

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: January 17, 2012
TO: City Council
FROM: City Attorney
SUBJECT: Ratification of Agreement for Temporary Change of Stadium's Name

INTRODUCTION

On December 19, 2011, the Stadium Manager signed an "Agreement for Temporary Promotional Signage" ("Agreement") for the placement of temporary signs at Qualcomm Stadium by Qualcomm Incorporated. The Agreement, intended to be effective on December 16, 2011, provides for the placement of temporary signs by Qualcomm at the Stadium from about December 18, 2011 to about December 28, 2011, during the time that the Holiday Bowl games and other events would be held at the Stadium, and for payment of \$1000 by Qualcomm to the City. Qualcomm signed the Agreement on December 20, 2011. Installation of the signs began on December 12, 2011. A copy of the Agreement is attached.

The temporary signs installed by Qualcomm were placed over the signs identifying the Stadium as Qualcomm Stadium and purported to rename the Stadium from "Qualcomm Stadium" to "Snapdragon Stadium." The placement of the signs was touted in the media as changing the Stadium's name. During coverage of the Holiday Bowl games, the Stadium was referred to by "its new name" of "Snapdragon Stadium."

These signs and the naming of the Stadium, however, are subject to the naming rights and signage plan agreements between the City and Qualcomm authorized by ordinance of the City Council on April 7, 1997 (Agreement Conveying Naming Rights to Stadium between the City and Qualcomm ("Naming Rights Agreement") and Supplement No. 1 to Agreement Conveying Naming Rights ("Signage Plan")). The Naming Rights Agreement and Signage Plan are very specific about the use of the signs and require prior authorization of the City Council for any name change.

The Naming Rights Agreement and the Signage Plan describe and list the signs to be used for naming the stadium and clearly state how they will be used. Specifically, in the Naming Rights

Agreement, the City grants Qualcomm “the exclusive right to name the Stadium ‘QUALCOMM STADIUM,’” and Qualcomm agrees “to immediately name the Stadium ‘QUALCOMM STADIUM.’” (Art. II, A). The Naming Rights Agreement and the Signage Plan then refer to the size, design, and location of the signs that will display the words “Qualcomm Stadium.”¹ The Signage Plan permits Qualcomm to redesign the signage with the City’s prior approval. The Signage plan does not authorize changing the words on the sign from “Qualcomm Stadium” to something else, or the right to change the purpose of the signs. (Signage Plan, para. 11.)

Renaming the Stadium requires the prior written consent of the City authorized by a resolution of the City Council. (Naming Rights Agreement, Art. II.A.) This requirement is consistent with the fact that the Agreement was originally authorized by the City Council and concerns the naming of a major City facility. The City Council acted on behalf of the City in approving the name for the Stadium; there is no provision in the Agreement for a name change without further Council action, and there is no provision for a temporary name change. Accordingly, renaming the Stadium to “Snapdragon Stadium,” even on a temporary basis, requires the City’s written consent authorized by Council resolution.

Moreover, there is no provision in the agreements for using the identified name signs for a purpose other than displaying the sanctioned name “Qualcomm Stadium.” Rather, the Naming Rights Agreement provides that Qualcomm can purchase advertising at the Stadium separate and apart from the name signs, “at its sole cost and expense.” (Art. II.B.6.a.)

I. THE AGREEMENT FOR TEMPORARY PROMOTIONAL SIGNAGE IS VOID FOR LACK OF PROPER AUTHORIZATION

The Agreement required the approval of the City Council as a matter of contract, and the approval of the City Attorney as a matter of law. While the failure to obtain the approval of the City Council is a breach of the terms of the contract, the failure to obtain the approval of the City Attorney renders the contract void and unenforceable against the City. (*See* City Att’y MOL 2009-20, “Overview of City Charter and Municipal Code Requirements for City Contracts” (Dec. 18, 2009), and City Att’y MOL 2008-1, “Requirements for Legally Executed Contracts” (Feb. 11, 2008).)

