

NRG Potrero LLC
100 California Street
Suite 400
San Francisco, CA 94111

September 9, 2016

REQUEST FOR CONSENT TO TRANSFER
UNDER THE MEMORANDUM OF UNDERSTANDING

VIA OVERNIGHT COURIER

Ken Rich
Director of Development
c/o Jon Lau, Project Manager
Office of Economic Workforce and Development
City Hall, Room 448
One Dr. Carlton B Goodlett Place
San Francisco, CA 94102

Re: Memorandum of Understanding (the “MOU”) dated as of May 1, 2016, between the San Francisco Office of Economic Workforce and Development (“OEWD”) and NRG Potrero LLC, a Delaware limited liability company (“NRG”)

Gentlemen:

Reference is made to the MOU, a copy of which is attached hereto, for your convenience, as Exhibit A. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the MOU.

As described in the Notice of Transfer and Request for Partial Termination Under the Settlement Agreement dated on or about the date hereof, NRG has entered into an agreement (the “**Sale Agreement**”) to transfer the approximately 21-acre Site (the “**Sale Site Transfer**”) to California Barrel Company LLC, a Delaware limited liability company (the “**Buyer**”). This letter constitutes a written request by NRG, pursuant to Section 7 of the MOU, that OEWD consent to (a) the assignment by NRG to the Buyer of NRG’s rights and rights and obligations under the MOU, which assignment would be effective as of the closing of the Sale Site Transfer to the Buyer pursuant to the Sale Agreement, and (b) the release of NRG from any and all obligations under the MOU first arising on or after the closing of the Sale Site Transfer to the Buyer pursuant to the Sale Agreement. The closing of the Sale Site Transfer to the Buyer under the Sale Agreement is currently expected to occur on September 21, 2016. Please indicate your consent to the foregoing by signing this letter in the space provided below and returning it to the undersigned by email (Sean.Beatty@nrg.com).

Information regarding the Buyer is as follows:

Name: California Barrel Company LLC

Address: c/o Paul Hastings LLP
55 Second Street, 24th Floor
San Francisco, California 94105
Attn: Charles Thornton

Designated
Representative(s): Enrique Landa and Charles Thornton

Telephone Nos.: 415.713.3699 and 415.856.7001, respectively

Email: e5@associatecapital.com and c3@associatecapital.com,
respectively

A prompt response to this request is appreciated.

Very truly yours,



Sean P. Beatty
Regional General Counsel, West
NRG Energy, Inc.
on behalf of NRG Potrero LLC

ACKNOWLEDGED AND AGREED:

City and County of San Francisco,
a municipal corporation, acting by and through
its Office of Economic and Workforce Development

By: 

Name: Todd Rufo

Title: DIRECTOR

cc Charles Sullivan, Deputy City Attorney, City and County of San Francisco; via email only at Charles.Sullivan@sfgov.org
Enrique Landa and Charles Thornton, California Barrel Company LLC; via email only at e5@associatecapital.com and c3@associatecapital.com, respectively
David Hamsher, Esq., Paul Hastings, LLP; via email only at davidhamsher@paulhastings.com

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

[Attached]

MEMORANDUM OF UNDERSTANDING # _____

Potrero Project

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") dated as of May 1, 2016, is made by and between the San Francisco Office of Economic and Workforce Development ("OEWD") and NRG Potrero, LLC ("NRG") in connection with the proposed Potrero development project in San Francisco.

RECITALS

This MOU is made with regard to the following facts, intentions, and understandings:

A. NRG is the owner of a 21-acre parcel of land in the Central Waterfront district of San Francisco, immediately south of the Port of San Francisco's "Pier 70 Area" (the "Site"). The Site once housed a set of relatively heavy industrial operations, including most recently a large natural gas-fired power generation facility. NRG's property is generally bounded by 22nd Street to the north; a Pacific Gas and Electric-operated transformer station (which sits along Illinois Street) to the west; 23rd Street on the south; and San Francisco Bay to the east.

