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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590(DML)11
)	Jointly Administered
Debtors.)	
)	
)	

MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(b) AND (f), AND 554 FOR APPROVAL (I) TO SELL CERTAIN ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (II) OF PROCEDURES TO SELL CERTAIN MISCELLANEOUS ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; AND (III) OF PROCEDURES TO ABANDON AND DISPOSE OF ESTATE ASSETS THAT ARE BURDENSOME OR OF INCONSEQUENTIAL VALUE

TO THE HONORABLE D. MICHAEL LYNN, UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation (“Mirant”) and its above-captioned affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, file this motion (the “Motion”) pursuant to 11 U.S.C. §§ 105, 363(b), (f), and 554 for approval (i) to sell certain assets free and clear of liens, claims, encumbrances, and interests, (ii) of procedures by which the Debtors may sell certain miscellaneous assets, free and clear of liens, claims, encumbrances, and interests, and (iii) of procedures to abandon and dispose of estate assets that are burdensome and of inconsequential

value. In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the "Petition Date"), certain of the Debtors filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended.¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. commenced chapter 11 cases under the Bankruptcy Code (collectively, the "New Debtors"). The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the Debtors' motion for an order requesting that the Debtors' bankruptcy estates be jointly administered. A motion for joint administration of the cases of the New Debtors with the Debtors' cases was filed with this Court on August 20, 2003 and was entered on September 8, 2003. This Court also entered an order on September 8, 2003 which provides that certain orders

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd. and Mirant Canada Energy Marketing Investments, Inc. (collectively, the "Canadian Debtors") to commence plenary insolvency proceedings (the "Canadian Proceedings") in the Court of Queen's Bench of Alberta Judicial District of Calgary (the "Canadian Court") pursuant to the Companies' Creditors Arrangement Act (the "CCAA"). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

entered in the chapter 11 cases of Mirant Corporation, *et al.* are applicable to the New Debtors' cases and the New Debtors.

4. Unsecured Creditors' Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of two official unsecured creditors' committees; one for Mirant Corporation and the other for Mirant Americas Generation, LLC. The appointment lists of members of both official unsecured creditors' committees were filed in their respective chapter 11 cases on July 25, 2003.

FACTUAL BACKGROUND

The Debtors' Business Operations.

5. Mirant and its direct and indirect subsidiaries comprise one of the world's largest generators and marketers of electricity. Through its direct and indirect subsidiaries, Mirant produces, sells, and delivers reliable energy products and services to utilities, municipal systems, aggregators, electric-cooperative utilities, producers, generators, marketers, and large industrial customers in North America, the Philippines and the Caribbean. Mirant's core business centers on the production and sale of electricity and electrical capacity (essentially the ability to produce electricity on demand). Mirant currently owns or controls more than 21,800 megawatts of electric generating capacity around the world, of which more than 18,000 megawatts is located in the United States. In 2002, Mirant produced 73 million megawatt-hours of electricity, sold 312 million megawatt-hours of electricity and sold or marketed an aggregate average of 21 billion cubic feet per day of natural gas.

6. Mirant employs in excess of 7,000 employees worldwide, of which approximately 1,100 employees are based at Mirant's corporate headquarters in Atlanta and approximately 5,900 employees are based at operating facilities. In 2002, Mirant recorded a \$542 million loss in earnings before interest, taxes and depreciation on a consolidated basis. Its

2002 operating revenues were approximately \$6.4 billion.

FACTS SPECIFICALLY RELEVANT TO THE MOTION

A. The Debtors Have Identified Miscellaneous Assets that Are Not Necessary For Continued Operations and Should Be Sold.

7. As the foregoing demonstrates, the Debtors comprise an expansive enterprise with numerous subsidiaries, facilities, and items of personal property. In its sound business judgment, the Debtors have identified various items of personal property that are no longer necessary for the continued operation of their business, and should be sold. The Debtors have identified purchasers for the assets the Debtors request to sell herein, as discussed below. Moreover, the Debtors expect that as these cases proceed, they will continue to identify other miscellaneous items that can and should be sold to generate proceeds for the benefit of the Debtors' estates. The prompt and efficient sale of such assets will also minimize administrative expenses attendant upon retaining and storing unnecessary property.

8. The Debtors anticipate that the types of miscellaneous assets that should be sold going forward include obsolete spare machinery parts, scrap metal from dismantled and unused facilities, worn-out furniture, obsolete equipment, and various other miscellaneous assets.

9. Because of the unique nature of the types of miscellaneous assets which the Debtors intend to sell, oftentimes there is a short window of opportunity available to consummate advantageous sale transactions for such assets. This is because there is a limited market for items such as obsolete spare machinery parts, scrap metal from dismantled and unused facilities, worn-out furniture and obsolete equipment. Furthermore, because of the relatively low value of the miscellaneous assets (in light of the size of the Debtors' estates), the Debtors believe that conducting auctions and conducting hearings for each proposed sale transaction will, in many cases, result in costs that are disproportionate to the anticipated sale

proceeds.

10. Given the *de minimus* nature of the items that the Debtors desire to sell now (and with respect to such items the Debtors expect they will desire to sell in the future while these cases are pending) and the magnitude of the various types of assets, Debtors submit that it is necessary and appropriate to develop prompt and cost-efficient procedures pursuant to which such *de minimus* items can be sold for reasonably equivalent value without incurring significant legal expense.

11. For example, the following Debtors have certain miscellaneous items that could be sold immediately (and with respect to which, the Debtors' seek authority to sell immediately herein):

<u>Debtor Seller</u>	<u>Asset</u>	<u>Proposed Purchaser</u>	<u>Value of Asset (as recorded on the Debtor's books or Debtors' estimated value)</u>	<u>Proposed Sale Price</u>
Mirant Portrero, LLC	Scrap metal from disassembly of obsolete electric generating units	Utility Investment Recovery, Inc. 842 Mt. Zion Church Road Casar, NC 28020	\$110,000 (est.)	\$111,200
Mirant Corporation	Worn out, excess furniture	[see paragraph 12 below]	\$1,875,000	\$75,000-100,000

12. Attached hereto as Exhibit A is the contract evidencing the agreement to purchase the scrap metal between Utility Investment Recovery, Inc. and Mirant Portrero, LLC. In regard to the sale of the furniture by Mirant Corporation, Mirant Corporation has received four bids between \$75,000 - \$100,000. The bids vary in that some bids are offers for all the furniture, and other bids are offers for less than all the furniture. Mirant Corporation requests herein authority to choose the best, highest bid of the four (and any others that are made) and sell the furniture to the highest bidder. The timing of the sale of the furniture is crucial because the furniture is located in rental space that must be vacated at the end of the month.

B. The Debtors Have Identified Assets That Should Be Abandoned.

13. In contrast to miscellaneous assets that the Debtors intend to sell and generate sales proceeds therefrom, the Debtors have also identified items that are worthless, or of inconsequential value, and should be abandoned (for example, work space cubicles that will not be used by the Debtors).

14. The Debtors do not request authority to abandon any specific assets herein. Rather the Debtors expect that as these cases proceed, they will identify assets that should be abandoned in order to eliminate unnecessary storage and expense costs. The determination to abandon and dispose of an asset will be made only after the Debtors have exhausted reasonable efforts to sell such assets. Thus, the Debtors seek approval of abandonment procedures to deal with such issues as they arise. With respect to such burdensome assets with a book value of less than \$50,000, the Debtors propose to scrap such property in order to alleviate the burdens upon the estate associated therewith.

RELIEF REQUESTED

15. Therefore, in accordance with the foregoing, the Debtors request authority, pursuant to Bankruptcy Code §§ 105, 363(b), (f), and 554 to: (i) sell the specific assets described

herein on the terms set forth herein free and clear of liens, claim, encumbrances, and interests; (ii) establish and implement a procedure by which the Debtors may sell certain miscellaneous assets hereafter, the value of which in the aggregate (as recorded on the Debtors' books, or if such information is not available, the Debtors' reasonable estimate thereof) will not exceed \$150,000 in total sales price (the "Miscellaneous Assets") for each respective sale, subject to certain notice procedures set forth herein; and (iii) establish and implement a procedure by which the Debtors may abandon certain assets, the value of which in the aggregate (as recorded on the Debtors' books, or if such information is not available, the Debtors' reasonable estimate thereof) will not exceed \$50,000 and only after the Debtors have exhausted reasonable efforts to sell such assets pursuant to the sales procedures established herein (or otherwise) have failed. The Debtors also request that Federal Rule of Bankruptcy Procedure 6004(g), which contains an automatic ten (10) day stay of orders authorizing sales of property, be waived.

APPLICABLE AUTHORITY

A. This Court Should Approve Procedures to Sell Miscellaneous Assets.

(i) *The Proposed Sale Notice Procedures are Reasonable.*

16. To strike a balance between the desire to maximize the value of the Miscellaneous Assets to the Debtors' estates (and minimize administrative expenses with respect thereto) and the necessity of providing parties in interest with notice and an opportunity to object to transactions that may be out of the ordinary course of business,² the Debtors propose the following procedures for the sale of Miscellaneous Assets (the "Sale Notice Procedures"):

(a) The Debtors will give written notice, by facsimile or overnight mail, of

² See, 11 U.S.C. § 363(b)(1).

each such proposed sale of Miscellaneous Assets (the “Sale Notice”)³ to (i) the Office of the United States Trustee, (ii) counsel for the Committees, (iii) any entity that provides (or has provided) financing authorized by the Bankruptcy Court pursuant to, and authorized by, Bankruptcy Code section 364, (iv) any known holder of a lien, claim, encumbrance or interest against the specific Miscellaneous Assets to be sold, and (v) any party that has requested special notice (collectively, the “Notice Parties”).

- (b) The Sale Notice will specify (i) the asset or assets to be sold and the selling Debtor thereof, (ii) the identity of the proposed purchaser,⁴ (iii) the value as reflected on the Debtors’ books, or if no value is available, an estimated value, (iv) the proposed sale price (which will not exceed \$150,000), and (v) and will have attached a copy of any of the sale agreements (to the extent such agreements are reasonably available).
- (c) If none of the Notice Parties serves the Debtors with a written objection to the proposed transaction in a manner so that it is actually received by the Debtors within seven (7) business days after the date the Debtors send the Sale Notice (the “Notice Period”) or any such objection is resolved, counsel for the Debtors will submit to the Court a form of order, which contains (among other things) findings that (i) the Notice Procedures have

³ The Debtors propose and request authorization to use a Sale Notice in substantially the form of Exhibit B attached hereto.

⁴ The Debtors will not sell any assets to an employee or insider (as defined in 11 U.S.C. § 101) of any Debtor pursuant to the Sale Notice Procedures set forth herein.

been satisfied, (ii) no objection to the Miscellaneous Assets sale was timely made or such objection has been resolved, and (iii) the Debtors may proceed with the proposed sale free and clear of all security interests, liens, claims, encumbrances, and interests.

- (d) If the Debtors receive a written objection prior to the expiration of the Notice Period, and the Debtors are unable to resolve such objection, the Debtors will not take any additional steps to consummate the sale of the particular asset which is the subject of the objection (but may proceed to sell any other assets set forth in the Sale Notice to which no objection was timely served in accordance herewith) without first obtaining the Court's approval for the sale of that specific asset with respect to which an objection was timely served.
 - (e) Upon Court approval of the order authorizing the Miscellaneous Assets sale, the Debtors may consummate the proposed sale transaction and take such actions as are necessary to close the sale and obtain the sale proceeds without further notice or Court order.
- (ii) *The Debtors May Sell the Miscellaneous Assets Pursuant to the Sale Notice Procedures Under Section 363(b).*

17. Bankruptcy Code section 363(b) provides in pertinent part that a debtor “after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). A debtor must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. *See, e.g., In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986).

18. Courts look to various factors to determine whether to approve a motion under § 363(b), such as: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate and reasonable notice is provided. In re Condere, 228 B.R. 615, 626 (S.D. Miss. 1998).

