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1/15

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO

1. CERTIFICATE NL
(FOR AUDITOR'S USE ONLY)
AC 2800423

TO: CITY COUNCIL

2. FROM (ORIGINATING DEPARTMENT):
CITY ATTORNEY

3. DATE:
September 14, 2007

4. SUBJECT:
Retainer Agreement with Tatro, Tekosky & Sadwick as lawyers for environmental contamination and water rights damage at Qualcomm Stadium Property.

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)
John Serrano, 619/533-4521

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)
Sim Von Kalinowski, 619/533-5803

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	10705		
DEPT.	10705		
ORGANIZATION			
OBJECT ACCOUNT	1414 4141		
JOB ORDER	001001		
C.I.P. NUMBER			
AMOUNT	\$500,000		

9. ADDITIONAL INFORMATION / ESTIMATED COST:
Total costs and fees estimated at \$500,000. These funds are available from the settlement funds retained to cover future costs and fees from the Equilon Partners matter (Texaco) arising from the Northeast corner of the same property.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>John Serrano</i>	12/8/07	8	DEPUTY CHIEF		
2				9	COO/CEO	<i>[Signature]</i>	10/29/07
3	AUDITOR LC	<i>Simon Q.</i>	11/29/07	10	CITY ATTORNEY	<i>John Serrano</i>	10-25-07
4	FINANCIAL MGMNT	<i>Philip Cruzat</i>	11/9/07	11	ORIG. DEPT	<i>John Serrano</i>	10-25-07
5	RISK MGMNT	<i>[Signature]</i>	11-15-07	DOCKET COORD: <i>[Signature]</i> COUNCIL LIAISON <i>[Signature]</i>			
6	WATER DEPT	<i>[Signature]</i>	11/30	<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 1/15/08			
7							

11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorizing the retention of Tatro, Tekosky & Sadwick as counsel to prosecute environmental contamination of city and water department owned lands located at Qualcomm stadium and recover damages for water contamination to aquifer in Mission Valley.
2. Authorizing the Expenditure of \$500,000 from Water Fund 10705, Department 10705, OA 1414, Job Order 001001 for the purpose of funding this agreement. *Appropriation and Mission Valley Terminal Settlement*

11A. STAFF RECOMMENDATIONS: ADOPT THE RESOLUTION.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 6

COMMUNITY AREA(S): Qualcomm Stadium, Mission Valley

ENVIRONMENTAL IMPACT: THIS ACTIVITY IS NOT A PROJECT AND IS THEREFORE NOT SUBJECT TO CEQA PER CEQA GUIDELINES SECTION 150609C)2.

HOUSING IMPACT: NONE.

OTHER ISSUES: The contract was approved by the City Council in closed session on 5-21-07.

City clerk requested to provide certified copy of final documents to Deputy City Attorney John Serrano, 619/533-4521.

ENVIRONMENTAL SERVICES

NOV 28 2007

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EXECUTIVE SUMMARY SHEET

DATE ISSUED: June 7, 2007 REPORT NO.:
ATTENTION: Council President and Members of the City Council
ORIGINATING DEPARTMENT: City Attorney
SUBJECT: Authorize Suit against Kinder Morgan Energy Partners, L.P.
(KMP) and Santa Fe Pacific Pipeline Partners, L.P. (owned by
KMP since 1997) and any other appropriate party; Authorize
retention of Tatro Tekosky Sadwick LLP for Legal Services for
Qualcomm Stadium, Pueblo Water Rights and Surrounding Land
Contamination Suit against appropriate parties.

COUNCIL DISTRICT(S): 6

CONTACT/PHONE NUMBER: John H. Serrano, Deputy City Attorney, 619/533-4521
or Sim Von Kalinowski, Chief Deputy City Attorney, 619/533-5803

REQUESTED ACTION: Resolution authorizing the filing of a lawsuit against the
polluter of city land and resources; authorize the retention of Tatro, Tekosky Sadwick
LLP as counsel for city; authorize the Auditor and Comptroller to transfer funds to the
Water Fund.

STAFF RECOMMENDATION: Adopt the resolution.