¹ For example, in Article II.B.6 of the Naming Rights Agreement, the City agreed to install the following new signs “*identifying* the Stadium as ‘QUALCOMM STADIUM.’” (i) the marquis sign at the entrance to the Stadium; (ii) a sign over the main entrance to the Stadium; (iii) a sign on top of the existing scoreboard at the east end of the Stadium; (iv) a sign on the new scoreboard at the west end of the Stadium; (v) two signs on the inside of the Stadium below the Loge Level; and (vi) two signs on the exterior of the Stadium. (See also the Signage Plan, stating that the signs shall use the words “Qualcomm Stadium” with the Qualcomm logo.)

A. City Council Authorization Was Required as a Matter of Contract and Law

The Naming Rights Agreement was authorized by Ordinance No. O-18397 adopted by the unanimous vote of the City Council on April 7, 1997. The Naming Rights Agreement was expressly conditioned on the adoption of a resolution by the City Council renaming the Stadium to "Qualcomm Stadium." (Art. II.A.) Action by the City Council was legally necessary to rename the Stadium as the Stadium had been named "San Diego Jack Murphy Stadium" by resolution of the City Council in 1981 (R-253397). That resolution remained in effect until the City Council adopted its resolution renaming the Stadium to "Qualcomm Stadium" on March 18, 1997 (R-288449).

Consistent with prior resolutions of the City Council to rename the Stadium, Article II, section A of the Naming Rights Agreement also requires the City Council's authorization for a change of the Stadium's name from "Qualcomm Stadium" to something else:

. . . QUALCOMM . . . may subsequently rename the Stadium to another name . . . , subject to the prior written approval by the City, which approval shall not be unreasonably withheld. Provided, however, that any name change shall be effectuated pursuant to a resolution adopted by the City Council.

Again, this step is legally necessary because the March 18, 1997, resolution of the City Council is the official City action establishing the name of the Stadium and cannot be superseded by the unilateral act of the Mayor or his designee.

Accordingly, although the Agreement states that "the Parties have had this agreement executed by their duly authorized representatives," by law and by the terms of the Naming Rights Agreement, no individual acting on behalf of the City could have been properly authorized to sign the Agreement without a resolution of the City Council. As no such resolution was adopted, execution of the Agreement was beyond the power and authority of the Mayor's designee, and not enforceable against the City. *See Katsura v. City of Buenaventura*, 155 Cal. App. 4th 104, 109 (2007) ("any act of an officer to be valid must find express authority in the law or be necessarily incidental to a power expressly granted") and *P&D Consultants, Inc. v. City of Carlsbad*, 190 Cal. App. 4th 1332, 1341-1342 (2010). (amendments to contract do not bind City where "plain language of the contract limits the City's power to contract to the prescribed method," and the prescribed method (written change order) was not followed).

The City is not bound by an officer's act in excess of his authority. *Katsura*, 155 Cal. App. 4th at 109. Moreover, the party contracting with a public agency is charged with knowledge of the public agency's contracting requirements, especially as here, where the procedure is set out in the party's contract with the public agency. *P&D Consultants*, 190 Cal. App. 4th at 1341-1342. The party contracting with the public agency acts at its peril when it fails to take notice of the limits of the agent's authority. *Id.* at 1342.

B. City Attorney Approval Is Required for a Valid City Contract

The City Charter requires the City Attorney to approve City contracts. Charter section 40 expressly provides that it is the duty of the City Attorney to prepare and endorse City contracts with his or her approval:

It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, . . . to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; . . .

As a charter city, the City of San Diego is bound by the provisions of its Charter governing the administration and execution of contracts. *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 171 (1994). "A charter city may not act in conflict with its charter . . . Any act that is violative of or not in compliance with the charter is void." *Id.* The charter is the source of a charter city's power and authority; accordingly, a charter city is without power to contract in violation of its charter. *Katsura v. City of Buenaventura*, 155 Cal. App. 4th 104, 109-110 (2007).

