

1 [Settlement of Lawsuit and Disputes and Agreement to Close the Potrero Power Plant.]

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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 April 27, 2009, in San Francisco Superior**
5 **Court, Case No, CGC 09-487-795; entitled City and County of San Francisco, et al., v.**
6 **Mirant Potrero L.L.C., which settlement provides for, among other things, permanent**
7 **closure of the entire Potrero Power Plant when it is no longer needed for electric**
8 **reliability, payment by Mirant of \$1,100,000 to the City, the City's agreement to stay**
9 **enforcement of the UMB Ordinance for the unoccupied unreinforced masonry buildings**
10 **located at the Potrero Power Plant site pending a new site reuse plan so long as Mirant**
11 **maintains the buildings in a safe manner, Mirant's agreement to restrict future uses of**
12 **the site to prohibit fossil fuel generation after the Plant is shut down, and the City's**
13 **agreement to priority processing of a future application for entitlements for a proposed**
14 **site reuse plan.**

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

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18 Section 1. The City Attorney is authorized to settle the action entitled "City and County
19 of San Francisco, et al., v. Mirant Potrero L.L.C.", San Francisco Superior Court Case No.
20 CGC-09-487795 (the "Action") on the terms and conditions set forth in the Settlement
21 Agreement dated August 13, 2009, between City and County of San Francisco and Mirant
22 Potrero, LLC, (the "Agreement"), a copy of which Agreement is on file with the Clerk of the
23 Board of Supervisors in File No. _____, and declared to be a part of this Ordinance as if set
24 forth fully in the text of this Ordinance.

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Section 2. Key Terms of the Settlement. As detailed in the Agreement, the key terms
of the settlement are summarized as follows:

1 A. Mirant shall permanently close the entire Potrero Power Plant (the "Plant") as
2 soon as the Plant is not needed for electric reliability. Also, Mirant will actively support the
3 City in its efforts to ensure closure of the entire Plant by December 31, 2010. Mirant's active
4 support will include sending a letter (included as Exhibit D to the Agreement) to the California
5 Independent System Operator or other regulatory entities stating Mirant's intention not to
6 operate the Plant after December 31, 2010. The City shall support permits necessary for
7 interim operations of the Plant through December 31, 2010, to the extent the Plant remains
8 needed during such interim period for electric reliability.

9 B. Within five business days after the entry of the Stipulated Injunction (described
10 in Paragraph C below), Mirant shall pay the City the nonrefundable sum of \$1,100,000, of
11 which \$100,000 will reimburse the City Attorney's Office for attorneys' fees incurred in
12 prosecuting this case and negotiating the Agreement, and \$1,000,000 will be used by the City
13 for neighborhood improvement and mitigation measures (described in Paragraph 4B below).
14 If Potrero Unit 3 continues to operate after June 30, 2011, Mirant shall pay the City an
15 additional nonrefundable amount of \$100,000 per year, for each year that Unit 3 operates, up
16 to a total of \$500,000, to be used by the City for neighborhood improvement and mitigation
17 measures.

18 C. The City and Mirant shall request Court approval of a Stipulated Injunction that
19 will stay enforcement of the City's Unreinforced Masonry Building (UMB) Ordinance for a
20 period of eight years. Mirant shall ensure that the unreinforced masonry buildings ("UMBs")
21 located at the site remain unoccupied and reasonably secure from public access. The eight-
22 year stay may be extended for up to four years if Mirant has applied for and is diligently
23 pursuing approval of a site reuse plan and if Mirant has maintained the UMBs in a safe
24 condition.

1 D. If Mirant submits a proposal for reuse of the site, the City shall process the
2 proposal on a priority basis, including assigning senior staff to the proposal, agreeing to an
3 expedited review schedule, and considering , in its sole discretion, any appropriate
4 redevelopment tools, provided that Mirant shall pay the City fees and costs otherwise
5 generally applicable to that proposal. Any such proposal remains subject to public review and
6 environmental review under the California Environmental Quality Act. The City retains
7 absolute discretion in considering whether to approve any reuse plan. And the City has no
8 obligation to calendar consideration of any such reuse plan unless and until the entire Plant is
9 shut down.

10 E. Mirant shall not take any actions to prolong the operation of the Plant. Mirant
11 shall not pursue its earlier proposal to retrofit Potrero Units 4, 5, and 6. Once the Plant is
12 closed, Mirant shall restrict the future uses of the site so that it may not be used for fossil fuel
13 generation. This restriction contains limited exceptions to allow for certain distributed
14 generation and cogeneration in connection with other uses at the site.

15 F. The Agreement shall be binding on and inure to the benefit of successors and
16 assigns of Mirant, subject to certain limited exceptions relating to Mirant's existing loan and
17 possible transfers by or of Mirant, provided that the City shall have the right to terminate the
18 Agreement if all of Mirant's obligations are not assumed by the successor or assign under
19 such circumstances, as further set forth in the Agreement.

20 G. The City and Mirant shall each release the other from claims relating to the
21 disputes that are the subject of the Agreement, and Mirant shall indemnify the City against
22 any claims relating to the site and certain other matters, as further set forth in the Agreement.

23 Section 3: The City filed the Action in San Francisco Superior Court on April 27, 2009,
24 and the following parties were named in the lawsuit: City and County of San Francisco and
25 the People of the State of California, by and through Dennis J. Herrera, City Attorney for the

1 City and County of San Francisco, Plaintiffs, and Mirant Potrero L.L.C., Defendant. The
2 Action includes a lawsuit by the City against Mirant and a countersuit against the City by
3 Mirant.

4 Section 4. Appropriation of Settlement Payments.

5 A. \$100,000 is appropriated to the City Attorney for costs and attorney time
6 associated with the Action, the Agreement and this settlement.

7 B. \$1,000,000 is appropriated for neighborhood improvement and mitigation
8 measures in the neighborhoods most impacted by the operations of the Plant. Any additional
9 payments made by Mirant for operation of Potrero Unit 3 after June 30, 2011, are also
10 appropriated for these purposes. The City shall hold all of these funds on reserve in a
11 designated account. After a public hearing in the Land Use Committee and consultation with
12 the Asthma Task Force and Power Plant Task Force, the Board of Supervisors will consider
13 approval of one or more community mitigation measures such as those measures approved
14 by the California Energy Commission in connection with the City's former Combustion Turbine
15 Project which was submitted to the Board of Supervisors in File No. 080523.

16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By: _____
19 THERESA L. MUELLER
20 Deputy City Attorney

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