19. The Sale Notice will provide the necessary information for the recipients thereof to ascertain whether the Debtors have met the foregoing requirements with respect to the Miscellaneous Assets set forth in the Sale Notice. Certainly if no objection to a Sale Notice is timely served, the Notice Parties will have indicated by their conduct that the Debtors have satisfied the relevant criteria, and the sale should proceed.

(iii) The Debtors May Sell the Miscellaneous Assets Pursuant to the Sale Notice Procedures “Free and Clear” Under Section 363(f).

20. When a sound business justification exists for the sale transaction (as in this case), the Court may, pursuant to Bankruptcy Code section 363(f), authorize the sale of the assets that are the subject of the transaction free and clear of existing liens, claims, encumbrances, and interests if: (1) applicable non-bankruptcy law permits the sale of such property free and clear of such interests; (2) any entity a holding lien, claim, encumbrance or interest consents to the proposed sale; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity will be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

21. Section 363(f) is satisfied if the entity holding a lien, claim, encumbrance, or interest consents to the sale. If no parties object (or any objection is resolved), section 363(f)(2) is satisfied and the sale may be free and clear of all such interests. To the extent any

Miscellaneous Assets are the subject of a valid interest, lien, or security interest, any such interest will attach to the sale proceeds.

B. The Requested Sale Notice Procedures Substantially Comply With the Notice Requirements Set Forth in the Federal Rules of Bankruptcy Procedure.

22. Any Sale Notice delivered pursuant to the procedures requested herein will satisfy the notice policies set forth in: (a) Bankruptcy Rule 2002(c)(1), which requires a sale notice to set forth the terms and conditions of private sales and the time fixed for filing objections; (b) Bankruptcy Rule 2002(i), which requires service of sale notices upon the Committees or their authorized agents (i.e., their counsel); (c) Bankruptcy Rule 2002(k) which requires service of sale notices upon the United States Trustee; and (d) Bankruptcy Rule 6004 which requires service of sales notices “free and clear” of interests upon parties who have liens or other interests in the property to be sold.

23. As set forth above, the Debtors have a sound business justification for selling the Miscellaneous Assets and for establishing the Sale Notice Procedures to permit the Debtors to accomplish such future sales in the most efficient manner possible. Indeed, allowing the Debtors to sell unnecessary, miscellaneous assets pursuant to the Sale Notice Procedures proposed herein provides the most efficient and cost-effective means of maximizing the value of the Miscellaneous Assets and thus is in the best interests of the Debtors’ estates. Requiring the Debtors to file a motion and hold a hearing for each such sale transaction would result in administrative expenses for drafting, serving, and filing pleadings, as well as time incurred by attorneys for appearing at Court hearings. The Debtors believe that the proceeds that will be generated by many of the sale transactions for the Miscellaneous Assets do not warrant incurring such expenses. It is unlikely any Notice Party will object to a sale of assets with such *de minimus* value. Nonetheless, the Sale Notice Procedures preserve the right of the Notice Parties

to object if they deem it appropriate to do so.

24. Moreover, the Debtors will likely face stringent time constraints to meet the closing deadlines established by purchasers. The procedures set forth herein will permit the Debtors to be responsive to the needs of purchasers, thereby guarding against lost sales due to delay, while still providing for a review of the proposed transaction by the United States Trustee, the Committees, any entity that provides financing authorized by the Bankruptcy Court pursuant to, and authorized by, Bankruptcy Code section 364, and any known holder of a lien, claim, encumbrance or interest in any Miscellaneous Asset. Additionally, the Debtors believe that the notice procedures set forth herein satisfy the requirements of section 363(f). If a holder of a lien, claim, encumbrance, or interest receives the requisite notice and does not object within the Notice Period, such holder will be deemed to have consented to the proposed sale, and the property then may be sold free and clear of such holder's lien, claim, encumbrance, or interest, with such lien, claim, encumbrance, or interest attaching to the sale proceeds. If there is an objection that is not resolved, a hearing will be conducted and this Court will resolve the objection.

C. This Court Should Approve the Sale of the Specific Assets Described Herein "Free and Clear".

25. As noted, certain of the Debtors are prepared to sell various assets immediately. See pages 5-6 hereof. The sale of such assets satisfies section 363(b) in that a sound business justification exists to sell such assets. This is because the selling Debtors have no use for such assets, costs are being unnecessarily incurred to store the assets, and the sales proceeds will benefit the Debtors' estates. The consideration to be received is fair and reasonable given the limited value of the assets. The selling Debtors have undertaken the reasonable and appropriate steps to obtain the best price for the assets described above. For

example, Debtors have solicited offers from likely, potential purchasers with interest in the assets to be sold. The transactions were negotiated in good faith and at arm's length. None of the proposed purchasers are affiliates, employees, or insiders of any of the Debtors. With respect to the specific assets to be sold, the Debtors note the following:

(i) *Mirant Portrero LLC Scrap Metal Sale*

26. With respect to the sale of scrap metal by Debtor Mirant Portrero, such items are not separately reflected upon the Debtors' books and records. However, it is important to note that the energy generating units from which the scrap metal to be sold was taken are obsolete. The obsolete generating units cannot be sold for any appreciable sum, so the Debtors have determined that selling the scrap parts after dismantling the obsolete generating units is the best course of action to realize some value from the property.

(ii) *Mirant Corporation's Sale of Furniture*

27. Unfortunately, there is truly no market for used furniture. Thus, while the book value of the Debtor furniture Mirant Corporation intends to sell herein is \$1,875,000, the Debtors were only able to receive four offers for between \$75,000-\$100,000 for the furniture, a fraction of the book value. This is due, in part, because a portion of the furniture to be sold consists of cubicles that are simply worthless. Some potential purchasers have indicated they would be inclined to include the cubicles in a sale of other furniture, but ascribe practically no value to the cubicles. Other potential purchasers are unwilling to include the cubicles in their purchaser offer. The Debtors have determined that it will cost approximately \$40,000 to have the cubicles removed.

28. Under the circumstances, the assets described herein may be sold free and clear of liens, claims, encumbrances, and interests. There are no creditors that have an interest in the property to be sold.

D. Federal Rule of Bankruptcy Procedure 6004(g) Should Be Waived.

29. As noted, Federal Rule of Bankruptcy Procedure 6004(g) stays an order authorizing an asset sale as follows:

An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, *unless the court orders otherwise.*

(Emphasis added.)

30. Clearly, this Court can waive the ten (10) day stay requirement set forth in Rule 6004(g). Debtors request that the ten (10) day stay requirement be waived with respect to the specific assets described herein for which sale approval is sought. Moreover, with respect to the sale procedures described herein for which approval is sought in the future, given the *de minimus* nature of the Miscellaneous Assets and the necessary speed by which such sales should occur in order to maximize sale value and minimize sale administration, Debtors submit that a waiver of the ten (10) day stay requirement with respect to all sales that are approved by this Court and permitted hereunder should also be waived.

E. This Court Should Approve Abandonment Procedures.

(i) *The Proposed Abandonment Procedures are Reasonable.*

31. Just as sufficient justification exists to establish streamlined and efficient procedures to sell miscellaneous assets, sufficient justification exists to establish procedures for the Debtors to abandon assets that are burdensome or of inconsequential value. The Debtors propose abandoning assets pursuant to the procedure outlined herein only after the Debtors have exhausted reasonable efforts to sell the assets. After those efforts have failed, the Debtors will follow the following procedures to dispose of the burdensome assets (the “Abandonment Procedures”):

(a) The Debtors will give written notice, by facsimile or overnight mail, of

each such proposed abandonment of assets (the “Abandonment Notice”)⁵ to (i) the Office of the United States Trustee, (ii) counsel for the Committees, (iii) any entity that provides financing authorized by the Bankruptcy Court pursuant to, and authorized by, Bankruptcy Code section 364, (iv) any known holder of a lien, claim, encumbrance or interest against the specific assets to be abandoned, and (v) any party that has requested special notice (collectively, the “Notice Parties”).

- (b) The Abandonment Notice will specify (i) the asset or assets to be abandoned and the abandoning Debtor thereof, (ii) the value of the abandoned assets as reflected on the Debtors’ books, or if no such value is available, an estimated value (which value in either case, will not exceed \$50,000), (iii) the cost of removal and disposal of the assets to be abandoned, and (iv) the reasonable efforts made by the Debtors to locate a purchaser of such assets and the inability to locate any such purchaser.
- (c) If none of the Notice Parties serves the Debtors with a written objection to the proposed transaction in a manner so that it is actually received by the Debtors within seven (7) business days after the date the Debtors send the Abandonment Notice (the “Notice Period”) or any such objection is resolved, counsel for the Debtors will submit to the Court a form of order which contains (among other things) findings that (i) the Abandonment

⁵ The Debtors propose and request authorization to use an Abandonment Notice in substantially the form of Exhibit C attached hereto.

Notice Procedures have been satisfied, (ii) no objection to the proposed abandonment was timely made or such objection has been resolved, and (iii) the Debtors may take all reasonable and necessary steps to abandon and dispose of the assets described in the Abandonment Notice, and pay costs associated therewith.

- (d) Upon Court approval of the order authorizing the abandonment, the Debtors may take such actions as are necessary to abandon the assets and dispose of them without further notice or Court order.
- (e) If the Debtors receive a written objection prior to the expiration of the Notice Period, and the Debtors are unable to resolve such objection, the Debtors will not take any additional steps to abandon the assets which are the subject of the objection (but may proceed to abandon any other assets set forth in the Abandonment Notice to which no objection was timely served in accordance herewith) without first obtaining the Court's approval for the abandonment of that specific asset with respect to which an objection was timely served.

(ii) *The Court Should Approve the Proposed Abandonment Procedures.*

32. Bankruptcy Code section 554 provides:

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

11 U.S.C. § 554.

33. The proposed Abandonment Procedures satisfy section 554. Sufficient

notice will be provided to the parties to protect the interests of the creditors and proper procedures will be established and complied with. Just as with the sale procedures requested herein, streamlined and efficient procedures to abandon assets that are burdensome or of inconsequential value are necessary to minimize expenses associated with abandoning assets and preserving estate assets.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has instructed BSI as service agent to serve a true and correct copy of the foregoing document upon all parties on the Limited Service List via email, facsimile and/or overnight courier on the 10th day of September, 2003 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Robin E. Phelan

EXHIBIT “A”



MIRANT CALIFORNIA, LLC

Contract

Contractor's
Copy

CONTRACTOR: Utility Investment Recovery, Inc.	CONTRACT NO. M02-06-00500
ADDRESS: 824 Mt. Zion Church Road, Casar, NC 28020	Page 1 of 1

Hereinafter called Contractor, and Mirant California, LLC, referred to either as "Mirant California" or "Mirant" on behalf of itself and its subsidiary companies Mirant Delta, LLC (owning Pittsburg and Contra Costa Power Plants) and Mirant Potrero, LLC (owning Potrero Power Plant) hereby agree as follows: (Note: Any reference in this Contract or in the attachments hereto to Mirant California, LLC, Mirant California or Mirant will be deemed to include Mirant Delta, LLC and Mirant Potrero, LLC.)

DEFINITION AND PURPOSE: This Contract is established to provide agreed upon terms, conditions, work requirements and rates. This Contract shall continue as agreed upon unless a change is effected in the form of a Change Order. This Contract does not guarantee Contractor any work, nor is there any guarantee as to any volume or duration of work. This is not an exclusive contract and at the discretion of Mirant California, any job may be performed by Mirant California or competitively bid. This Contract may be terminated by Mirant California or Contractor by 30 days written notice. Any letters, drawings, specifications, Mirant California legal terms, or other material annexed hereto or referred to herein shall be deemed a part hereof and incorporated herein.

WORK: Contractor shall at its own risk and expense perform the work hereinafter described and, except as herein otherwise provided, shall furnish all labor, equipment, and material required therefor.

Provide necessary supervision, skilled labor, tools, and equipment to purchase and remove condenser and heater tubing from Units #1 through #5. Contractor will remove designated scrap materials and reassemble equipment to as found condition at Contra Costa Power Plants. All work will be done in accordance with Exhibits 1 and 2, both of which are attached hereto and incorporated herein by reference

WORK AUTHORIZATION: Work will be authorized against this contract

CONTROLLING ORDER: Should a conflict exist between the General Conditions and the Specific Conditions, the Specific Conditions shall control. Should a conflict exist between the Contract and applicable law or regulation, the law or regulation shall control. The Contract and any applicable law and regulation shall be construed whenever possible to avoid any conflict between them. Varying degrees of stringency among the General Conditions, Specific Conditions, laws, and regulations are not deemed conflicts and the most stringent requirement shall control.

SAFETY: All Contractor's employees working on site will attend a mandatory safety orientation conducted by Mirant California Safety Supervisor or authorized representative. Contractor shall be required to follow specific guidelines and procedures to ensure the safety of their own and other workers. The orientation will last approximately 60 minutes. Contractor will maintain an effective Injury and Illness Prevention Program as indicated by signing this Contract.

CONTRACT TERM: The term of this Contract shall begin July 14, 2003 and expire October 24, 2003 provided that neither of the parties terminate the Contract.

PAYMENT INSTRUCTIONS) UIR will forward \$11,120.00 to Mirant as a pre-payment prior to mobilization or job commencement. Once job starts, UIR will pay Mirant 30% on August 4th, September 1st, and September 29th. Total payment amount due to Mirant California LLC \$111,200.00; Payments to: Mirant California, LLC, Accounts Payable, Post Office Box 192, Pittsburg, CA 94565-0019

COMPANY NAME (TYPE OR PRINT) MIRANT CALIFORNIA, LLC		COMPANY NAME (TYPE OR PRINT) UTILITY INVESTMENT RECOVERY, INC.	
NAME OF MIRANT REPRESENTATIVE (TYPE OR PRINT) Jack Lange		NAME OF COMPANY REPRESENTATIVE (TYPE OR PRINT) DIANA E. STOKES	
SIGNATURE 	DATE 7/11/03	SIGNATURE 	DATE 6-11-03
TITLE Procurement Manager		TITLE PRESIDENT/OWNER	
MIRANT CALIFORNIA NEGOTIATOR APPROVED Roberta Aguinaga	PHONE 925-427-3429	FED TAX ID 56-2196018	CONTRACTOR LICENSE NUMBER 504338

MIRANT CALIFORNIA, LLC

EXHIBIT 1

CONSTRUCTION

GENERAL CONDITIONS

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CONSTRUCTION GENERAL CONDITIONS

1.0 DEFINITIONS

- 1.1 "BIDDER": Party or parties submitting a proposal for the specified Work.
- 1.2 "CONTRACTOR": Party or parties entering into a Contract with MIRANT CALIFORNIA, LLC for the Work.
- 1.3 "SUBCONTRACTOR": Party or parties entering into a Subcontract with Contractor or another Subcontractor to perform Work on the site. The obligations of Contractor, where set forth in this Contract, shall also apply to Subcontractors regardless of level or tier.
- 1.4 "CONTRACT": This agreement, between MIRANT CALIFORNIA and Contractor for the Work under the Specification.
- 1.5 "SUBCONTRACT": An agreement between Contractor and Subcontractor or between Subcontractors at any level for a portion of the Work under this Specification.
- 1.6 "SPECIFICATION": MIRANT CALIFORNIA's Specification which includes these General Conditions, the Specific Conditions, and other documents specified under the Table of Contents page.
- 1.7 "CHANGE ORDER": A Contract Change Order.
- 1.8 "AS DIRECTED," "AS REQUIRED," "AS PERMITTED," "APPROVED," "ACCEPTABLE," "SATISFACTORY," or similar terms shall mean by or to MIRANT CALIFORNIA.
- 1.9 "WORK": Labor, materials, and requirements specified.
- 1.10 "APPROVED EQUIVALENT": An item approved by MIRANT CALIFORNIA as being acceptable as a substitute for a specified item.
- 1.11 "CONSTRUCTION SCHEDULE": A document required by MIRANT CALIFORNIA that identifies the sequence and timing of Work and other activities necessary to meet Contract completion dates.
- 1.12 "PARTY" or "PARTIES": MIRANT CALIFORNIA or Contractor or both.

2.0 PROPOSALS

- 2.1 GENERAL: Proposal shall be submitted on the attached Proposal Form, enclosed in a sealed envelope marked "Proposal" with the title of the Work, and delivered to the address stated in the Proposal Form on or prior to the time invited. The signed Specification and drawings shall be forwarded with the Proposal. MIRANT CALIFORNIA reserves the right to reject any or all proposals.
- 2.2 VISIT TO WORK SITE: Bidder shall make arrangements with MIRANT CALIFORNIA to visit the Work site. The Proposal shall be based on full knowledge of all conditions that would affect the cost and conduct of the Work.
- 2.3 TIME: Contractor shall perform the Work in as short a time as practicable consistent with good workmanship and without overtime, unless otherwise specified. Time quoted by Bidder for completion of the Work will be an important consideration in making the award

of Contract. The time so stated will be incorporated in the Contract. Time is of the essence.

3.0 DRAWINGS, SPECIFICATION, AND INFORMATION

- 3.1 DISCREPANCIES: Specification and drawings are complementary and are intended to be consistent with each other. Contractor shall report to MIRANT CALIFORNIA any discrepancies or errors.
- 3.2 DIMENSIONS: Contractor shall obtain at the Work site the necessary dimensions and not rely on the drawings for dimensions, which tie into the existing work. No claim will be honored which is a result of failure to comply with this provision.
- 3.3 CONSTRUCTION DRAWINGS: As soon as possible after award of Contract, approved construction drawings will be provided to Contractor for use in the performance of the Work. Bidding drawings shall not be used for construction purposes unless authorized in writing by MIRANT CALIFORNIA.
- 3.4 ESTIMATED QUANTITIES, WEIGHTS, OR DATA: Quantities, weights, or data made available to Contractor by MIRANT CALIFORNIA for preparation of his proposal or for performance of the Work shall not relieve Bidder or Contractor of the responsibility to satisfy himself through investigations as to conditions affecting the cost and performance of the Work. Estimated quantities and information submitted are the best available at the time; however, MIRANT CALIFORNIA assumes no responsibility for the correctness of such information or for Contractor's conclusions drawn therefrom.

4.0 PERFORMANCE OF THE WORK

- 4.1 LAYING OUT OF THE WORK: MIRANT CALIFORNIA will provide necessary benchmarks and controlling lines for the Work. Contractor shall lay out and construct the Work accurately to the lines and elevations shown on the drawings. Contractor shall check the lines, dimensions, and elevations of each unit of Work as it is completed to ensure the proper installation of subsequent Work. If any discrepancies are found when checks and rechecks have been made, Contractor shall report the discrepancies immediately to MIRANT CALIFORNIA. Contractor shall use reasonable precautions to preserve lines and grades.
- 4.2 MATERIALS AND WORKMANSHIP: Materials and workmanship shall be new, first class in every respect, plumb and true, and comply with requirements of the Specification and drawings. Work shall be subject to the inspection of MIRANT CALIFORNIA who will exercise control of the Work to safeguard MIRANT CALIFORNIA's interest. Contractor shall furnish labor, materials, equipment, and services required for the Work unless otherwise specified. Mirant, Contra Costa agrees to supply crane, electrical power 120v and 480v (Contra Costa electrician will wire their plug to contractors leed), supply diesel for contractor's compressor, and warehouse forklift. Work performed subsequent to the award of the Contract shall be performed in accordance with the Contract.
- 4.3 TRADES: Various branches or trades into which the Work is to be divided are described under separate divisions. Materials may be furnished and Work performed in accordance with those divisions or otherwise at Contractor's option. Contractor shall, in accepting the bid of a Subcontractor for a given trade or class of Work, determine that the Work to be performed by that trade is included in the Subcontractor's bid, whether or not specifically required within that division relation to such trade or class of Work.
- 4.4 MIRANT CALIFORNIA'S OPERATIONS: It is necessary that MIRANT CALIFORNIA maintain its operations without interruption during the progress of the Work; therefore, no

unnecessary interference will be permitted. Contractor shall conduct the Work in a manner that will cause a minimum of inconvenience to MIRANT CALIFORNIA's employees and the public.

- 4.5 BRAND NAME: Items designated within the Specification or drawings by brand name shall be as designated or an Approved Equivalent. Furnishing or installing or both of an item shall be in accordance with the manufacturer's recommendations or specifications unless otherwise specified herein.
- 4.6 CONTRACTOR'S REPRESENTATIVE: Contractor shall retain a representative who shall supervise the Work, and exercise control as required by MIRANT CALIFORNIA.
- 4.7 REGULATIONS AND CONDUCT OF WORK: Contractor shall plan and conduct the Work to safeguard persons and property from injury. Contractor shall direct the performance of the Work in compliance with reasonable Work practices and with applicable Federal, State, and local laws, rules, and regulations, including but not limited to "Occupational Safety and Health Standards" promulgated by the U.S. Secretary of Labor and Safety Orders of the California Division of Occupational Safety and Health. Personnel shall wear approved "hard hats" when at the Work site except as otherwise permitted by MIRANT CALIFORNIA. Work in areas adjacent to electrically energized equipment shall be performed in accordance with MIRANT CALIFORNIA's established safety rules and as directed by MIRANT CALIFORNIA. MIRANT CALIFORNIA may require Contractor to observe reasonable safety precautions in addition to those in use or proposed by Contractor. Neither the giving of special instructions by MIRANT CALIFORNIA nor the adherence thereto by Contractor shall relieve Contractor of the sole responsibility to maintain safe and efficient working conditions. Mirant may immediately deny access to or remove from its facilities the personnel of any Contractor or Subcontractor who Mirant believes is not following or complying with any of the above requirements. This action will be followed up with a written notification.

5.0 LEGAL REQUIREMENTS

- 5.1 PERMITS AND RULES: Contractor shall, without additional cost to MIRANT CALIFORNIA, obtain required permits except for the general building permit, serve notices, arrange for inspection, and pay fees and deposits. Work shall comply with applicable governmental rules, regulations, and ordinances. A general building permit will be obtained by MIRANT CALIFORNIA when required.
- 5.2 EQUIPMENT DESIGN: Equipment and material furnished hereunder shall be so designed and constructed that when installed they will comply with the applicable laws, rules, and regulations, including, without limitation, "Occupational Safety and Health Standards" promulgated by the U.S. Secretary of Labor and those Safety Orders of the California Division of Occupational Safety and Health, which must be complied with before the equipment and material may lawfully be used by MIRANT CALIFORNIA in California. Expenses incurred in complying with these requirements are understood to be included in the Contract price.
- 5.3 CHANGES: Requests by Contractor for any changes in the requirements of the Specification and drawings shall be brought to the attention of MIRANT CALIFORNIA for written approval of MIRANT CALIFORNIA. No changes will be authorized without such approval.
- 5.4 BOND: If required by MIRANT CALIFORNIA, Contractor shall furnish a surety bond securing performance of Contract and payment of labor and material bills in the amount of 100 percent of the Contract price. Contractor will be separately reimbursed for the actual premium cost thereof.

- 5.5 **INFRINGEMENT PROTECTION:** Royalties or other charges for patents for machinery, equipment, or materials furnished by Contractor for the Work, or for processes or arts employed by Contractor in the Work, shall be considered as included in the Contract prices. Contractor shall indemnify and save harmless MIRANT CALIFORNIA, its officers and employees, from loss, liability, and expense arising out of claims for infringement of said patents.
- 5.6 **SUBCONTRACTS:** Subcontracts shall be subject to approval by MIRANT CALIFORNIA.
- 5.7 **INDEPENDENT CONTRACTOR:** Contractor shall perform the Work as an independent Contractor, and persons employed by Contractor in connection therewith will be employees of Contractor and not employees of MIRANT CALIFORNIA in any respect.
- 5.8 **USE OF FACILITIES:** MIRANT CALIFORNIA shall have the use of the facilities constructed hereunder at any time during construction, whether such facilities are completed or not. If MIRANT CALIFORNIA makes use of any uncompleted facility, MIRANT CALIFORNIA will reimburse Contractor for any actual expense incurred as a result of its use.
- 5.9 **INSPECTIONS AND TESTS:** MIRANT CALIFORNIA has the right to make field and shop inspections and tests, and MIRANT CALIFORNIA's inspectors shall have access to the Work. Neither the making nor the failure to make inspections and tests by MIRANT CALIFORNIA nor the express or implied approval by MIRANT CALIFORNIA of any part of the Work shall relieve Contractor of the responsibility to complete and guarantee the Work as specified. Rejected Work shall be corrected as directed by MIRANT CALIFORNIA at sole expense of Contractor.
- 5.10 **GUARANTEE:** Contractor shall repair or replace or both, at his expense, any part of the Work which develops defects due to faulty material, workmanship, or design within a one-year period after the Work is accepted. The warranty period for repaired or replaced parts shall be one year from the date of completion and acceptance of the repair or replacement. Contractor shall repair or replace at his expense any other property damaged as a result of the defects.
- 6.0 **TERMINATION OF CONTRACT**
- 6.1 **TERMINATION FOR CAUSE:** If (1) Contractor fails to conform to the requirements of the Contract; or (2) Contractor seeks relief under any law for the benefit of insolvents or is adjudged bankrupt; or (3) any legal proceeding is commenced against Contractor which, in MIRANT CALIFORNIA's opinion, may interfere with the performance of the Contract; or (4) in MIRANT CALIFORNIA's opinion, it is apparent that the Work will not be completed within the specified time and MIRANT CALIFORNIA has requested Contractor to take steps to accomplish the required progress and completion, and Contractor has failed to do so MIRANT CALIFORNIA may, at its option and without prejudice to any other right it may have, take over and complete all or part of the Work using Contractor's equipment and facilities at the Work site and may terminate all or part of the Contract. Contractor shall be liable for any additional cost to MIRANT CALIFORNIA arising from termination. In the event of termination, Contractor shall vacate the Work site and not remove any material, plant, or equipment without the prior approval of MIRANT CALIFORNIA.
- 6.1.1 **STRIKE:** In the event of a dispute which threatens the progress or cost of Work, or MIRANT CALIFORNIA's labor relations, or which disrupts MIRANT CALIFORNIA's operations, or results in a secondary boycott at Company's facilities, MIRANT CALIFORNIA reserves the right to restrict additional hiring of Contractor's employees, to suspend or discontinue the Work of the Contractor

and any Subcontractor, or terminate the Contract for cause. This paragraph shall be applicable whether or not any Contractor or Subcontractor is directly involved in a labor dispute.

- 6.2 TERMINATION FOR MIRANT CALIFORNIA'S REASONS: Should MIRANT CALIFORNIA be required or deem it advisable to suspend or terminate the Contract, it may do so upon written notice to Contractor. Contractor thereupon shall take whatever action with respect to performance of the Work as will tend to minimize its claim against MIRANT CALIFORNIA. In the event of termination, MIRANT CALIFORNIA shall be liable to Contractor only for the value of the Work performed to the date of termination, plus costs reasonably incurred by Contractor in terminating his operations. Contractor shall not be entitled to any payment for anticipated profits on uncompleted portions.
- 7.0 PAYMENTS AND MISCELLANEOUS
- 7.1 GENERAL INFORMATION: Payments submitted by Contractor to MIRANT CALIFORNIA must be in accordance with the service contract order and include the service contract order number.
- 7.2 COMPLETED WORK: Contractor shall submit a copy of the compressor rental invoice to show the difference in the Final Payment.
- 7.3 INVOICE INSTRUCTIONS: Payments shall be submitted in accordance with the contract, to: Mirant California, LLC, Accounts Payable, Post Office Box 192, Pittsburg, CA 94565-0019.
- 7.4 LIENS: Contractor shall discharge at once, and hold MIRANT CALIFORNIA harmless from, liens or stop notices that may be filed in connection with the Work. MIRANT CALIFORNIA may retain from Contract payments sufficient funds to discharge delinquent accounts of Contractor or a Subcontractor for which liens on MIRANT CALIFORNIA's property have been or can be filed, or for which stop notices have been or can be filed, and MIRANT CALIFORNIA may at any time pay therefrom, for Contractor's account by joint check or otherwise, such amounts as are admittedly due thereon.
- 7.5 CONSTRUCTION LENDERS: In accordance with Civil Code Section 3097, MIRANT CALIFORNIA represents that there are no construction lenders for this Work. Contractor shall make this information available to any person seeking to serve the notice specified in Civil Code Section 3097(c).
- 7.6 SEGREGATION OF PRICE: Contractor shall submit a segregation of the Contract price, if requested, for each lump sum of the Proposed Form. The segregation shall itemize the estimated cost of each class of Work, together with an allowance for profit, insurance, and overhead expense, the total of which shall equal the Contract price. When approved by MIRANT CALIFORNIA, the segregation shall become the basis for determining progress payments for Work performed.
- 7.7 CLAIMS: If Contractor claims extra compensation or time from MIRANT CALIFORNIA arising out of MIRANT CALIFORNIA's administration or interpretation of the Contract or other action on the part of MIRANT CALIFORNIA, Contractor shall submit to MIRANT CALIFORNIA a written statement supporting the claim as soon as practicable but not more than 30 days after the action or decision giving rise to the claim. Portions of Contractor's claim incurred prior to written notification to MIRANT CALIFORNIA shall be considered waived and failure to submit a statement within 30 days shall constitute a waiver of the entire claim. Before Contractor is entitled to the final payment, he shall, if requested by MIRANT CALIFORNIA, furnish satisfactory evidence to MIRANT CALIFORNIA that valid claims against Contractor or a Subcontractor have been paid.

Acceptance by Contractor of the final payment hereunder shall be deemed a waiver by Contractor of claims against MIRANT CALIFORNIA.

7.8 REFERENCES: References in this Specification to standard specifications, codes, and requirements of organizations, such as the American Society for Testing and Materials (ASTM), American Institute of Steel Construction (AISC), and others, are to current issue thereof, unless otherwise specified. Requirements of reference specifications shall be deemed a part hereof, except that in the event of a conflict between the requirements of this Specification and those of reference specifications, the most stringent shall govern.

7.9 CLEANUP: Upon completion of the Work, Contractor shall remove debris and waste material resulting from the Work and leave the Work site clean. Building surfaces affected by the Work, including glass, shall be left clean.

8.0 ADDITIONAL WORK OR CHANGES

8.1 CONTRACT CHANGE ORDERS: Additional Work or changes shall be performed by Contractor only when authorized in writing and signed by MIRANT CALIFORNIA. Change orders are normally issued in the form of a Purchase Order.

8.2 COMPENSATION: Compensation to Contractor for any increase in the amount of Work due to additions or changes shall, be performed either in accordance with the Time and Material Rates included with proposal or on a lump sum agreed upon price.

8.3 LUMP-SUM EXTRA WORK: For additional Work or changes performed on a lump-sum or agreed price basis, Contractor shall submit for approval when requested by MIRANT CALIFORNIA a complete price breakdown of amounts and fees.

8.4 For approved additional Work performed by a Subcontractor, including Subcontracts for rental of equipment valued at \$1,500 or more each, Contractor will be paid the Subcontract amount plus a fee of:

8.4.1 Ten percent (10%) of Subcontract that amounts to less than \$1,000.

8.4.2 Five percent (5%) of Subcontract that amounts to \$1,000 or more.

8.5 RENTAL RATES: Rental rates shall be submitted with Bidder's proposal for use of his equipment valued at \$1,500 or more each.

8.6 DECREASE IN WORK: At MIRANT CALIFORNIA's option, credit to MIRANT CALIFORNIA for decrease in the Work will be based on agreed prices or on the basis of Contract unit prices.

9.0 INDEMNIFICATION AND WITHHOLDING

9.1 INDEMNIFICATION

9.1.1 Contractor shall indemnify, defend and hold harmless MIRANT CALIFORNIA, its officers, directors, agents, and employees, from and against all claims, demands, losses, damages, costs, expenses, including workers' compensation expenses incurred by MIRANT CALIFORNIA, and legal liability connected with or resulting from injury to or death of persons, including but not limited to employees of MIRANT CALIFORNIA or Contractor; injury to property of MIRANT CALIFORNIA, Contractor, or a third party, or to natural resources, or violation of any local, state or federal law or regulation, including but not limited to environmental laws or regulations, or strict liability imposed by any law or regulation; arising out of,

related to, or in any way connected with Contractor's performance of this Contract, except to the extent such claims, demands, losses, damages, costs, expenses, liability or violation of law or regulation may be caused by the active negligence or willful misconduct of MIRANT CALIFORNIA, its officers, agents, or employees.

- 9.1.2 Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste as a result of the Work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.
- 9.1.3 Contractor shall, on MIRANT CALIFORNIA's request, defend any action, claim or suit asserting a claim covered by this indemnity. Contractor shall pay all costs that may be incurred by MIRANT CALIFORNIA in enforcing this indemnity, including reasonable attorney's fees.
- 9.2 WITHHOLDING: MIRANT CALIFORNIA may withhold from the final payment due Contractor hereunder such amounts as, in MIRANT CALIFORNIA's opinion, are sufficient to provide security against all loss, damage, expense, and liability covered by the foregoing indemnity provision for damage to property.

10.0 INSURANCE

The Contractor, at its expense, shall procure and maintain in effect during the term of this Contract with insurance companies authorized to transact insurance in this State and acceptable to MIRANT CALIFORNIA, policies of insurance providing, at a minimum, the coverages and limits specified, and complying with the other requirements stated below:

- 10.1 Worker's Compensation in statutory amounts and Employer's Liability with a minimum limit of \$1,000,000 per person.
- 10.2 Commercial General Liability on an Occurrence Basis, with the following coverages and limits:
- | | |
|---|-------------|
| General Aggregate | \$1,000,000 |
| Products-Completed Operations-Aggregate | \$1,000,000 |
| Personal & Advertising Injury | \$1,000,000 |
| Each Occurrence | \$1,000,000 |
| Fire Damage (any one fire) | \$50,000 |
| Medical Expense (any one person) | \$5,000 |
- 10.3 Business Automobile Liability covering automobiles of the Contractor, including owned, hired and non-owned automobiles, for Bodily Injury and Property Damage with a combined single limit of \$1,000,000 each Occurrence.
- 10.4 Excess Liability in Umbrella Form with a limit of \$4,000,000 each Occurrence, \$4,000,000 Aggregate.

- 10.5 By signing the Contract, the Contractor thereby waives all rights of subrogation against MIRANT CALIFORNIA with respect to any subsequent claim or loss payable or paid under each of such policies set forth in 10.1, 10.2, 10.3, and 10.4 above.
- 10.6 The Contractor shall cause its insurer(s) to issue endorsements to add MIRANT CALIFORNIA Additional Insureds on the policies set forth in 10.2, 10.3, and 10.4 above with respect to liability. (a) arising out of the performance of ongoing operations, work or services by or on behalf of Contractor for MIRANT CALIFORNIA under this Contract, or (b) arising out of the conduct of the Contractor in the ownership, maintenance or use of Contractor's autos. MIRANT CALIFORNIA shall be such an Additional Insured to the extent that any officers or employees of MIRANT CALIFORNIA that participate in, or act as agent of MIRANT CALIFORNIA with respect to, such work or services under this Contract.
- 10.7 Contractor's insurance shall be primary insurance with respect to work on this Project and insurance of Purchaser shall be excess of the Contractor's insurance and shall not contribute with it.
- 10.8 To the extent that the Contractor utilizes deductibles or self-insurance in connection with the insurance coverages required herein, all such deductible and self-insured amounts shall be for the account and expense of the Contractor and shall not be considered as costs or fees provided for in this Contract.
- 10.9 Each of the above required policies shall contain a provision whereby the insurance carrier will notify MIRANT CALIFORNIA at least thirty (30) days prior to the effective date of cancellation, nonrenewal or material change in any of said policies. Upon request, the Contractor shall promptly submit to MIRANT CALIFORNIA a Certificate, signed by an authorized representative of the insurance carrier, listing the policies, coverages, limits and Additional Insureds, and certifying that the said policies shall be in effect for the time periods stated in the Certificate. The obligations for Contractor to procure and maintain insurance shall not be construed to waive or restrict other obligations of the Contractor. Contractor, in its agreements with subcontractors, shall require each subcontractor who performs work on the Project site, to obtain and maintain in effect during the term of each subcontract, insurance policies providing the coverages and limits and complying with other requirements set forth herein. MIRANT CALIFORNIA may inspect the original policies or require complete certified copies, at any time.
- 10.10 Insurance coverage will name the following as **additionally insured** and be submitted to:

MIRANT CALIFORNIA, LLC
Contracts Administrator
Post Office Box 192
Pittsburg, CA 94565

Mirant Delta, LLC
Contracts Administrator
Post Office Box 192
Pittsburg, CA 94565

Mirant Potrero, LLC
Contracts Administrator
Post Office Box 192
Pittsburg, CA 94565

11.0 RISK OF LOSS OR DAMAGE TO WORK

The risk of loss or damage to the Work and materials shall remain with Contractor, until the Work is completed and accepted by MIRANT CALIFORNIA. No damages or extras will be allowed for unforeseen difficulties or obstructions.

12.0 FEDERAL EQUAL OPPORTUNITY LAWS

- 12.1 FEDERAL REGULATIONS: During the performance of this Contract and to the extent they may be applicable to this Contract, the Contractor agrees to comply with laws, orders, and regulations.

- 12.2 EQUAL OPPORTUNITY PURCHASING PROGRAM: It is MIRANT CALIFORNIA's policy that Women, Minority, and Disabled Veteran Business Enterprises (WMDVBEs) shall have the maximum practicable opportunity to participate in providing the products and services it purchases.

13.0 DELAYS AND SUSPENSION OF WORK

- 13.1 SUSPENSION OF WORK: MIRANT CALIFORNIA may suspend the Work or delivery of materials for causes it considers to be sufficient.

- 13.2 DELIVERY OF MATERIALS: Delivery dates for materials to be supplied by others directly or through MIRANT CALIFORNIA have been scheduled to allow Contractor sufficient time for installation in compliance with the specified Construction Schedule.

- 13.3 NOTIFICATION: Contractor shall notify MIRANT CALIFORNIA promptly in writing upon knowledge of any impending cause for delay and MIRANT CALIFORNIA will use its best efforts to prevent the delay. Failure to notify MIRANT CALIFORNIA shall constitute waiver by Contractor of concessions or benefits specified under this paragraph.

- 13.4 DELAYS WITHIN CONTRACTOR'S CONTROL: No additional compensation or other concessions will be allowed Contractor for expenses incurred as a result of delays arising from causes for which Contractor is responsible. If, in MIRANT CALIFORNIA's opinion, a delay that is sufficient to prevent Contractor's compliance with the specified Construction Schedule, Contractor shall be required to accelerate the Work through overtime or other means, at his expense, to allow for completion on schedule.

- 13.5 DELAYS BEYOND CONTRACTOR'S CONTROL: In the event of a delay in delivery of material to be furnished by or through MIRANT CALIFORNIA or a delay that is, in MIRANT CALIFORNIA's opinion, caused by circumstances beyond Contractor's control, except delays due to inclement weather, MIRANT CALIFORNIA will investigate the causes and remedies and may require or authorize any of the following procedures. Contractor will be promptly notified as to which procedure shall be followed:

- 13.5.1 If, in MIRANT CALIFORNIA's opinion, the current progress of the Work is satisfactory and the delay is minor, Contractor may be required to complete the Work in accordance with the specified Construction Schedule with no allowance for extra time or extra compensation.

- 13.5.2 If, in MIRANT CALIFORNIA's opinion, any actual delay is sufficient to prevent Contractor's compliance with the specified Construction Schedule, MIRANT CALIFORNIA will require or authorize any of the following procedures:

- 13.5.2.1 Extend the specified completion date, with no extra compensation, for a period of time equal to the delay plus, in the event of strikes or other causes that make it necessary to close down the Work, an additional two days.

- 13.5.2.2 Authorize overtime as necessary to comply with the specified completion date. MIRANT CALIFORNIA will only reimburse Contractor for the premium portion of overtime. No other extra compensation will be allowed.

- 13.5.2.3 Extend the specified completion date and authorize certain overtime as directed. Compensation for overtime will be as set forth under paragraph 13.5.2.2.

14.0 AVAILABILITY OF INFORMATION

- 14.1 ACCESS: MIRANT CALIFORNIA's duly authorized representative shall have, during the term of the Contract and for two years thereafter, access at all reasonable times to all of the Contractor's and his Subcontractors' personnel, accounts and records of all description, including but not limited to computer files, pertaining to the Contract to verify or review the quantity, quality, Work program and progress of the Work, reimbursable costs, amounts claimed by the Contractor, estimates of cost for fixed rates including those applicable to proposed changes, and for any other reasonable purposes, including any and all records of the Contractor for the purpose of verifying compliance with the "Conflict of Interest/Business Ethics" provision (Paragraph 15.3) included herein.
- 14.2 APPLICABILITY: This provision shall apply to all contracts except those performed solely on a lump-sum basis. However, where lump-sum and time and materials Work (unit price, reimbursable costs, fixed rates, etc.) are performed together, either as a part of this Contract or as separate contracts, then the above audit privilege shall also extend to MIRANT CALIFORNIA access to all Contractor's records pertaining to all contracts including the lump-sum for assurance that the portions of the Work performed on a time and materials basis are not being charged with time, material, or other units or cost which are intended to be covered by lump-sum or fixed rates, etc., provided herein, supplement hereto or in such other agreements.
- 14.3 ACCOUNTING: The Contractor's and its Subcontractors' accounts shall be kept in accordance with generally accepted accounting principles in the particular industry and shall be kept in such a manner and in sufficient detail to clearly disclose the nature and amounts of the different items of service and cost pertaining to the Contract and the basis for charges or allocations to the Contract.
- 14.4 TIME PERIOD: The Contractor and its Subcontractors shall preserve all such accounts and records for a period of two years after the term of the Contract. MIRANT CALIFORNIA's duly authorized representatives shall have the right to reproduce any such accounts and records.
- 14.5 ADJUSTMENTS: Contractor shall promptly adjust any inaccuracy in the billings. Adjustments shall accrue interest, compounded monthly, at a rate equal to the reference rate charged by the Bank of America, NT&SA, San Francisco, California, at the beginning of each month, from the date of payment of the invoice being adjusted to the date that the adjustment is paid.
- 14.6 SUBCONTRACTORS: The Contractor shall include the necessary provisions in its subcontracts to ensure that its Subcontractors comply with this provision.

15.0 CONFLICT OF INTEREST/BUSINESS ETHICS

- 15.1 REASONABLE CARE: Contractor shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with MIRANT CALIFORNIA's interest.
- 15.2 TERM: During the term of this Contract, Contractor will not accept any employment or engage in any work which creates a conflict of interest with MIRANT CALIFORNIA or in any way compromises the Work to be performed under the Contract.
- 15.3 GIFTS: Contractor or its employees shall not offer substantial gifts or entertainment nor make or offer to make any payment, loans or other consideration to MIRANT CALIFORNIA's employees, their families, vendors, Subcontractors and other third parties

for the purpose of influencing such persons to act contrary to MIRANT CALIFORNIA's interest.

15.4 ACCURATE DOCUMENTATION: All financial statements, reports, billings, and other documents rendered shall properly reflect the facts about all activities and transactions handled for the account of MIRANT CALIFORNIA.

15.5 NOTIFICATION: The Contractor shall immediately notify MIRANT CALIFORNIA of any and all violations of this clause upon becoming aware of such violation.

16.0 HAZARDOUS MATERIALS

The California Health And Safety Code requires businesses to provide warnings prior to exposing individuals to materials listed by the Governor as chemicals "known to the State of California to cause cancer, birth defects or reproductive harm." MIRANT CALIFORNIA uses chemicals on the Governor's list at many of its facilities. In addition, many of these chemicals are present at non-MIRANT CALIFORNIA - owned facilities and locations. Accordingly, in performing the Work or services contemplated under this Contract, Contractor, its employees, agents and Subcontractors may be exposed to chemicals on the Governor's list. Contractor is responsible for notifying its employees, agents, and Subcontractors that Work performed hereunder may result in exposures to chemicals on the Governor's list.

17.0 DRUG, ALCOHOL ABUSE AND SAFETY POLICY FOR ACCESS TO MIRANT CALIFORNIA FACILITIES

17.1 PREFACE: MIRANT CALIFORNIA is committed to maintain and promote job safety and health for all workers at its facilities. In addition, MIRANT CALIFORNIA is determined to protect its employees, customers, and the general public while they are on MIRANT CALIFORNIA property from any harm caused by illegal drug, alcohol use or unsafe work practices by non-MIRANT CALIFORNIA personnel. To accomplish these objectives, MIRANT CALIFORNIA has established the following drug, alcohol abuse and safety policy for access to MIRANT CALIFORNIA facilities by its Contractor and Subcontractor personnel.

17.2 COVERAGE: This policy applies to the personnel of all MIRANT CALIFORNIA Contractors and Subcontractors providing maintenance, construction, and related services at MIRANT CALIFORNIA facilities. MIRANT CALIFORNIA employees are covered by MIRANT CALIFORNIA's Drug Prevention Policy and employee conduct policy.

17.3 POLICY

17.3.1 MIRANT CALIFORNIA may deny access to, or remove from, its facilities the personnel of any Contractor or Subcontractor, who MIRANT CALIFORNIA has reasonable grounds to believe has:

17.3.1.1 Engaged in alcohol abuse, illegal drug activity or unsafe work practices which in any way impairs MIRANT CALIFORNIA's ability to maintain safe work facilities, to protect the health and well-being of MIRANT CALIFORNIA employees, customers, and the general public, and to promote the public's confidence in MIRANT CALIFORNIA service and operations; or

17.3.1.2 Been found guilty, pled guilty, or pled nolo contendere to a charge of sale or distribution of any illegal drug or controlled substance as defined under Federal or California law within the past five years,

whether or not the criminal record was later expunged or sealed by a court order.

17.3.2 The following activities are prohibited at all facilities owned or leased by MIRANT CALIFORNIA:

17.3.2.1 Possessing, furnishing, selling, offering, purchasing, using, or being under the influence of illegal drugs or other controlled substances as defined under Federal or California law;

17.3.2.2 Possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

17.3.2.3 Engaging in any unsafe work practices.

17.3.3 Where reasonable cause exists that Section 17.3.2 of this policy has been violated, the Contractor or Subcontractor must inform the MIRANT CALIFORNIA representative responsible for the Contract. The Contractor or Subcontractor is also expected to take any or all of the following actions unless prohibited under governing collective bargaining agreements.

17.3.3.1 Search the individual, his or her vehicle, locker, storage area, and personal effects;

17.3.3.2 Require the individual to undergo a medical examination to determine their fitness for duty. Such examination shall include obtaining a urine and/or blood specimen for drug or alcohol analysis unless the examining physician deems such tests to be inappropriate;

17.3.3.3 Take any other appropriate action to determine if there has been a violation of Section 17.3.2.

17.3.4 Refusal to comply with a request made under this section shall be grounds for denying access to, or immediate removal from, any MIRANT CALIFORNIA facility.

17.3.5 Any individual who has been denied access to, or removed from, MIRANT CALIFORNIA facilities for violating this policy may obtain permission to enter or reenter provided the individual establishes, to the satisfaction of their employer and MIRANT CALIFORNIA that the previous activity which formed the basis for denying access or removal has been corrected and his or her future conduct will conform with this policy. MIRANT CALIFORNIA retains the right of final approval for the entry or reentry of any individual previously denied access to or removed from MIRANT CALIFORNIA facilities.

18.0 INJURY AND ILLNESS PREVENTION PROGRAM

In the performance of the Work under this Contract, Contractor acknowledges that it has an effective Injury and Illness Prevention Program which meets the requirements of all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Contractor shall ensure that any Subcontractor hired by Contractor to perform any portion of the Work under this Contract shall also have an effective Injury and Illness Prevention Program.

19.0 NON-DISCLOSURE OBLIGATION

- 19.1 Non-Disclosure Obligation: Contractor and its representatives shall not disclose to third parties any non-public, confidential, or proprietary information ("Confidential Information") regarding MIRANT CALIFORNIA's operational status, business affairs, finances, technology, processes, plans, installations, marketing information, know-how or other information, without the express written consent of the MIRANT CALIFORNIA, which consent shall not be unreasonably withheld. Contractor and representatives shall protect the Information of MIRANT CALIFORNIA from unauthorized use or disclosure by using at least the same degree of care, but no less than a reasonable degree of care, used to protect its own Information. Contractor agrees to limit access to Confidential Information of MIRANT CALIFORNIA to those of its representatives and agents who have a need to know such Confidential Information. Each party shall notify the other party immediately upon discovery of any unauthorized use or disclosure of Confidential Information of the other party, and will cooperate with the other party to regain possession of the applicable Confidential Information and prevent its further unauthorized use or disclosure.
- 19.2 Term of Obligation. The confidentiality obligations of the parties pursuant to this Article shall survive the expiration or other termination of this Agreement for a period of [two (2)] years. Upon such expiration or other termination, each party shall promptly return to the other party, upon request, any Confidential Information of the other party supplied in documentary form.

EXHIBIT 2

MIRANT PLANT SPECIFIC CONDITIONS

MIRANT SAFETY MANAGEMENT POLICY

MIRANT HAZARDOUS MATERIALS MANAGEMENT POLICY

MIRANT HAZARDOUS WASTE MANAGEMENT POLICY

ATTACHMENT A

MIRANT PLANT SPECIFIC CONDITIONS

MIRANT'S PLANT SPECIFIC CONDITIONS

1.0 DEFINITIONS

- 1.1 "PITTSBURG POWER PLANT": Mirant Delta, LLC facility located at 696 West 10th Street, Pittsburg, California.
- 1.2 "CONTRA COSTA POWER PLANT": Mirant Delta, LLC facility located at 3201 Wilbur Avenue, Antioch, California.
- 1.3 "POTRERO POWER PLANT": Mirant Potrero, LLC facility located at 1201-A Illinois Street, San Francisco, California
- 1.4 "MIRANT CALIFORNIA" referred to either as "Mirant California" or "**MIRANT**" on behalf of it's self and it's subsidiary companies Mirant Delta, LLC (owning Pittsburg and Contra Costa Power Plants) and Mirant Potrero, LLC (owning Potrero Power Plant) *(Note: Any reference in this Contract or in the attachments hereto to Mirant California, LLC, Mirant California or MIRANT will be deemed to include Mirant Delta, LLC and Mirant Potrero, LLC)*

2.0 SAFETY REQUIREMENTS

- 2.1 **SAFETY ORIENTATION:** At Contractor's expense all Contractor's employees will attend a mandatory safety orientation conducted by MIRANT's Safety Supervisor or authorized representative. Contractor shall be required to follow specific guidelines and procedures to ensure the safety of their own and other workers. **The orientation will last approximately 60 minutes.**
- 2.2 **COMPLIANCE:** Contractor shall inform their employees of, and ensure compliance with, all applicable safety regulations pertaining to this Work, including monitoring and reporting (See Section 5214, Title 8, California Administrative Code).
 - 2.2.1 MIRANT will not be responsible for supplying any safety equipment or services not specifically mentioned in this Specification or its Attachments and/or Exhibits.
- 2.3 **HARD HATS:** Contractor shall furnish each employee and each subcontractor's employee with a hard hat, which shall be worn while on the work site. Each hard hat shall have Contractor's name and employee's name. Contractor shall provide the MIRANT Representative with a list of each employee's name, classification and number and the list shall be kept current. Contractor hard hats shall be distinguishable from those used by MIRANT and PG&E.

- 2.4 SAFETY GLASSES – FRONTAL PROTECTION: Impact resistant eye protection shall be worn by all persons while at the work site. Frontal eye protection shall be worn in all areas of the power plant except the offices and control rooms. Dark glasses shall not be worn indoors except when required for welding. Employees that work in areas where there is danger of eye injury shall wear cover goggles over their prescription glasses unless the glasses meet the ANSI standard. Additional approved eye or face protection shall be used for operations such as drilling, chipping, grinding, chemical handling and other plant operations as deemed necessary by plant supervision.
- 2.5 FOOTWEAR: Appropriate work-type footwear is required in the power plant (except offices). Sandals, tennis shoes, jogging shoes, open toe shoes or canvas top shoes shall not be used where there is exposure to hot water, chemicals, and other foot injury hazards.
- 2.6 RESPIRATORY PROTECTION: For use of any respirator, it is essential that the user be properly instructed in its selection, use, and maintenance. Users shall be instructed by competent persons. Training shall provide the users an opportunity to handle the respirator, have it fitted properly, test its face-piece-to-face seal, wear it in normal air for the familiarity period, and to wear it in a test atmosphere. Respirators shall not be worn when conditions prevent a good face seal. Such conditions may be a growth of beard, sideburns, a skullcap that projects under the face piece, or temple pieces on glasses. User's diligence in observing these factors shall be evaluated by periodic check. To assure proper protection, the face piece fit shall be checked by the wearer each time it's used. Wearing of contact lenses in contaminated atmosphere with a respirator shall not be allowed.
- 2.7 MIRANT MAN-ON-LINE tagging procedure is inviolate. Non-company personnel shall not remove, displace or destroy any Man-On-Line tags within their work boundaries.
- 2.8 SMOKING: No smoking, welding, cutting or other spark-producing work shall be done in non-smoking designated areas, inside any buildings, or within 50 feet of the cooling towers unless authorized by the MIRANT representative.
- 2.9 GOOD HOUSEKEEPING shall be practiced at all times. All tripping, slipping or bumping hazards shall be removed promptly or be properly barricaded.
- 2.10 GENERAL SAFETY: These special instructions do not relieve the Contractor from the responsibility of maintaining safe and efficient working conditions in areas not specifically covered.
- 2.11 ENGLISH LANGUAGE: English-speaking and English-reading Contractor work supervisors shall be on site while work is in progress.
- 2.12 AIR MONITORING: Contractor will perform all personal air monitoring and will provide all necessary air monitoring equipment when required.

3.0 WORK SITE FACILITIES

- 3.1 ROADS to access work sites: Contractor may use the main access roads, on which posted driving regulations will be rigidly enforced at MIRANT property. Abuse of these posted regulations shall result in the restriction of access to the project.
- 3.2 PARKING facilities at the work site are extremely limited. No vehicles, other than those authorized by the MIRANT representative, shall be permitted to park on site. All authorized vehicles will park in the designated area for Contractor Parking except for those vehicles required to do the Work (supply trucks, cranes, etc.).

3.3 POWER

- 3.3.1 MIRANT shall furnish electrical power free of cost to the Contractor.
- 3.3.2 MIRANT will assume no liability for reliability, capacity, failure or suspension of electrical power supplied.
- 3.3.3 Contractor shall be allowed to use existing 120 volt single phase outlets. If these circuits do not have enough amperage to supply all the Contractor's power requirements, Contractor will need to supply their own generators for their power needs.
- 3.3.4 If 480 volt power is required, Contractor shall provide a 3-wire, 4 pole mating connector, Appleton Power Tite 60 amp ACP 6044BC or Crouse-Hinds Catalog No. APJ6485, for each location and/or piece of equipment requiring power. MIRANT's technicians will install any such connectors. Contractor shall be allowed to use existing 480 volt outlets. If these circuits do not have enough amperage to supply all the Contractor's power requirements, Contractor will need to supply their own generators for their power needs.
- 3.3.5 Contractor will provide all necessary extension cords to make connection from electrical outlets to work site equipment. All extension cords will be strung in a safe manner.
- 3.3.6 Contractor will not unplug or disconnect extension cords or equipment in order to meet work requirements without permission of a MIRANT employee.

3.4 COMPRESSED AIR

- 3.4.1 Contractor shall be allowed to use existing air outlets. If these outlets do not have enough capacity to supply all the Contractor's air requirements, Contractor will need to supply their own air compressors for their air requirements.

- 3.4.2 Contractor will not unplug or disconnect air hoses or equipment in order to meet their work requirements without permission of a MIRANT employee.
- 3.4.3 MIRANT will assume no liability for reliability, capacity, failure or suspension of air supplied.
- 3.4.4 Contractor will provide all necessary air hoses to make connection from air outlets to work site equipment. All air hoses will be strung in a safe manner. Connections will be made with safety chain. Contractor will not change MIRANT air fittings.
- 3.5 TELEPHONE FACILITIES for PT&T phones are not supplied to the Contractor at the work site. Contractor shall make the necessary arrangements for their telephone requirements.
- 3.6 STORAGE AREA in the vicinity of the work site will be assigned to Contractor to use for material storage and equipment laydown. Under no circumstances shall Contractor occupy other areas without written authorization from the MIRANT Representative. MIRANT assumes no responsibility for the material or equipment stored in this area.
- 3.7 PROTECTION from inclement weather conditions (tarpaulins, etc.) will be provided by Contractor for protection of its work/equipment to the satisfaction of the MIRANT Representative.
- 3.8 REMOVAL of rubbish and damaged or unsatisfactory material shall be Contractor's responsibility. Contractor shall maintain the work site, storage area and other facilities in a clean condition and shall remove all material and rubbish from the work site daily or as directed by the MIRANT Representative.
 - 3.8.1 At the completion of work, Contractor shall remove all tools and equipment and leave work site and area in a clean and orderly condition.
- 3.9 OBSTRUCTIONS shall be removed by Contractor, as necessary to perform the Work, subject to obtaining MIRANT's permission. Removed obstructions shall be repaired or replaced as directed by the MIRANT Representative at no additional cost to MIRANT.
- 3.10 BOTTLED DRINKING WATER shall not be furnished by MIRANT. Contractor will be responsible to provide drinking water if required. City water is available.
- 3.11 RESTROOMS: During overhauls and outages, Contractors are not allowed to use the restroom facilities. Contractors shall use portable restrooms (blue rooms) that will be provided.
- 3.12 GANTRY CRANES AND OVERHEAD CRANES: Contractor may be granted use MIRANT's gantry cranes and overhead cranes contingent on all the following requirements:

- 3.12.1 Contractor will provide proof of certification and training in the proper operation and use of this equipment.
- 3.12.2 MIRANT or its representative will provide an equipment orientation to the Contractor on the requirements and restrictions on the use of the equipment prior to Contractors use.
- 3.12.3 Contractor will provide a waiver of subrogation for this equipment use.
- 3.13 OFFICE FACILITIES shall not be furnished by MIRANT, the Contractor will be responsible to provide it's own office.
- 3.14 MIRANT's FORK LIFTS, MOBILE CRANES, BOOM TRUCKS AND MANLIFTS: Contractor shall not use any of MIRANT's equipment if the contractor requires a forklift, mobile crane, boom truck or man-lift to perform work he will rent them directly and mark the rental up no more than five percent to MIRANT.

4.0 SECURITY REGULATIONS

- 4.1 PITTSBURG POWER PLANT: Security consists of a manned and automated gate, which is in operation twenty-four (24) hours a day. Visitors to job site shall stop at the main gate and sign in. They must have obtained permission from the MIRANT Representative prior to their arrival. They shall also sign out when departing. They shall comply with all security procedures at Pittsburg Power Plant.
- 4.2 CONTRA COSTA POWER PLANT: Security consists of an automated gate, which is in operation twenty-four (24) hours a day.
- 4.3 POTRERO POWER PLANT: Security consists of an automated gate, which is in operation twenty-four (24) hours a day.
- 4.4 WEAPONS, LIQUOR AND DRUGS: Contractor's personnel shall not possess firearms, bows and arrows, or other projectile firing implements on their person or in their vehicle while at MIRANT property. No alcoholic beverages or illegal drugs will be allowed at MIRANT property.
- 4.5 ACCESS: Contractor will provide MIRANT 's Representative a current list of all employees/suppliers needing access to the Power Plants prior to the start of work.
- 4.6 WORK AREA: Contractor employees will be restricted to the specific work area unless accompanied by a MIRANT Representative.

5.0 GENERAL CONDUCT OF WORK

- 5.1 CONDUCT OF WORK during the performance of work, care and protection of existing MIRANT's facilities, equipment, or adjacent areas shall remain with Contractor and any damage thereto shall be repaired at the sole expense of the Contractor.

- 5.2 **SAFEGUARDS:** Contractor shall plan and conduct the Work to safeguard persons and property from injury. Contractor shall provide and maintain sufficient lanterns, barriers, barricades, temporary walk platforms and other safeguards as required for the safety of their employees and others working in the vicinity, as required by federal, state, and local laws, including all rules and regulations of MIRANT.

6.0 CELLULAR PHONES OR RADIOS

- 6.1 Use of cellular phones or radios is permitted with exception of marked areas. Generally, use of cellular telephones or radios are not allowed in any control room or any relay room.

7.0 CONFLICTS

- 7.1 Conflicts between Specifications and Drawings shall be brought to the attention of the MIRANT Representative for resolution prior to the Contractor submitting a Proposal.
- 7.2 Conflicts between Drawings and Field Dimensions: Drawings shall not be scaled, but only computed or figure dimensions shall be used. Contractor shall verify all field dimensions.

8.0 INJURY AND ILLNESS PREVENTION PROGRAM

- 8.1 Prior to commencing performance of work, Contractor shall furnish to MIRANT proof of compliance which certifies that the Contractor has an effective Injury and Illness Prevention Program which meets the requirements of all applicable laws and regulations including but not limited to Section 6401.7 of the California Labor Code.

ATTACHMENT B

**MIRANT'S SAFETY MANAGEMENT POLICY FOR
CONTRACTORS**

**MIRANT'S
SAFETY MANAGEMENT POLICY
FOR CONTRACTORS**

Construction activity requires that all practical measures be taken to establish and maintain safe working conditions during this period; to achieve this end, a safety action plan for outside contractors has been formulated. The plan is designed to serve as a guide for the Contractors to follow in developing their individual safety programs as required by Cal-OSHA.

Each Contractor is solely responsible for the safety and protection of its own employees.

Each Contractor is solely responsible for the implementation of its particular safety program, and to comply with Cal-OSHA, MIRANT, OSHA, and local applicable safety rules and regulations.

1.0 CONTRACTOR SAFETY ORIENTATION

All contract employees must attend a safety orientation, prior to performing any work in the plant.

2.0 CONTRACTOR'S SAFETY AND HEALTH REQUIREMENTS

Contractor should have a written Injury/Illness Prevention Program (IIPP) fully describing Contractor's commitments for meeting its obligations to provide safe and healthful working conditions for its employees and generally contribute to and enhance safety at MIRANT. Contractor's IIPP should include, but not be limited to, the items listed below.

- A. New Hire Safety Orientation - a presentation outlining all aspects of Contractor's Illness/Injury Prevention Program, which includes documentation of such orientation to be filed for future reference.
- B. Employer/employee responsibilities under Cal-OSHA
- C. Personal Protective Equipment
- D. Safety Belts and Lifelines
- E. Shoring
- F. Housekeeping
- G. Confined/Enclosed Spaces
- H. Tagging Procedures
- I. Safety Meeting
- J. Accident Investigations
- K. Hazard Communication Standard

- L. Hearing Conservation Program
- M. Asbestos Awareness Program
- N. Hazardous Waste Operations and Emergency Response
- O. Safety Inspections/Audits
- P. First Aid Training
- Q. Fire Protection

3.0 INCIDENT REPORTING

Contractor shall cooperate with Owner personnel in investigating any major safety-related incidents. Contractor shall immediately investigate and submit to the Project Coordinator, or designated representative, a written report of all accidents in which medical treatment, disabling injuries, or fatalities occur, or which result in damage to property or fire loss. These reports shall be submitted within twenty-four (24) hours of the occurrence.

4.0 REPORTING UNSAFE CONDITIONS

The Contractor shall have a procedure whereby notification of unsafe conditions noted by employees can be made to their immediate supervisor and correction of such conditions can be made.

Alleged unsafe conditions that are not controlled by the Contractor shall be directed to the responsible MIRANT supervisor immediately.

5.0 GENERAL SAFETY INSPECTIONS

5.1 Periodic general safety inspections will be conducted by Owner personnel. During these inspections, Owner personnel will identify and record safety violations and will submit such items for action and immediate correction by Contractor. Inspections shall focus on working conditions and work practices.

5.2 Contractor shall participate in specialized inspections conducted by Owner personnel which focus on specific aspects of safety and health, e.g. shoring, electrical hazards, overhead work, mobile equipment, personal protective equipment, etc.

6.0 ENFORCEMENT POLICY

Owner personnel shall notify Contractor Management of its discovery of Contractor's safety violations. If Contractor does not respond appropriately and immediately, Owner personnel may take necessary action to obtain compliance, including issuance of a stop work order for the affected work or dismissal from plant premises.

7.0 BARRICADES

Contractor shall be responsible for erecting and maintaining any and all required barricades that may be needed to protect employees from hazards from Contractor's work.

8.0 SAFETY SIGNS

Contractor shall be responsible for posting any sign or requirements that will advise its employees of unsafe areas or conditions arising from Contractor's work. Signs shall conform to ANSI-35.1-1968, specifications for Accident Prevention Signs.

9.0 EQUIPMENT INSPECTIONS

Contractor shall be responsible for routinely inspecting its equipment to insure safe and efficient working order.

10.0 OVERHEAD WORK AND INTERFERENCE

Contractor shall comply with Cal-OSHA and MIRANT standards in regards to overhead work and interference, (e.g., ladder, scaffold, bucket truck, crane, electrical hazard, turbine shelters, etc.)

11.0 FLOOR AND ROOF OPENINGS

Contractors shall have a program for securing and marking floor and roof openings to protect employees from falls. Guardrails shall have preference over fall protection equipment when feasible.

12.0 PERSONAL PROTECTIVE EQUIPMENT

Contractor shall have a program to comply with MIRANT's Personal Protective Equipment Policy (See Attachment B for all workers at MIRANT)

13.0 MATERIAL HANDLING PROGRAM

Contractors shall have a program to provide authorized and trained personnel in operating mobile equipment.

14.0 CONTRACTOR'S FIRST-AID CARE / EMERGENCY TRANSPORTATION

14.1 Contractors shall have a procedure for providing employees immediate first aid care. Owner employees will assist in arranging emergency transportation. Contractor shall provide all non-emergency transportation for its employees.

14.2 If an ambulance is required, Contractors shall call appropriate emergency control room telephone number. The contractor shall tell the Control Operator the extent of injuries and location of the incident. The Control Operator will contact outside emergency authorities and appropriate plant personnel.

**MIRANT
HAZARDOUS WASTE MANAGEMENT POLICY
FOR CONTRACTORS**

The MIRANT is required by law to maintain constant monitoring and supervision of the generation, storage, and disposal of hazardous waste.

The MIRANT employees, Contractors and subcontractors are required to adhere to MIRANT's Hazardous Waste Management policies, and federal or state laws governing the generation, storage, and disposal of hazardous waste.

POLICY

The following is a summary of MIRANT's Hazardous Waste Management Plan for Contractors when handling hazardous waste:

1. Contractor shall not bring hazardous waste onto plant premises.
2. The Contractor is responsible to insure his personnel are knowledgeable of what material used in their work is considered as a hazardous waste. A list of the most prevalent hazardous waste generated at MIRANT can be found in the plant's Hazardous Waste Management Plan. Occasionally, the Contractor will have to consult with the MIRANT Representative for hazardous waste that is not on the list.
3. If the Contractor cannot determine if a substance is considered as a hazardous waste, the MIRANT Representative shall be contacted. The MIRANT Representative will make the determination and if necessary MIRANT can be consulted.
4. Hazardous waste containers shall be issued by MIRANT. The containers will be assigned to the MIRANT Representative. These containers will be for specific wastes and will be labeled and dated according to regulatory requirements. The containers will be placed at specific locations and they will be moved only at MIRANT direction.
5. The Contractor is responsible to insure that each employee, within their supervision, follows the requirements for handling hazardous waste.
6. Contractor, nor Contractor's employees, shall remove any property belonging to MIRANT from MIRANT property without an authorization in the form of a purchase order or a contract from MIRANT. These authorizations are for the repair and return of that property. The authorization document allowing the removal of property from the plant shall have a full description of the property being removed as well as an intended disposition of the property.
7. Removal of MIRANT property from the plant, without written authorization, may result in legal action against the Contractor.

8. All salvage and waste shall be placed on MIRANT property in the manner and location designated by the job site MIRANT Representative.
9. Waste deemed by law to be hazardous wastes, and which arise out of Contractor's specified and assigned portion of the work, shall be properly handled, packaged, and moved to the plant's designated storage areas for future disposal at MIRANT's direction. Contractor's costs for the on-site handling of these hazardous wastes shall be included in all bids and estimates associated with the related work. MIRANT will dispose of all wastes after they have been placed in the plant's designated hazardous waste storage area.
10. In the event such material or equipment is not disposed of as provided herein, Contractor shall indemnify and hold harmless MIRANT, its officers, directors, employees, and agents from and against all loss, damage, expense, and liability resulting from injury to or death of a person, including but not limited to, employees of MIRANT, or Contractor, or subcontractor, or economic loss or damage, arising out of or in any way connected with the failure of Contractor to dispose of such material or equipment as set forth in Section 6, however caused, regardless of any such injury or death as may be caused by the sole negligence or willful misconduct of MIRANT. Contractor shall on MIRANT's request defend any action, claim, or suit asserting a claim covered by this indemnity. Contractor shall pay all costs that may be incurred by MIRANT in enforcing the indemnity including reasonable attorney's fees.
11. Spills and Releases

Contractor shall take all precautions necessary to prevent spills or release of hazardous materials and waste. If a spill of hazardous material or waste occurs, the MIRANT work supervisor/inspector or other designated MIRANT work supervisor shall be notified immediately. Contractor shall be responsible for and pay all costs to MIRANT for cleaning, mitigation, and penalties that may result from a spill or release from Contractor.
12. Contractors shall not send any correspondence or make any notification to federal, state, regional, and local regulatory agencies relating to work by Contractor at MIRANT facilities unless reviewed and authorized by the appropriate MIRANT supervisor. This includes but is not limited to agency notification, response to agency inspections and reports, shipping papers for disposal of wastes, etc.