B. In a Settlement Agreement ("**Closure Agreement**") between the City and County of San Francisco ("**City**") and Mirant Potrero, LLC (NRG's predecessor) dated August 13, 2009 and approved by the Board of Supervisors (Ordinance 220-09), the owner agreed to permanently cease all power-generating activities at the Site, when no longer needed for electric reliability as determined by the California Independent System Operator. Such a determination was granted in 2010, and the power plant was permanently closed on February 28, 2011. Under the terms of the Closure Agreement, and an ensuing deed restriction placed on the property, the Site can never again be used for fossil fuel generation. The Closure Agreement also contemplates "priority processing" for any reuse proposal put forth by the Site's owner; commits the City to designating senior representatives to work with ownership on a site plan for the land; and waives certain City costs related to the City's processing of a site plan.

C. NRG now seeks to reuse the Site through a mixed-use development project ("**Potrero Project**") of approximately three million square feet of residential and commercial uses, along with a variety of types of open spaces and a new circulation network. NRG has not yet filed for an environmental evaluation application with the Planning Department, which will contain a more specific basic project description. NRG and OEWD understand and agree that the Potrero Project may be refined and modified through the community and stakeholder review, environmental review, and planning processes.

D. NRG intends to apply for the approval of a special use district and planning code and zoning map amendments, a Section 309 approval, and to negotiate for other City agreements related to workforce and other public benefits, including a Development Agreement. These agreements will require review and approval by the City's Planning Commission and Board of Supervisors, and may require approval of other City agencies.

E. The parties anticipate that a special use district ordinance and supplementary planning and design standards documents will establish the review and design guidelines and requirements for the Potrero Project, including the process by which the design of individual phases of the Potrero Project are approved by the City.

F. OEWD is currently working with NRG, as well as the City Attorney's Office and other City agencies, to determine the appropriate scope of all of the Potrero Project transaction and entitlement documents. This MOU is to provide a payment mechanism for NRG to reimburse OEWD and other City agencies (including the City Attorney's Office) for staff time and materials expended on any component of the Potrero Project.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OEWD and NRG agree to the following:

1. Negotiations and Entitlement Process. OEWD, working in close consultation with the Planning Department, shall act as the lead representative of the City in negotiating the substance of the proposed entitlement package (with design guidelines and requirements, project phasing, workforce requirements, transportation improvements, and other appendices) and any other transaction or approval documents (such documents shall be referred to as the "Project Documents"). OEWD shall consult with staff from affected City agencies, and such City agencies shall contribute personnel and staff time as may be directed by their respective directors or department heads. Following negotiations, all Project Documents shall be subject to review and approval of the Planning Commission, applicable City agencies, and the Board of Supervisors, each in their sole discretion.

2. Reimbursement of City Costs.

(a) NRG shall reimburse OEWD for the actual costs incurred by the City for all work associated with the preparing, adopting or negotiating the Project Documents for the Potrero Project. Eligible costs shall include, without limitation, the (1) fees and expenses of the City Attorney's Office staff at the rates charged by the City Attorney's Office to third party outside developers from time to time, (2) reasonable actual fees and expenses of any outside counsel and third party consultants, advisors, and professionals (including, but not limited to, real estate appraisers), (3) reasonable actual costs related to public outreach and information; and (4) costs of staff time for the City agencies consulted in communication with the Project Documents. Eligible costs shall not include costs that are paid or reimbursed through planning department or other project applications. Before engaging any outside counsel or consultants, OEWD shall obtain NRG's approval regarding the proposed engagement, which approval shall not be unreasonably withheld. OEWD shall be responsible for coordinating the billing of all City agencies as described in this section.

(b) In recognition of the Site Entitlement Process described in the Closure Agreement (Article 5), OEWD shall apply a discount rate of 50% to OEWD staff time-related costs

("Discount Rate") described in subsection (a) above. Accordingly, NRG will reimburse the City for half of all OEWD hours performed on the Potrero Project.

(c) OEWD will provide NRG with quarterly invoices. These invoices shall indicate the hourly rate for each OEWD or City staff member at that time, the total number of hours spent by each City staff member on the tasks during the invoice period, any additional costs incurred by the City and a brief non-confidential description of the work completed.

(d) NRG will reimburse OEWD \$8,780.00 for the work performed by OEWD before the start of calendar year 2016. This amount reflects the application of the Discount Rate described in subsection (b) above. The parties anticipate that OEWD and other City staff time to be reimbursed under subsection (a)(1)-(4) above, shall not exceed \$325,000 based on following staffing (under a 40-hour work week): up to 10% of Director of Development's time and up to 30% of the Project Manager or Managers' time. See Appendix A for current billing rates.

