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May 23, 2008

**REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL**

**EXECUTION OF 5TH AMENDMENTS  
TO AGREEMENTS WITH INTERA, INC.  
FOR ENVIRONMENTAL EXPERT SERVICES  
AND OPPER & VARCO, LLP, FOR  
ENVIRONMENTAL LEGAL SERVICES  
RE: CLEANUP OF CONTAMINATION  
AT QUALCOMM STADIUM**

**INTRODUCTION**

In late 2003, the City formed a Working Group of staff, attorneys, and outside experts to address the issues presented by the release of petroleum products from the Mission Valley Terminal [Terminal] to the soil and groundwater beneath the Qualcomm Stadium [Site]. This Working Group is tasked with advocating the City's interests in expediting remediation of the Site in connection with the Regional Water Quality Control Board's [Water Board] enforcement action against the discharger, Kinder Morgan Energy Partners LP [Kinder Morgan]. From its inception, this Working Group has included Richard G. Opper of Opper & Varco LLP as Special Environmental Counsel and Dr. Richard Jackson, P.E., Ph.D., of INTERA, Inc., as the City's Environmental Expert Consultant, both of whom have intimate knowledge of the technical and other aspects of the clean-up action. Clean-up deadlines set by the Water Board are fast approaching. The deadline for removing gasoline from the soil and groundwater beneath the Site is December 31, 2010, and the deadline for reducing dissolved phase petroleum hydrocarbons to background water quality levels is December 31, 2013. Thus, the City's continued, active participation in the Water Board action over the next 3-5 years is crucial to ensuring that clean-up goals are achieved on time. Dr. Jackson and Mr. Opper are instrumental to the City's efforts.

Funds provided for Dr. Jackson's services are nearly exhausted, and the term of his consulting agreement will expire at the end of calendar year 2008. The term of the agreement between the City and Mr. Opper also will expire at the end of calendar year 2008. Thus, amendments to both agreements are being proposed for approval, so as to extend the term of both agreements to December 31, 2011, and to add \$200,000 to the total contract amount for Dr. Jackson's services over an additional three years. Pursuant to City Charter section 99, these

amendments each require authorization by ordinance adopted by a two-thirds vote of the City Council.

In addition, the funds from the Shell Oil settlement were intended to defray expenses incurred by the City in its ongoing efforts to ensure remediation of the Site and related litigation, including reimbursing expenses incurred by the Water Department for consultant services, attorney services, and other expenses related to those efforts. As of April 21, 2008, the expenses incurred by the Water Department, including for staff and attorney time funded from the Environmental Services Department Refuse Disposal Enterprise Fund, total \$472,000, with future reimbursable expenses expected as this matter continues.

## **DISCUSSION**

Beginning in 1986, petroleum products from the Terminal at Friars Road and Interstate 15, north of Qualcomm Stadium in Mission Valley, were discharged into the ground and groundwater beneath the Site. In 1992, the Water Board issued Clean Up and Abatement Order CAO 92-01 [CAO] for these petroleum products. As a result, the owners and operators of the Terminal, Santa Fe Pipeline Partners and its successor, Kinder Morgan, and the petroleum companies leasing the facilities at the tank farm were instructed to take action to investigate, contain, and mitigate the release.

In 2000, Kinder Morgan filed a lawsuit against various parties including Equilon Enterprises LLC doing business as Shell Oil Products US [Shell], contesting responsibility for the discharge to the Site. Eventually, this dispute was arbitrated before retired Los Angeles Superior Court Judge Robert Altman. In 2003, Judge Altman issued his opinion concluding that Kinder Morgan was the sole cause of the “core” gasoline plume, which extends beneath Qualcomm Stadium in the direction of the San Diego River. The arbitration opinion was confirmed by the Superior Court and became final in late 2003. Shell subsequently entered into a settlement with the City for some unrelated diesel-fuel contamination in the area of its leased terminals. The settlement included payment to the City of \$1,000,000.

Once responsibility for the discharge and the remediation had been adjudicated, the City formed its Working Group. The Working Group included Dr. Jackson, a nationally recognized environmental expert, who had been the technical advisor to Judge Altman in the arbitration proceeding and who was already intimately familiar with the technical aspects of the discharge, the hydrology of the Site, and the remedial challenges posed by the contamination. The Working Group also included Mr. Richard Opper, an experienced environmental attorney with years of practicing before the Water Board. The Working Group immediately began actively engaging with the Water Board, pressing the City’s and the region’s interests in developing the Mission Valley Aquifer [Aquifer], advocating accelerated clean-up technologies and more aggressive clean-up timelines, demonstrating that remedial alternatives for accelerated clean-up were technically feasible, and pressuring the discharger to do more faster.

While the clean-up is still ongoing and achieving clean-up deadlines is not yet assured, the actions of the Working Group have positively influenced the course of events and the pace of remedial progress. Through its numerous, comprehensive submittals and other communications and meetings with the Water Board, the Working Group repeatedly has communicated the importance of the Aquifer as a local and regional water resource and the City's plans and time frames for developing the Aquifer. Through the efforts of the Working Group, the City and Kinder Morgan entered into a Summary of Understanding whereby Kinder Morgan agreed to (1) develop a more accurate profile of the subsurface of the Site, the contamination, and the migration rate and pathways; (2) expedite installation of a property boundary containment system to prevent further migration from the Terminal onto the Site; (3) undertake testing of enhanced remedial technology; (4) investigate whether utilities under public rights-of-way were impacted by the contamination; and (5) improve its remedial system.

Among other submittals, in 2005, the Working Group prepared and submitted a comprehensive report in response to a proposed Water Board order to set clean-up goals and deadlines. The Working Group also participated in the Water Board's workshop on the proposed order, where it presented and advocated the City's interests in achieving clean-up goals in time to meet the City's timeframes for development of the Aquifer. Subsequently, through the efforts of Dr. Jackson, the City demonstrated to the Water Board and Kinder Morgan that alternative technologies to accelerate remediation were technically practicable and strongly urged their implementation.

The Working Group reviews all draft work plans, reports, and evaluations prepared by Kinder Morgan and routinely recommends improvements to work plans, evaluates and comments on the status of remedial progress, and through its actions maintains pressure on Kinder Morgan to make course corrections whenever necessary so that clean-up deadlines do not slide. In October 2007, Kinder Morgan submitted a comprehensive evaluation of the remedial progress to date. This evaluation confirmed for the Water Board the City's repeatedly expressed concerns that the pace of clean-up was insufficient to meet the Water Board's deadlines. It has also galvanized Kinder Morgan into action to significantly upgrade its remedial system, test and improve the property boundary containment barrier, and install technology to more accurately determine if clean-up goals have been achieved in any given area, all of which is currently underway.

Moreover, after repeated urging by the Working Group, the Water Board recently expressed its intent to establish interim benchmarks that Kinder Morgan must achieve during 2008-2010 in order to demonstrate its progress toward meeting the first deadline, with a contingency plan for course corrections in the event a benchmark is missed.

Upgrades currently underway are expected to be complete in June. The Working Group expects to meet with Water Board staff sometime after Labor Day to review the progress made during the first part of this year. The first deadline is only 2.5 years away and much work

remains to be done. The efforts and the expertise of Dr. Jackson and Mr. Opper continue to be instrumental in protecting and advocating the City's interests in a timely clean-up.

### **CONCLUSION**

In order to ensure clean-up goals for the Site are achieved on time, it is imperative that the City remain an active participant in actions before the Water Board. The technical expertise of Dr. Jackson and the legal expertise of Mr. Opper are instrumental to this effort. Thus, it is recommended that the City Council authorize execution of the 5th Amendment to the Agreement between the City and INTERA, Inc. and authorize execution of the 5th Amendment to the Agreement between the City and Opper & Varco LLP for legal services to extend the term of both agreements to December 31, 2011, and to add \$200,000 to the total contract amount for Dr. Jackson's services over an additional three years.

It is also recommended that Council authorize the use of the Shell settlement monies for remediation of the Site and related litigation, including reimbursing expenses incurred by the Water Department for consultant services, outside counsel services, and staff and attorney time funded from the Environmental Services Department Refuse Disposal Enterprise Fund.

Respectfully submitted,

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