EXECUTIVE SUMMARY:

In closed session on 5-21-07 the Council authorized the City Attorney, through outside
counsel, to file suit against Kinder Morgan Inc., or any other appropriate party, to speed
up the cleanup of the Qualcomm property and facilitate the recovery of money damages.
The motion was made by Council President Peters and seconded by Councilmember
Frye. The final vote was 5-0 in favor of the motion.

FISCAL CONSIDERATIONS:

Authorizes up to \$500,000 for costs and attorney's fees to provide representation to the
City of San Diego in an action to recover compensation and speed up remediation.

The costs associated with this action will be paid for with funds received from the
settlement between Shell Oil Products and the City of San Diego for the amount of
\$1 million. This settlement was approved by City Council in October 2004, and per City
Council's direction, was used to reimburse the Water Department for costs incurred in
paying for expert witnesses, and held in reserve in the event the City pursued litigation.
Per City Council's direction, a fund was setup for these purposes by the City Auditor and
managed by the Water Department.

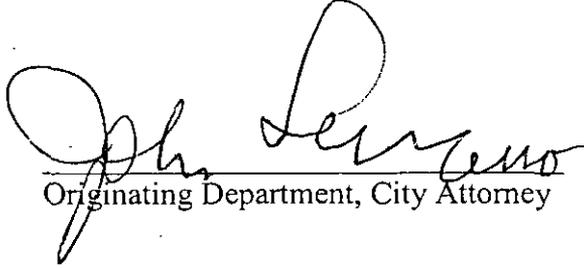
PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Council approved the settlement with Equilon Partners in October, 2004.
Council approved the retainer with Tatro, Tekosky and Sadwick in closed session on 5-
21-07.

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COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N.A.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable): N.A.


Originating Department, City Attorney

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The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800423

ORIGINATING

DEPT. NO.: 045

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: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	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: \$500,000.00

Vendor: Tatro, Tekosky & Sadwick

Purpose: Authorizing the appropriation and expenditure of funds for legal services related to environmental contamination in Mission Valley.

Date: November 29, 2007 By: L. Chim 

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
01	0	10705	10705		4141	001001				500,000.00
TOTAL										\$500,000.00

FUND OVERRIDE

AC 2800423

**CITY COUNCIL OF THE CITY OF SAN DIEGO
THE CLOSED SESSION MEETING REPORT
FOR MONDAY AND TUESDAY, MAY 21 and 22, 2007
CITY ADMINISTRATION BUILDING
COMMITTEE ROOM - 12TH FLOOR
202 "C" STREET
SAN DIEGO, CA 92101**

REPORTING RESULTS OF CLOSED SESSION MEETINGS

Only items that can be disclosed are reported out in the Open Session of the regular City Council Meeting. Public comment on Closed Session items are taken in Open Session. Please refer to the City Clerk's minutes for Open Session for more information. Assistant City Attorney Karen Heumann reports the results of the Closed Session Meetings of May 21 and 22, 2007, as follows:

CLOSED SESSION MEETING FOR MONDAY, MAY 21, 2007

Closed Session Items were heard on Tuesday, May 22, 2007.

CLOSED SESSION MEETING FOR TUESDAY, MAY 22, 2007

ROLL CALL:

Present: Mayor Jerry Sanders, Council President Peters, Council President Pro Tem Young; and Councilmembers Faulconer, Atkins, and Frye

Absent: Councilmember Maienschein - Dist. 5 (Absent for the meeting.)
Councilmember Madaffer - Dist. 7 (Absent for the meeting.)
Councilmember Hueso - Dist. 8 (Absent for the meeting.)

CLOSED SESSION ITEMS:

Conference with Legal Counsel - existing litigation, pursuant to California Government Code section 54956.9(a):

CS-1 *Marcus Pless v. City of San Diego*
San Diego Superior Court, Case No. GIC 878818

DCA assigned: M. Herrin

Nothing to report

Conference with Legal Counsel - existing litigation, pursuant to California Government Code section 54956.9(c):

CS-2 Hiring Tatro Tekosky Sadwick, LLP, as Outside Counsel
Re Qualcomm Stadium Contamination

DCA assigned: J. Serrano

Motion: Initiate litigation.
Moved: Council President Peters - Dist. 1
Seconded: Councilmember Frye - Dist. 7
Vote: 5/0 [Passed]
Absent: Councilmember Maienschein - Dist. 5
Councilmember Madaffer - Dist. 7
Councilmember Hueso - Dist. 8

**Reported out in Open Session on May 22, 2007, at 2:23 p.m. by Karen Heumann,
Assistant City Attorney:**

Today, the City Council voted in Closed Session on Item 2, Hiring Tatro Tekosky Sadwick, LLP, as Outside Counsel regarding Qualcomm Stadium Contamination, with a motion to initiate litigation against Kinder Morgan Energy Partners, LLC, and appropriate parties, and retain outside counsel to be paid from the Water Fund. Motion by Council President Peters - second by Councilmember Frye. The item passed 5 to 0 with Councilmembers Maienschein, Madaffer, and Hueso absent.

