#/0/ (R-2019-201) /0/30/18

RESOLUTION NUMBER 312029 DATE OF FINAL PASSAGE NOV 0 2 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE SETTLEMENT AGREEMENT BETWEEN MM SAN DIEGO, LLC, NEO SAN DIEGO, LLC (AFFILIATES OF FORTISTAR METHANE GROUP) AND THE CITY OF SAN DIEGO

WHEREAS, on March 1, 2016, the City of San Diego filed a lawsuit entitled *City of San Diego v. MM San Diego, LLC*, United States District Court Case No. 3:16-cv-00964-WQH-BGS against MM San Diego alleging breach of contract claims related to the "Amended and Restated Privatized Cogeneration Facility and Energy Sales Agreement" and the "Amended and Restated North City Privatized Cogeneration Facility and Energy Sales Agreement" which respectively concern electrical service for the Metropolitan Biosolids Center (MBC) and the North City Water Reclamation Plant (NCWRP), and

WHEREAS, MM San Diego and NEO San Diego filed cross-claims against the City related to the two contracts; and

WHEREAS, in Closed Session on September 25, 2018, the City Council, by the following votes: Yeas, 1, 3, 4, 5, 6, and 7; Nays, None; and 2, 8 and 9 Absent, approved a settlement of the litigation (Settlement); and

WHEREAS, the City Council in Closed Session on September 25, 2018, authorized the Settlement of the litigation for an amount consistent with the amounts set forth below; NOW THEREFORE;

BE IT RESOLVED, by the City Council of the City of San Diego, that:

- 1. The Mayor or his designee is hereby authorized to sign a Settlement Agreement and Release according to the terms contained in the document on file in the Office of the City Clerk as Document No Results 2029 which includes the "City of San Diego and Fortistar Services LLC Operation and Maintenance Services Agreement" and "Second Amendment to Amended and Restated Privatized Cogeneration Facility and Energy Sales Agreement," all in full and final consideration for settlement of the litigation entitled City of San Diego v. MM San Diego, LLC, United States District Court Case No. 3:16-cv-00964-WQH-BGS; and
- 2. BE IT FURTHER RESOLVED that the Chief Financial Officer is authorized to pay the sum of \$2,264,000 from Metropolitan Sewer Utility Fund No. 700001, for transfer of the North City Cogeneration Facility (NCCF) and related gas and electric facilities to the City as an essential part of the settlement of each and every claim for damages, interest, costs and fees of any type, including attorney fees, against City of San Diego, its agents and employees, arising from the complaint for contract damages filed by the City of San Diego, entitled *City of San Diego v. MM San Diego, LLC*, United States District Court Case No. 3:16-cv-00964-WQH-BGS, and
- 3. BE IT FURTHER RESOLVED that the Chief Financial Officer is authorized to pay the sum not to exceed \$400,000.00 from Metropolitan Sewer Utility Fund No. 700001, to MM San Diego, as provided in the Settlement Agreement, for the retention by MM San Diego of ERM West, Inc. dba Environmental Resources Management (ERM) to develop and implement appropriate utility standby service and demand cost reduction strategies for the MBC as an essential part of the settlement of each and every claim for damages, interest, costs and fees of

(R-2019-201)

any type, including attorney fees, against City of San Diego, its agents and employees, arising

from the complaint for contract damages filed by the City of San Diego, entitled City of San

Diego v. MM San Diego, LLC, United States District Court Case No. 3:16-cv-00964-WQH-BGS,

and

4. BE IT FURTHER RESOLVED that the Chief Financial Officer is authorized to

pay the sum not to exceed \$700,000.00 from Metropolitan Sewer Utility Fund No. 700001, for

the retention of Fortistar Services, LLC during the remainder of Fiscal Year 2019 to operate and

maintain the NCCF under the terms set forth in the "City of San Diego and Fortistar Services

LLC Operation and Maintenance Services Agreement" as an essential part of the settlement of

each and every claim for damages, interest, costs and fees of any type, including attorney fees,

against City of San Diego, its agents and employees, arising from the complaint for contract

damages filed by the City of San Diego, entitled City of San Diego v. MM San Diego, LLC,

United States District Court Case No. 3:16-cv-00964-WQH-BGS.

APPROVED: MARA W. ELLIOTT, City Attorney

By

Frederick M. Ortlieb

Deputy City Attorney

FMO:it

October 16, 2018

Or. Dept: City Attorney

CC: 3000011577

Doc. No.: 1818618

-PAGE 3 OF 4-

meeting of OCT 30 2	2018
	ELIZABETH S. MALAND City Clerk
	By Syndadrum Deputy Ofty Clerk
Approved: (date)	KEVIN L. FAULCONER, Mayor
Vetoed: (date)	KEVIN L. FAULCONER, Mayor

The City of San Diego COMPTROLLER'S CERTIFICATE

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FUND OVERRIDE []
CC 3000011577

CC-361 (REV 7-09)

Passed by the Council of Th	e City of San Diego on _	001	30 2018	, by the following vote:	
Councilmembers	Yeas	Nays	Not Present	Recused	
Barbara Bry				Π	
Lorie Zapf	<u></u>		П		
Chris Ward				П	
Myrtle Cole				П	
Mark Kersey					
Chris Cate	$\overline{\mathbb{Z}}$				
Scott Sherman	$\overline{\mathbb{Z}}$				
David Alvarez	\square				
Georgette Gomez	Ø				
Date of final passage	NOV 0 2 2018				
(Please note: When a resolution was read approved resolution approved resolution read approved read		the City Cler	·k.) KEVIN L. FA		
(Seal)		City	ELIZABETH Clerk of The City o	S. MALAND of San Diego, California.	
				on, Deputy a Usira	