or entity, or Mirant's breach or violation of any term or condition of this Agreement, save and except claims or litigation which a court determines arose through the sole gross negligence or willful misconduct of the

Indemnitees. Mirant shall make good to and reimburse Indemnitees for any expenditures, including reasonable attorney's fees, any of the Indemnitees may make by reason of such aforementioned matters.

Under no circumstance shall the Indemnitees have any liability to Mirant or to any other person or entity, for consequential or special damages, or for any damages based on loss of use, revenue, profits or business opportunities, arising from or in any way relating to any action taken or failure to act by the Indemnitees or any of them. Mirant hereby forever waives and releases Indemnitees, from any and all claims to consequential or special damages, and for any damages based on loss of use, revenue, profits or business opportunities arising from or in any way related to this Agreement.

This indemnification clause shall survive the termination or expiration of this Agreement but shall only apply to acts or omissions that occurred when the contract was in effect. Mirant's obligations under this section shall exist regardless of whether any Indemnitee has inspected the Project or has approved any plan(s) or specification(s) in connection with the Project, or has insurance or other indemnification covering any of these matters.

12. Immunities. Mirant acknowledges and agrees that the County retains the right to assert any and all applicable governmental immunities, including, but not limited to the immunity granted under California Government Code section 818.6.
13. Enforcement. Any failure by Mirant to pay all or any portion of the Fee within thirty (30) days of the date such amount is due pursuant to the provisions of Section 4 shall constitute a material breach of this Agreement. Any failure by Mirant to comply with any other term or condition of this Agreement shall constitute a material breach of this Agreement. In the event of such a breach, at its sole option, County may: (a) declare this Agreement null and void and file suit to collect any amount due and owing; and/or (b) file suit to enforce this Agreement in which case interest on any delinquent payment shall accrue from the date of delinquency at the rate provided by law; and/or (c) to the extent permitted by law, exercise any other remedy available to the CEC or allowed at law or in equity. This section shall not infringe upon the CEC's legal authority to enforce the terms and conditions of the Decision nor preclude the CEC from exercising all remedies available to it to the extent permitted by law.
14. Applicable Law; Venue. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of California without regard to its conflict of laws rules. The venue for any legal action pertaining to this Agreement shall be Contra Costa County, California.
15. Notice. All correspondence regarding this Agreement, including invoices, payments and notices, shall be directed to the following persons at the following addresses and telephone numbers:

COUNTY: Jason Crapo, Deputy Director
Conservation & Development Department
Building Inspection Division
Contra Costa County
651 Pine Street, 3rd Floor, North Wing
Martinez, CA 94553

MIRANT: Chuck R. Hicklin, Project Manager
Mirant Marsh Landing, LLC
3201 Wilbur Avenue
P.O. Box 1687
Antioch, CA 94509
(925) 779-6512

16. Construction. The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement. The Recitals are, and shall be enforceable as, a part of this Agreement.
17. Severability. If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.
18. Authorizations Obtained. The person executing this Agreement on behalf of Mirant represents that her or she has the requisite legal authority to enter into this Agreement on behalf of Mirant and to bind Mirant to the Terms of this Agreement. The person executing this Agreement on behalf of the County represents that he or she has the requisite legal authority to enter into this Agreement on behalf of the County and to bind the County to the terms of this Agreement.
19. Entire Agreement. This Agreement contains the entire agreement between the parties and all prior understandings or agreements, oral or written, regarding this matter are superseded. This Agreement shall not be modified except by written mutual agreement signed by the parties.

CONTRA COSTA COUNTY

MIRANT MARSH LANDING, LLC

By: _____
Jason Crapo
Deputy Director, Building Inspection Division

By: _____
John V. Chillemi
President