REPORTED BY: _____

Karen Heumann
Assistant City Attorney

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION AUTHORIZING THE INITIATION OF A LAWSUIT AGAINST THE PARTIES RESPONSIBLE FOR THE CONTAMINATION OF THE QUALCOMM STADIUM PROPERTY AND WATER RIGHTS; AUTHORIZING THE RETENTION OF THE LAW FIRM OF TATRO, TEKOSKY, SADWICK, LLP TO PROSECUTE SAID ACTION FOR THE CITY AGAINST ALL RESPONSIBLE PARTIES.

WHEREAS, the City of San Diego is the owner of Qualcomm Stadium, the surrounding 166 acres of land abutting the San Diego River and the Pueblo Water Rights to the area; and

WHEREAS, Kinder Morgan, Inc. has been found to be responsible for the contamination of the City's Property, including its water aquifer by permitting petroleum products to leak out of its transfer lines and storage tanks and has proceeded to clean up the spills too slowly; and

WHEREAS, the Regional Water Quality Control Board has found Kinder Morgan, Inc. liable and has ordered cleaning and remediation; and

WHEREAS, Kinder Morgan, Inc. has acknowledged responsibility for the contamination and yet carried out remediation of the City property at a markedly slow speed while not cleaning up the contamination at the neighboring Kinder Morgan, Inc. property which is the source of the contamination; and

WHEREAS, Kinder Morgan, Inc. has available superior technology and resources to clean up the contamination and restore the Qualcomm Stadium property and adjacent water rights to a usable condition; and

WHEREAS, litigation to seek speedier and enhanced remediation of the contamination and compensation for the injuries to the City's land and resources will require extensive

resources necessary to prepare pleadings, research substantive and procedural matters in specialized niches of the law, prepare and respond to legal documentation and provide courtroom representation; and

WHEREAS, the law firm of Tatro, Tekosky, Sadwick, LLP, attorneys at law, is experienced in environmental litigation on behalf of public entities and should be retained by the City of San Diego to provide services with respect to the contemplated litigation against Kinder Morgan, Inc. and any other appropriate parties and related litigation; and

WHEREAS, this matter was considered in Closed Session on May 21, 2007 and on that date, the Council of the City of San Diego voted unanimously (5-0) to authorize the filing of the suit against Kinder Morgan, Inc., or other appropriate parties, and the funding for the law firm of Tatro, Tekosky, Sadwick, LLP as outside counsel, in an amount not to exceed \$500,000, including attorney's fees and costs. The Council further determined that the funding for this action was to come from the Public Liability Fund; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is authorized to file suit against Kinder Morgan, Inc., or any other appropriate parties for the remediation of the contamination and recovery of all appropriate damages and remedies on behalf of the City of San Diego.

BE IT FURTHER RESOLVED, that the Retainer Agreement by and between the City of San Diego and Tatro, Tekosky, Sadwick, LLP for certain legal services, including costs of litigation, related to contamination remediation and the recovery of monetary compensation, on file in the office of the City Clerk as Document No. RR-_____, is hereby authorized in an amount not to exceed \$500,000 of attorney's fees and costs and that the Mayor is empowered and authorized to execute the same for and on behalf of the City.

BE IT FURTHER RESOLVED, that the Auditor and Comptroller is authorized to appropriate and expend \$500,000 from the Mission Valley Terminal Settlement Fund 10705, Department 10705, OA 4141, Job Order 001001 for the purpose of funding this agreement.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By John H. Serrano
John H. Serrano
Deputy City Attorney

JHS:amj:ar
11/30/07
Aud.Cert:2800423
Or.Dept:READ
R-2007-1135

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor