

ORDINANCE NUMBER O- 20068 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 06 2011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
SAN DIEGO AUTHORIZING AMENDMENTS TO EXISTING  
AGREEMENTS CONCERNING THE MIRAMAR LANDFILL  
GAS POWER PLANT PROJECTS.

WHEREAS, on December 4, 1995, the City Council approved a 20 year contract with NEO San Diego LLC (NEO) to install landfill gas (LFG) collection systems in the City's Miramar North, West Phase I and West Phase II Landfills to operate Commercial LFG collection systems at no cost to the City; and

WHEREAS, in 1995 the Council also approved a 20 year contract and land lease with Minnesota Methane San Diego LLC (MM San Diego) to privatize a 6.4 MW cogeneration system at the Metro Biosolids Center (MBC) to be fueled with LFG and digester gas to provide MBC long term renewable fueled electricity at a discount; and

WHEREAS, on February 25, 1997, the City Council approved a 20 year contract and a land lease for MM San Diego to privatize the North City Cogeneration Facility (NCCF), which was installed as a 3.8 landfill gas fueled power plant at the North City Water Reclamation Plant (NCWRP) which was provided electricity at a discount and City was provided free electricity on most of the Miramar Landfill; and

WHEREAS, by Ordinance No. 18475, adopted March 17, 1998, the parties entered Amended and Restated Agreements for the landfill gas system and the MBC and NCCF cogeneration projects which reset the 20 year term for the projects to begin in 1998, and expiring 2018 upon election of either party;

WHEREAS, in September 2008, the Marine Corps Air Station Miramar (MCASM) issued a sole source Request for Proposals for electricity produced from the Miramar Landfill to Fortistar Methane Group LLC (Fortistar), the owner of NEO San Diego and MM San Diego; and

WHEREAS, the proposed amendments and modifications to these agreements will extend the 20 year cogeneration agreements past 2018 to December 31, 2026 to accommodate MCASM's requirement for a 15 year energy sales agreement; and

WHEREAS, the proposed amendments and modifications to these agreements will provide for a new project of a cogeneration facility of 3.2 gross megawatts of new renewable fueled electricity for the United States Navy at MCASM; and

WHEREAS, NEO San Diego will install approximately forty new LFG wells in West Phase I and West Phase II, as the landfill is raised; and

WHEREAS, to serve MCASM, Fortistar Methane Group, LLC, will form the special purpose project company, Miramar Energy, LLC, which will design, construct, own and operate two 1.6 MW LFG fueled engine generators in available space in the MM San Diego MBC cogeneration building; and

WHEREAS, NEO will sell LFG to the City at a favorable rate and cooperate with City plans to build a 1.6 MW expansion to the MM San Diego owned NCCF; and

WHEREAS, the Miramar Energy, LLC power plant and the NEO gas sales to the City will provide the City with new royalties of approximately \$220,000 per year in addition to the existing \$110,000 per year; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego as follows:

Section 1. That the Mayor, or his designee, is authorized on behalf of the City of San Diego to execute the following Amendments to existing agreements:

- 1) The 2011 Amended and Restated Landfill Gas Lease and Operating Agreement, on file with the City Clerk as Document No. OO- 20068 -<sup>1</sup>,
- 2) The Amendment to the Non-Operating Interest Acquisition Agreement with NEO San Diego LLC, on file with the City Clerk as Document No. OO- 20068 -<sup>2</sup>,
- 3) The Amendment to the Amended and Restated Privatized Cogeneration Facility and Energy Sales Agreement, on file with the City Clerk as Document No. OO- 20068 -<sup>3</sup>,
- 4) The Amendment to the Amended and Restated Cogeneration Facility Site Lease Agreement, on file with the City Clerk as Document No. OO- 20068 -<sup>4</sup>,
- 5) The Amendment to the Amended and Restated North City Cogeneration Facility and Energy Sales Agreement, on file with the City Clerk as Document No. OO- 20068 -<sup>5</sup>,
- 6) The Amendment to the Amended and Restated North City Cogeneration Facility Site Lease Agreement, on file with the City Clerk as Document No. OO- 20068 -<sup>6</sup>,
- 7) The Amendment to the Digester Gas Agreement with MM San Diego LLC., on file with the City Clerk as Document No. OO- 20068 -<sup>7</sup>,
- 8) The Second Amended and Restated Well Installation Agreement with NEO San Diego LLC, MM San Diego LLC and Miramar Energy, LLC., on file with the City Clerk as Document No. OO- 20068 -<sup>8</sup>,

Section 2. That the Mayor, or his designee, is authorized on behalf of the City of San Diego to execute the following new agreements:

1) The City-Developed North City Expansion Project Landfill Gas Purchase and Sale Agreement with NEO San Diego LLC, on file with the City Clerk as Document No. OO- 20068 - 9,

2) The Contingent Landfill Gas Purchase and Sale Agreement with MM San Diego, LLC; on file with the City Clerk as Document No. OO- 20068 - 10,

3) The Contingent Landfill Gas Purchase and Sale Agreement with Miramar Energy, LLC, on file with the City Clerk as Document No. OO- 20068 - 11,

4) The Phase III Cogeneration Facility Site Easement Agreement with Miramar Energy, LLC, on file with the City Clerk as Document No. OO- 20068 - 12,

5) The Supplemental Guaranty Agreement with Fortistar Methane 3, LLC, on file with the City Clerk as Document No. OO- 20068 - 13,

6) The Site Easement Guaranty Agreement with Fortistar Methane 3, LLC, on file with the City Clerk as Document No. OO- 20068 - 14,

Section 3. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Frederick M. Ortlieb  
Frederick M. Ortlieb  
Deputy City Attorney

FMO:ca  
05/31/2011  
Or.Dept: Public Utilities - Wastewater

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUN 28 2011.

ELIZABETH S. MALAND  
City Clerk

By [Signature]  
Deputy City Clerk

Approved: 7-6-11  
(date)

[Signature]  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

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JERRY SANDERS, Mayor