

RESOLUTION NUMBER 312029

DATE OF FINAL PASSAGE NOV 02 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. **RR-312029** 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

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:jt
October 16, 2018
Or. Dept: City Attorney
CC: 3000011577
Doc. No.: 1818618

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 30 2018.

ELIZABETH S. MALAND
City Clerk

By *Ginda Bruin*
Deputy City Clerk

Approved: 11/1/18
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING CC 3000011577
 DEPT. NO.: 2000

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____

Purpose: _____

Date: _____ By: _____

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center or Cost Center	Internal Order or WBS Element	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$3,364,000.00

Vendor: MM San Diego, LLC

Purpose: To authorize the expenditure of funds, not to exceed \$3,364,000.00, to MM San Diego, LLC, for the Settlement of City of San Diego v. MM San Diego, LLC, US District Court Case No. 3:16-cv-00964-WQH-BGS.

Date: October 12, 2018

By: Elizabeth Warnock
 COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center	WBS Element	Original Amount
001	Non-Program	700001	N/A	560055	OTHR-00000000-SU	2000	2000190001	N/A	\$2,264,000.00
002	Non-Program	700001	N/A	512059	OTHR-00000000-SU	2000	2000191216	N/A	\$400,000.00
003	Non-Program	700001	N/A	512059	OTHR-00000000-SU	2000	2000191221	N/A	\$400,000.00
004	Non-Program	700001	N/A	512186	OTHR-00000000-SU	2000	2000191221	N/A	\$300,000.00
TOTAL AMOUNT									\$3,364,000.00

FUND OVERRIDE

CC 3000011577

Passed by the Council of The City of San Diego on OCT 30 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 02 2018

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Peterson, Deputy
for Linda Orwin

Office of the City Clerk, San Diego, California
Resolution Number R- 312029