For a charter city, failure to follow the procedures set forth in the city's charter will render a contract void, or at least, unenforceable against the charter city.² *Katsura v. City of Buenaventura*, 155 Cal. App. 4th 104, 108-110 (2007) (it is well-settled that a municipal contract "made in disregard of a prescribed mode is unenforceable"), citing *Los Angeles Dredging Co. v. City of Long Beach*, 210 Cal. 348, 353 (1930).

Where a charter requires approval by the city attorney as part of the method for approving a contract, that approval is necessary to formation of a valid contract, and without it, the contract is void. *See, e.g., G.L. Mezzetta, Inc. v. City of American Canyon*, 78 Cal. App. 4th 1087, 1092-1094 (2000) (holding that "a contract that does not conform to the prescribed method for [entering municipal contracts] is void"); *First Street Plaza Partners v. City of Los Angeles*, 65 Cal. App. 4th 650, 662-665 (1998).

In *Mezzetta*, for example, the city's charter contained language similar to the City of San Diego's, requiring the city attorney to: "[p]repare and approve all ordinances, resolutions, agreements, contracts, and other legal instruments . . . and approve the form of all contracts and

² There is some inconsistency among the California appellate districts regarding whether failure to follow municipal laws governing contract formation renders a contract void (*i.e.*, without legal effect) or unenforceable against the city (*i.e.*, one party is without power to enforce against the other). While, for the most part, the appellate courts have followed the California Supreme Court's holding in *Domar* and have found such contracts to be void (*see, e.g., Mezzetta* (1st Dist. 2000), *infra*; and *South Bay Senior Housing Corp. v. City of Hawthorne*, 56 Cal. App. 4th 1231, 1235 (2nd Dist. 1997)), at least one court permitted a city to enforce a contract not formed in accordance with its municipal code (*City of Orange v. San Diego County Employees Retirement Association*, 103 Cal. App. 4th 45, 55-57 (2d Dist. 2002)). In a decision by our own appellate district, however, the court limited the *City of Orange* case to its facts and declined to enforce an alleged oral contract against the City of Poway. *Poway Royal Mobilehome Owners Assn. v. City of Poway*, 149 Cal. App. 4th 1460, 1474 (4th Dist. 2007).

agreements and bonds given to the city.” 78 Cal. App. 4th at 1093. Failure to obtain the required signatures rendered the alleged oral contract invalid. *Id.* at 1093-1094. The court reasoned that by requiring multiple signatures, the city intended to avoid hasty decision-making and to spread the ability to enter into contracts over a “broad base of authority.” *Id.* at 1094. The same reasoning applies to the City’s Charter.

Similarly, in *First Street*, the court found that failure to obtain the required signatures rendered a development contract unenforceable even though the parties had engaged in protracted negotiations. The contract had not been presented to the city council for approval, approved by the city attorney, or signed by the mayor, as required by the city charter. The court found each of these requirements necessary to formation of a valid contract. 65 Cal. App. 4th at 663.

The Agreement at issue here was not prepared, reviewed, approved, or signed by the City Attorney or his designee. Based on the City’s Charter requirements and the cases discussed above, the failure to obtain the City Attorney’s approval of the Agreement renders the Agreement void and without legal effect.

II. COUNCIL RATIFICATION OF THE TEMPORARY SIGNAGE AGREEMENT AND APPROVAL BY THE CITY ATTORNEY WILL VALIDATE THE AGREEMENT

A municipality may ratify an invalid contract if it is a contract that the municipality could make, and it is not void by reason of noncompliance with some mandatory provision of law. 10A McQuillan Mun. Corp. § 29:104 (3d ed. 2011); *Baker v. City of Palo Alto*, 190 Cal. App. 2d 744, 757 (1961) (upon the removal of the city’s disability by referendum vote, the city had full power to enter into and re-execute contract that was previously void).

In this instance, the Agreement can be ratified by the adoption of a resolution by the City Council authorizing the Agreement, and approval of the Agreement by the City Attorney. Both of these acts will cure the defects that render the Agreement void. However, for the reasons explained above, both of these actions are required, and the taking of one or the other will not make the Agreement valid. For that reason, and as is the current practice, the City Attorney will approve the Agreement only if and after the Council has adopted a resolution authorizing the Agreement.

The City Council’s ratification of the Agreement, and subsequent approval by the City Attorney, will ensure that no precedent has been set in the manner in which the Naming Rights Agreement is implemented. City Council ratification will further ensure that the actions taken are properly authorized, that the “broad base of authority” between the City Council as the City’s legislative body, the Mayor as the City’s Chief Executive Officer, and the City Attorney are properly utilized in this decision-making process as intended and required by the City Charter. Finally, it will ensure that prior resolutions of the City Council, the Naming Rights Agreement, and the requirements of the Naming Rights Agreement for City Council involvement in any naming of

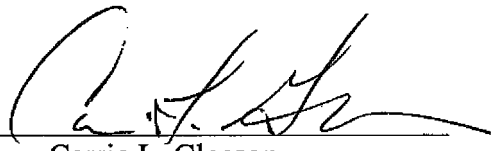
the Stadium are not ignored or waived. Although the City's ratification will not change the fact that improper actions were taken, it will give valid legal effect to an otherwise void agreement.

CONCLUSION

The Stadium Manager signed the Agreement for Temporary Signage. The Agreement is void for lack of proper authority. The City Council may choose to adopt a resolution authorizing and thereby ratifying the Agreement, after which the City Attorney will approve the Agreement, making it a valid and binding Agreement that temporarily changed the name of the Stadium from Qualcomm Stadium to Snapdragon Stadium.

Alternatively, the City Council may choose to not ratify the Agreement. This would mean that the purported name change and installation of signs was unauthorized and in violation of the Naming Rights Agreement between the parties, the City's Charter, and Resolution R-288449 of the City Council.

JAN I. GOLDSMITH, CITY ATTORNEY

By 
Carrie L. Gleeson
Deputy City Attorney

CLG:als
Attachment: Agreement for Temporary Promotional Signage
MS-2012-1

Agreement for Temporary Promotional Signage

This Agreement is entered into between the City of San Diego (the "City") and Qualcomm Incorporated ("Qualcomm") effective as of December 16th, 2011.

Whereas, in accordance with the City's arrangements concerning temporary signage rights at the City-owned Qualcomm Stadium, Qualcomm is contracting with each of the San Diego Chargers ("Chargers") and the San Diego Bowl Game Association ("Bowl Game Association") with respect to placing temporary signage at the Stadium (to augment Qualcomm's existing signage) on or around the period of December 18 through December 28, 2011 (and subsequent removal period);

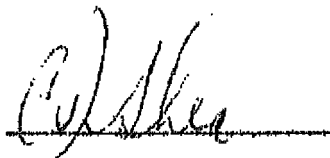
NOW, THEREFORE, the Parties hereto agree as follows:

Subject to the payment of the promotional fee mentioned below, the City hereby unconditionally agrees and consents to Qualcomm placing temporary signage at the Stadium and related arrangements made by Qualcomm with the Chargers and the Bowl Game Association.

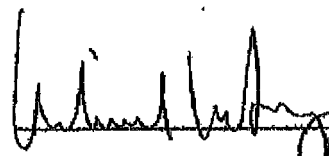
Qualcomm hereby agrees to pay a promotional fee payable to the City in the amount of \$1000.00. Payment shall be made via a check payable to City Treasurer.

The City will provide an invoice to Qualcomm for such fee, which shall payable within net 30 days of receipt.

In witness whereof, the Parties have had this agreement executed by their duly authorized representatives as of the date first above mentioned.

 12/22/11

For Qualcomm Incorporated Date

 12/19/11

For City of San Diego Date