(e) NRG shall pay the invoiced amount within 45 calendar days of receipt from OEWD, provided that (i) that the maximum amount payable shall not exceed the budget established in subsection (d) above, as the same may be revised from time to time as provided in Section 14(a), (ii) in the event that City's costs and expenses exceed the amounts set forth in the approved budget, then, notwithstanding anything in this MOU to the contrary, City shall have the right to suspend additional work on the Potrero Project until the parties reach agreement on a revised budget and additional payments to be made by NRG, including any amounts due by NRG for work previously performed, and (iii) in the event the parties cannot reach agreement on a revised budget, or if NRG fails to pay any amounts due and owing hereunder, then City shall have the right to terminate this MOU without cost or liability.

(f) If NRG in good faith disputes any portion of an invoice, then within 60 calendar days of receipt of the invoice NRG shall provide written notice of the amount disputed and the reason for the dispute, and the parties shall use good faith efforts to reconcile the dispute as soon as practicable. NRG shall have no right to withhold the disputed amount. If any dispute is not resolved within 90 days of NRG's notice to City of the dispute, NRG may pursue all remedies at law or in equity to recover the disputed amount. NRG shall have no obligation to reimburse City for any cost that is not invoiced to NRG within twenty-four (24) months from the date the cost was incurred.

(g) If NRG submits an application for a development agreement, the parties may terminate this MOU and revise the payment mechanisms for the reimbursement of all City costs consistent with San Francisco Administrative Code Chapter 56.

4. City Limitation. Nothing in this MOU shall obligate OEWD or any other City department to expend funds or resources, nor shall anything in this MOU be construed as a limitation on any party's authority to contribute staff, funds or other resources to the processing, review and consideration of the Potrero Project. Nothing in this MOU shall limit the discretion to be exercised by City staff and City officials in connection with the Potrero Project.

5. No Liability; Termination. The parties are entering into this MOU in order to cooperate in negotiating the substance of an entitlement package with respect to the Potrero Project. The parties understand and agree that the City would not be willing to enter into this MOU if it could result in any liability or cost to the City. Accordingly, in the event that NRG believes that the City has violated any of the terms of this MOU, NRG's sole remedy shall be to terminate this MOU. NRG shall be responsible for the eligible costs incurred by any of the City agencies before the termination notification. Notwithstanding anything to the contrary in this MOU, either party shall have the right to terminate this MOU at any time and for any reason without cost or liability by providing notice of termination to the other party, provided any such termination shall not relieve NRG of its reimbursement obligations with respect to work performed before the date of termination.

6. City Discretion. NRG acknowledges and agrees that by entering into this MOU, OEWD is not committing itself or agreeing to approve any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Planning Commission, the Board of Supervisors, the Mayor, or any other City agency, commission or department, and that the Project Documents and approvals are subject to the prior approval of the Planning Commission, the Board of Supervisors, and the Mayor (and perhaps other City agencies, as applicable), each in their sole and absolute discretion.

7. Assignment. NRG shall not assign its rights or obligations under this MOU without prior written consent of OEWD; provided, however, that NRG may assign its rights and obligations under this MOU to an affiliate or subsidiary entity to which NRG transfers its fee interest in the Site at any time with notice to but without the consent of OEWD. In the event of any permitted assignment of this MOU, NRG shall remain liable for amounts due to the City hereunder before the date of assignment unless the assignee pays such amounts.

8. Environmental Review. The final project ultimately proposed by OEWD and NRG shall be subject to a process of thorough public review and input and all necessary and appropriate approvals; that process must include environmental review under CEQA before a City department, commission, or any other City decision-maker may consider approving a project; and the Potrero Project will require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this MOU commits, or shall be deemed to commit, the City or a City official to approve or implement any project, and they may not do so until environmental review of the Potrero Project as required under CEQA has been completed. Accordingly, all references to the "Potrero Project" in this MOU shall mean the proposed project as revised and subject to future environmental review and consideration by the City. The City and any other public agency with jurisdiction over any part of the Potrero Project shall have the absolute discretion before approving that project to: (i) make such modifications to the Potrero Project as may be necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific impacts of the Potrero Project; (iv) balance the benefits of the Potrero Project against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the Potrero Project.

