

1 [Settlement Of Lawsuit]

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3 **Ordinance authorizing settlement of the lawsuit filed by the City and County of San**
4 **Francisco against Mirant Potrero L.L.C. on June 19, 2001 in United States District Court**
5 **– Northern District of California, Case No. C-01-2356 PJH; entitled City and County of**
6 **San Francisco, et al., v. Mirant Potrero L.L.C.; which settlement provides that Mirant**
7 **will pay the City \$100,000, and that Mirant will not operate the Peaker units located at**
8 **the Potrero Power Plant, known as Units 4, 5, and 6, beyond their permitted operational**
9 **hours of 877 hours per year, except as expressly permitted by or pursuant to the Bay**
10 **Area Air Quality Management District Rule 9-9, Mirant’s permits, and all other**
11 **applicable laws, rules, regulations and order.**

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13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. The City Attorney is hereby authorized to settle the action entitled "City and
15 County of San Francisco, et al., v. Mirant Potrero L.L.C.", United States District Court –
16 Northern District of California, Court No. C-01-2356 PJH by Mirant’s payment to the City of
17 \$100,000, of which \$ 25,000 will reimburse the City Attorney’s Office for a portion of the costs
18 and attorneys’ fees incurred prosecuting this case, and \$ 75,000 will be used for community
19 health programs in the neighborhoods affected by emissions from the peakers. In addition,
20 under the settlement Mirant must comply with the following terms: (1) for the remainder of
21 2001, Mirant (i) will not run Potrero Units 5 and 6; and (ii) will run Potrero Unit 4 only up to
22 877 operating hours for each engine; and (2) for 2002, Mirant will not operate Potrero Units 4,
23 5, and 6 in excess of 877 hours per engine , except as expressly permitted under Bay Area
24 Air Quality Management District Rule 9-9, as incorporated into the Clean Air Act State
25 Implementation Plan, Mirant’s permits, and all other applicable laws, rules, regulations and

1 orders, excluding (i) Bay Area Air Quality Management District, Compliance and Mitigation
2 Agreement with Mirant Potrero LLC (March 30, 2001) and (ii) In re Mirant Potrero LLC,
3 Potrero Generating Facility, United States Environmental Protection Agency, Administrative
4 Order on Consent, Docket No. R9-2001-04 (April 6, 2001).

5 Section 2. The above-named action was filed in United States District Court – Northern
6 District of California on June 19, 2001, and the following parties were named in the lawsuit:
7 City and County of San Francisco and the People of the State of California, by and through
8 Louise H. Renne, City Attorney for the City and County of San Francisco, Plaintiffs, and Mirant
9 Potrero LLC, Defendant.

10 Section 3. Within 60 days after the City receives payment of the \$100,000 from Mirant,
11 the Department of Public Health shall select a community-based public health program to
12 receive the \$75,000, and shall establish a mechanism to ensure that the money is used
13 appropriately by the program. The program shall address public health impacts related to air
14 pollution in the communities affected by emissions from Units 4, 5 and 6. After selection of a
15 program, the Department of Public Health shall report to the Public Health and Environment
16 Committee on how the money will be used.

17 APPROVED AS TO FORM AND
18 RECOMMENDED:

19 LOUISE H. RENNE
20 City Attorney

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22 Deputy City Attorney
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