

RESOLUTION NUMBER R- 314500

DATE OF FINAL PASSAGE DEC 09 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE SETTLEMENT AGREEMENT
BETWEEN THE SAN DIEGO AIR POLLUTION CONTROL
DISTRICT AND CITY OF SAN DIEGO.

WHEREAS, the San Diego Air Pollution Control District (APCD) is the local regulatory authority responsible for enforcing rules and regulations protecting air quality; and

WHEREAS, on March 20, 2019, the APCD issued Notice of Violation (NOV) APCD2019-NOV-000197 to the City alleging a Rule 51 violation pertaining to alleged asbestos air emissions at the San Diego Fire-Rescue training facility; and

WHEREAS, in 2019-2020, the APCD issued NOVs APCD2019-NOV-000702, APCD2020-NOV-000062, APCD2020-NOV-000067, and APCD2020-NOV-000100 alleging violations of the California Health and Safety Code and APCD Rules 51 and 1206 pertaining to alleged asbestos issues at 101 Ash Street; and

WHEREAS, collectively, NOVs APCD2019-NOV-000197, APCD2019-NOV-000702, APCD2020-NOV-000062, APCD2020-NOV-000067, and APCD2020-NOV-000100 shall be referred to as "NOVs"; and

WHEREAS, in Closed Session on October 18, 2022, the San Diego City Council, by the following votes: Yeas, Districts 2, 3, 4, 5, 7, 9; Nays, none; Absent, District 1, 6 and 8, approved the settlement to resolve the NOVs for an amount consistent with the amounts set forth below and pursuant to such other terms more fully set forth in the Settlement Agreement; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor or his designee is authorized to enter into a Settlement Agreement with the San Diego Air Pollution Control District to fully resolve the NOVs and to pay the sum of \$4,940,000 which includes a one-time monetary payment of \$250,000 to the APCD and a not-to-exceed amount of \$4,690,000 for creation of a Tree Planting Program beginning July 2023 and concluding by December 2028, in settlement of each and every potential claim and liability related to the NOVs.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend an amount not to exceed \$4,940,000, which includes a one-time monetary payment of \$250,000 to the APCD of which \$212,000 shall be paid from the Fire-Rescue Department's General Fund Budget, Fund 100000, Fire Rescue Business Area 1912 and \$38,000 shall be paid from Engineering and Capital Projects Fund No. 720057, and a not-to-exceed amount of \$4,690,000 for creation of a Tree Planting Program beginning July 2023 and concluding by December 2028, which will be appropriated as-need via the budget process in Fiscal Years 2024-2029, and paid from Fund 100000, Transportation Department, Cost Center 2116000013, for the purpose of settling this matter.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Laura M. DePoister
Laura M. DePoister
Deputy City Attorney

LMD:hm
October 25, 2022
Or.Dept: City Attorney
CC No. 3000015267
Doc. No. 3124607

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 06 2022

ELIZABETH S. MALAND
City Clerk

By Kristell Medina
Deputy City Clerk

Approved: 12/9/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

**The City of San Diego
COMPTROLLER'S CERTIFICATE**

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

CC 3000015267
DEPT. NO.: 1912

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: \$250,000.00

Vendor: San Diego Air Pollution Control District

Purpose: To authorize expenditure of funds, not to exceed \$250,000, related to settlement agreement to resolve pending notice of violations at the Fire-Rescue Training Facility and 101 Ash Street.

Date: November 16, 2022 By: Leana Chan *Leana Chan*

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center	IO or WBS Element	Original Amount
001	Non-Program	100000	N/A	512182	OTHR-00000000-FI	1912	1912150011	N/A	\$212,000.00
002	Non-Program	720057	N/A	512182	OTHR-00000000-GG	2112	2112180001	N/A	\$38,000.00
TOTAL AMOUNT									\$250,000.00

FUND OVERRIDE

DEC 06 2022

Passed by the Council of The City of San Diego on _____, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<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"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 09 2022

(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:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

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

By Kristell Medina, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- <u>314500</u>