9. Notices. Unless otherwise indicated elsewhere in this MOU, all written communications sent by the parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To OEWD: Ken Rich
Director of Development
c/o Jon Lau, Project Manager
Office of Economic and Workplace Development
City Hall, Room 448
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Phone: (415) 554-5194
Fax: (415) 554-4565
Email: ken.rich@sfgov.org

To NRG: Seth Hamalian
Managing Principal
Potrero Power Development Management, LLC
410 China Basin Street
San Francisco, CA 94158
Phone: (415) 355-6612
Fax: (415) 355-6692
Email: shamalian@mbaydevelopment.com

With a copy to: Peter Landreth
Senior Director
NRG Potrero, LLC
100 California Street, Suite 650
San Francisco, CA 94111
Phone: (415) 627-1641
Fax: (415) 398-2399
Email: peter.landreth@nrg.com

Any notice of default must be sent by registered mail.

10. California Political Reform Act. The parties acknowledge that payments pursuant to this MOU from NRG to OEWD are payments to the City, not to any individual employee or officer of the City, and that the payments therefore are not "income" to any City employee or officer under the California Political Reform Act, California Government Code Section 81000, *et seq.*

11. Notification of Limitations on Contributions. NRG acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a

committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. NRG acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more.

12. **No Conflict of Interest.** NRG acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if NRG becomes aware of any such fact during the term of this MOU, NRG shall immediately notify City.

12. **No Joint Liability.** Nothing in this MOU shall be construed as giving a party the right or ability to bind other parties and nothing in this MOU shall be construed to create any joint liability with regard to, or as a result of, the activities undertaken by any of the parties, their employees, officers and/or agents. All employees, officers and/or agents of a party shall remain employees, officers and/or agents of that party and shall be subject to the laws, procedures, rules and policies governing that party's employees, officers and/or agents.

13. **Sunshine.** NRG understands and agrees that under the City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov't Code section 6250 et seq.) apply to this MOU and any and all records and materials submitted to the City in connection with this MOU.


14. **Miscellaneous.** (a) This MOU may be modified only in writing and by mutual consent of all parties. (b) This MOU shall become effective when signed by all OEWD and NRG. It shall remain in effect until terminated in writing by either party. (c) There are no intended third party beneficiaries of this MOU. The parties acknowledge and agree that this MOU is entered into for their benefit and not for the benefit of any other party. (d) This MOU shall be governed by the applicable laws of California. (e) This MOU contains all of the representations and the entire agreement between the parties with respect to the subject matter of this MOU. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this MOU. Notwithstanding the foregoing, nothing in this MOU shall be construed to amend or modify the terms of the Closure Agreement.

IN WITNESS WHEREOF, the parties have executed this MOU on the date set forth herein.

City and County of San Francisco, a
municipal corporation, acting by and through its
Office of Economic and Workforce Development

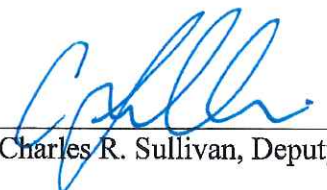
By: 
Todd Rufo, Director

NRG Potrero, LLC, a Delaware corporation

By: 
John Chillemi, President

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: 
Charles R. Sullivan, Deputy City Attorney

Appendix A

OEWD / Other City Staff – Billing Rates

(Hourly rates as of January 1, 2016)

Economic Development

Jon Lau	\$99.00
Ken Rich	\$140.00
Administrative Analyst	\$55.44

Workforce Development

Workforce Director	\$140.00
Compliance Manager	\$108.00
Workforce Manager	\$102.00
Workforce Analyst	\$99.00

Municipal Transportation Agency

Planning Manager	\$187.19
Project Manager, Planning	\$158.65
Transportation Planner, Planning	\$136.04
Livable Streets Sr. Engineer	\$158.65
Transportation Planner, Livable Streets	\$136.04
Accessible Services Planner	\$136.04
Project Manager III, Transit	\$175.56
Planner, Transit	\$158.65
Project Manager I, Transit	\$159.16
Principal Engineer	\$266.74
Associate Engineer	\$145.82
Senior Engineer	\$195.48

Other

Deputy City Attorney	\$375
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