**MIRANT
HAZARDOUS MATERIALS MANAGEMENT POLICY
FOR CONTRACTORS**

1. Hazardous substances brought on-site or generated by Contractor may not be stored or temporarily stored by Contractor on MIRANT property without written permission of the MIRANT Representative. Permission to store hazardous substances used or generated in the performance of the specification will be granted only when MIRANT determines that no other storage is safe, is permitted under local, state, and federal regulations, and does not interfere with ongoing operations on the property. If permission to store hazardous substances is granted, the following information must be supplied for each hazardous substance stored to the MIRANT Representative at the initial time of storage and on the first business day of each month:
 - a) A current Material Safety Data Sheet (MSDS)
 - b) Amount stored
 - c) Container type used for storage
 - d) Estimated date each hazardous substance will be permanently removed from storage
 - e) Other information as required under applicable local, state, and federal statutes, regulations, ordinances, or codes for storage of hazardous substances
2. Failure to supply the above information will result in loss of permission to store hazardous substances on MIRANT property. Storage of hazardous substances shall be in accordance with all applicable federal, state, and local statutes, regulations, ordinances, and codes, including appropriate labeling and secondary containment where required. The lawful cleanup, handling, and disposal of contractor's spilled hazardous substances, including contaminated rainwater, is the responsibility of the Contractor. Spilled hazardous substances must be cleaned up immediately after the occurrence. The MIRANT Representative must be notified when any hazardous substance is spilled.
3. MIRANT may require Contractor to stage hazardous substances at Contractor's cost in designated areas if MIRANT supplied containers are unavailable.
4. Contractor shall indicate the hazardous material's trade name and quantity.
5. All hazardous materials shall be removed from the job site by the Contractor at the completion of the project.
6. Hazard Communication Standard

Contractors are notified of hazardous chemicals located at MIRANT Facilities by the following methods:

- 6.1 Specific instructions from a MIRANT employee
- 6.2 National Fire Protection Association (NFPA) 704 M hazard warning labels for fire fighting purposes
- 6.3 Chemical signs and labels with the following information:

- 6.3.1 Name or product
 - 6.3.2 Precautionary measures
 - 6.3.3 Signal word
 - 6.3.4 Statement of hazards
 - 6.3.5 First aid instructions
 - 6.3.6 Fire extinguishing methods
- 6.4 Material Safety Data Sheet "Right-to-Know" information stations throughout the plant
- 6.4.1 Additional MSDS' are available from MIRANT
- 6.5 MIRANT's "Hazardous Materials and Wastes Inventory" and "Hazardous Materials and Wastes Emergency Response Guidelines" are available for review in the MIRANT Facilities AB2185 Business Plan.
- 6.6 Contractor's Safety Orientation Video
- 6.7 Overhaul/Outage Meeting

7. Notification to Regulatory Agencies

Contractors shall not send any correspondence or make any notification to federal, state regional and local regulatory agencies relating to work by Contractor at MIRANT unless reviewed and authorized by the appropriate MIRANT supervisor. This includes but is not limited to agency notification, response to agency inspections and reports, shipping papers for disposal of wastes, etc.

8. Asbestos Notification to Tenants & Contractors

As required by Assembly Bill 3713, entitled "Asbestos: Notice to Employee," contractors shall be provided written notice that asbestos or asbestos-containing materials were used in constructing this power plant. The following Asbestos Notification is for reference.

**ASBESTOS NOTIFICATION FOR TENANTS AND
CONTRACTORS WORKING IN BUILDINGS
CONSTRUCTED BEFORE 1979**

Assembly Bill 3713, entitled "Asbestos: Notice to Employees," was enacted in 1988 as Chapter 10.4, Division 20, of the California Health and Safety Code, and revised in 1989 to incorporate changes enacted by AB 1564. It requires owners of buildings constructed before 1979 to provide written notice to tenants and contractors if they know that asbestos or asbestos-containing materials were used in constructing those buildings.

Because of the extensive, routine, and sometimes required use of asbestos in construction before 1979, MIRANT is assuming that all buildings it owns or leases which were built before that year contain asbestos materials; Therefore, this is to inform you that MIRANT believes asbestos-containing materials were used in constructing the building in which you work. Asbestos may have been used in any of the following applications:

- As insulation over structural steel
- As insulation on steam lines and heat ducts
- As insulation on exterior surfaces of boilers or furnaces
- As a binder or insulating material in some ceiling panels
- As a binder in spackling compounds and joint cements applied prior to 1979
- As a bound matrix in vinyl-asbestos floor tiles
- As a binder in roofing felts
- As a bound matrix in asbestos cement (transite) siding materials
- As a bound matrix in some older drywall material, jointings, and packings
- As fire insulating sleeving around older electrical cables and wiring
- As a bound matrix in some older thermosetting plastic pipes
- As a bound matrix in asbestos-cement pipes

Additional general information on asbestos and its potential health risks, including procedures and handling restrictions to minimize its disturbance and release, can be provided by MIRANT.

ATTACHMENT D

**MIRANT HAZARDOUS WASTE MANAGEMENT POLICY
FOR CONTRACTORS**

15.0 FIRE PROTECTION

The Contractor's operation shall be conducted in a manner as to: (1) not create any fire hazards, and (2) comply with Cal-OSHA standards in regards to fire prevention including welding/cutting procedures.

16.0 RADIOGRAPHY

If Contractor is involved in radiography, it shall have and implement safe operating procedures for radiological activities as required by all applicable regulations.

17.0 SECURITY

Contractor shall comply with all established security rules and regulations, which includes vehicular and personnel access control.

18.0 CLEARANCE PROCEDURE

MIRANT Man-On-Line tagging procedures shall be followed to the letter. Non MIRANT personnel **SHALL NOT** remove, displace or destroy any Man-On-Line tags within his work boundaries.

Revised 3/20/01

ATTACHMENT C

MIRANT's HAZARDOUS MATERIALS MANAGEMENT POLICY FOR CONTRACTORS

EXHIBIT B

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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re)	
)	Chapter 11 Case
MIRANT CORPORATION, <i>et al.</i> ,)	
)	Case No. 03-46590 (DML)
Debtors.)	Jointly Administered
)	

**NOTICE OF INTENT TO SELL
CERTAIN MISCELLANEOUS ASSETS FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS**

PLEASE TAKE NOTICE that Mirant Corporation (“Mirant”) and its above-captioned affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, intend to sell (the "Proposed Transaction") certain miscellaneous assets, as set forth in the following table (the “Miscellaneous Assets”) pursuant to the sale agreement(s) attached hereto as Exhibit A. Specifically, Debtors desire to sell the following Miscellaneous Assets:

<u>Debtor Seller</u>	<u>Asset</u>	<u>Proposed Purchaser</u> ¹	<u>Value of Asset (estimated, or as recorded on the Debtor's books)</u>	<u>Proposed Sale Price</u>

PLEASE TAKE FURTHER NOTICE that this Notice is being filed with the Bankruptcy Court and served upon (i) the Office of the United States Trustee, (ii) counsel for the creditors' committee appointed for Mirant Corporation, (iii) counsel for the creditors' committee appointed for Mirant Americas Generation, LLC, (iv) any entity that provides (or has provided) financing authorized by the Bankruptcy Court pursuant to, and authorized by, Bankruptcy Code section 364, (v) any known holder of a lien, claim, encumbrance or interest, and (vi) any party that has requested special notice pursuant to that certain "Order Granting Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), and 554 for Approval (I) to Sell Certain Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (II) of Procedures to Sell Certain Miscellaneous Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; and (III) of Procedures to Abandon Estate Assets That are Burdensome or of Inconsequential Value" entered by the Bankruptcy Court for the Northern District of Texas on September [__], 2003.

PLEASE TAKE FURTHER NOTICE that you shall have seven (7) business days after service upon you of this Notice by the Debtors (the "Notice Period") to serve Debtors' counsel with a written objection to the Proposed Transaction in a manner so your objection is actually received by counsel for the Debtors at the address above prior to the expiration of the Notice Period. In the absence of any objection, Debtors will submit to the Bankruptcy Court a form of order setting forth that (i) the notice procedures for the sale of the Miscellaneous Assets have been satisfied, (ii) no objection to the sale of the Miscellaneous Assets was timely made or such objection has been resolved, (iii) the Debtors may proceed with the sale of the Miscellaneous Assets, and (iv) the order authorizing the Proposed Transactions shall be immediately effective notwithstanding the ten (10) day stay of sales of assets set forth in Federal Rule of Bankruptcy Procedure 6004(g). The form of order will also provide that to the extent any person or entity has any lien, security interest, encumbrance, or other interest ("Interest") in any of the Miscellaneous Assets sold in the Proposed Transaction, that the Miscellaneous Assets are sold free and clear of such Interests in accordance with 11 U.S.C. § 363(f), and the Interest shall attach to the sales proceeds of the particular Miscellaneous Asset that was subject to the Interest.

PLEASE TAKE FURTHER NOTICE that upon Court approval of the order authorizing the Miscellaneous Assets sale, the Debtors may consummate the Proposed Transaction and take such actions as are necessary to close the sale and obtain the sale proceeds without further notice or Court order.

¹ No proposed purchaser is an insider (as defined in 11 U.S.C. § 101) or employee of any of the Debtors.

Exhibit A

[Insert a description of the reasonable, unsuccessful efforts to sell the Assets to be abandoned.]

EXHIBIT C

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In re)	
)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	
)	Case No. 03-46590 (DML)
Debtors.)	Jointly Administered
)	

**NOTICE OF INTENT TO ABANDON ESTATE ASSETS
THAT ARE BURDENSOME OR OF INCONSEQUENTIAL VALUE**

PLEASE TAKE NOTICE that Mirant Corporation (“Mirant”) and its above-captioned affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, intend to abandon (the "Proposed Transaction") certain assets, as set forth in the following table (each such asset an “Asset” and collectively, the “Assets”). Specifically, Debtors desire to abandon the following Assets:

<u>Debtor Owner of Asset</u>	<u>Asset to be Abandoned</u>	<u>Value of Asset (estimated, or as recorded on the Debtor’s books)</u>	<u>Cost of Disposal</u>

PLEASE TAKE FURTHER NOTICE that the Debtors have made reasonable efforts to locate a purchaser of each Asset (such reasonable efforts described in Exhibit A attached hereto); however, despite such reasonable efforts, the Debtors have been unable to

locate any purchaser for such Asset. The Debtors have determined in their sound business judgment that the Assets should be disposed of and scrapped.

PLEASE TAKE FURTHER NOTICE that this Notice is being filed with the Bankruptcy Court and served upon (i) the Office of the United States Trustee, (ii) counsel for the creditors' committee appointed for Mirant Corporation, (iii) counsel for the creditors' committee appointed for Mirant Americas Generation, LLC, (iv) any entity that provides (or has provided) financing authorized by the Bankruptcy Court pursuant to and authorized by Bankruptcy Code section 364, (v) any known holder of a lien, claim, encumbrance or interest, and (vi) any party that has requested special notice pursuant to that certain "Order Granting Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), and 554 for Approval (I) to Sell Certain Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (II) of Procedures to Sell Certain Miscellaneous Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; and (III) of Procedures to Abandon Estate Assets That are Burdensome or of Inconsequential Value" entered by the Bankruptcy Court for the Northern District of Texas on September [__], 2003.

PLEASE TAKE FURTHER NOTICE that you shall have seven (7) business days after service upon you of this Notice by the Debtors (the "Notice Period") to serve Debtors with a written objection to the Proposed Transaction in a manner so your objection is actually received by counsel for the Debtors at the address above prior to the expiration of the Notice Period. In the absence of any objection, Debtors will submit to the Bankruptcy Court a form of order setting forth that (i) the notice procedures for the abandonment of the Assets have been satisfied, (ii) no objection to the abandonment of the Assets was timely made or such objection has been resolved, and (iii) the Debtors may take all reasonable and necessary steps to abandon the Assets.

PLEASE TAKE FURTHER NOTICE that upon Court approval of the order authorizing the abandonment of the Assets, the Debtors may take such actions as are necessary to abandon the assets and dispose of them, including payment of costs associated therewith, without further notice or Court order.

PLEASE TAKE FURTHER NOTICE that if the Debtors receive a written objection with respect to the abandonment of any Asset prior to the expiration of the Notice Period, and the Debtors are unable to resolve such objection, the Debtors will not take any additional steps to abandon the Asset that was the subject of the objection without first obtaining the Court's approval to abandon such Asset.

Dated: Fort Worth, Texas
September __, 2003

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By /s/ Robin Phelan
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