Council Meeting of
April 10, 2012

Honorable Mayor and Members
of the Torrance City Council
City Hall
Torrance, California

**Members of the Council:**

**SUBJECT: City Attorney – Approve agreement amendment to provide legal services**
**Expenditure: Not to exceed $24,500**

## RECOMMENDATION

Recommendation of the City Attorney that City Council approve a first amendment to fee agreement with McGuinness & Associates (C2011-174) to provide legal services, for a total contract amount not to exceed $24,500.

Funding

Funding is available from the City Attorney Department's general operating budget.

## BACKGROUND AND ANALYSIS

On September 8, 2011, the City entered into a $9,500 fee agreement with the law firm of McGuinness & Associates in connection with the default of MG Construction & Development on the Torrance Boulevard Rehabilitation Project. The law firm has advised that an additional $15,000 will be necessary to resolve the matter.

The City Attorney's office has an outstanding invoice in the amount of $3,017.40 for the firm's February 2012 legal services.

Other agreements have been previously approved with McGuinness & Associates this fiscal year exceeding our department's allowable cumulative annual purchases, absent City Council approval. The total cumulative amount is $63,000.

Therefore, the City Attorney recommends that City Council approve the first amendment to fee agreement with McGuinness & Associates for a total contract amount not to exceed $24,500.

Respectfully submitted,

John L. Fellows III
City Attorney

By _____
Alice Rusa
Law Office Administrator

CONCUR:

_____
John L. Fellows III, City Attorney

NOTED:

_____
LeRoy J. Jackson, City Manager

for

Attachment A: First Amendment to Fee Agreement

**ATTACHMENT A**

# FIRST AMENDMENT TO FEE AGREEMENT FOR LEGAL SERVICES (C2011-174)

This First Amendment to Fee Agreement for legal services ("Amendment") is made and entered into as of February 1, 2012, by and between the **CITY OF TORRANCE**, a municipal corporation ("CITY"), and **MCGUINNESS & ASSOCIATES,** a public limited company ("FIRM").

**RECITALS**:

A. CITY and FIRM entered into a Fee Agreement for Legal Services ("Fee Agreement") on September 8, 2011, in the amount of $9,500. A copy of that Fee Agreement for Legal Services in connection with the default of MG Construction & Development on the Torrance Boulevard Rehabilitation Project is attached as Exhibit A (Contract No. C2011-174.)

B. The CITY is satisfied with the level of service provided by FIRM.

C. Both parties wish to amend the contract to add an additional $15,000 to the contract for an amount not to exceed the sum of $24,500.

**AGREEMENT**:

1. Services to be Performed by FIRM.
FIRM will continue to provide the services set forth in the Fee Agreement attached as Exhibit A and incorporated into this First Amendment by this reference. FIRM warrants that all services set forth in the Fee Agreement and this Amendment will be performed in a competent, professional and satisfactory manner.

2. FIRM's Fee.
For services rendered, FIRM will be paid in accordance with the Fee Agreement; provided, however, that in no event will the total amount of money paid the FIRM, for services contemplated by the Fee Agreement, as amended, exceed the sum of ***$24,500*** unless otherwise first approved in writing by CITY.

3. In all other respects, the Fee Agreement is ratified and reaffirmed and remains in full force and effect.

CITY OF TORRANCE,
a municipal corporation

_____
Frank Scotto, Mayor

McGUINNESS & ASSOCIATES
a public limited company

By: _____
Joseph G. McGuinness
Partner

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

Exhibit A) Fee Agreement

**EXHIBIT A**

**MCGUINNESS & ASSOCIATES**
Del Amo Financial Center
21515 Hawthorne Blvd. #1050
Torrance, California 90503
Tel: (310) 792-0495 Fax: (310) 792-0520

September 8, 2011

John L. Fellows III
City Attorney
Office of the City Attorney
City of Torrance
3031 Torrance Boulevard
Torrance, CA 90503

Re: Fee Agreement for Legal Services

Dear Mr. Fellows:

Thank you very much for the selection by you of McGuinness & Associates to represent you in connection with the default of MG Construction & Development on the Torrance Blvd. Rehabilitation, T-43/44, Phase 2 Project.

This letter, when executed by you and returned to me at McGuinness & Associates, will constitute the agreement pursuant to which McGuinness & Associates will provide legal services to you in this matter. This firm is being engaged herein by you on the terms and conditions herein provided.

McGuinness & Associates will provide all legal services reasonably necessary to represent your interests in connection with matters for which this firm is retained. Our services for work performed pursuant to this agreement will be charged on an hourly basis and for costs, as follows:

1. Joseph G. McGuinness @ $380.00 an hour;
2. Jeffrey S. Flashman @ $380.00 an hour;
3. Todd Vollucci @ $310.00 an hour;
4. Paralegal / Legal Assistant @ $65.00 an hour; and
5. All matter costs are billed by a specific category line item.



C2011-174

COPY

You will be billed monthly for these fees. Our statements will be payable when they are sent to you.

Our statements for costs are generally prepared during the second week of the month following the month during which the costs were incurred. You will be responsible for paying all costs and expenses incurred in our handling of this matter, including filing fees, transcript and court reporter fees, messenger and other delivery fees, process service fees, jury fees, witness fees, investigator fees, expert or consultant fees, photocopies, travel costs, secretarial overtime, fax charges, long distance and telephone charges, car telephone charges, computer assisted legal research charges, and other similar items.

With respect to any significant anticipated disbursements, we will endeavor to confer with you in advance and, if appropriate, submit the vendor's statements to you directly for payment.

In the event it becomes necessary to hire expert witnesses and/or consultants, we will consult with you prior to retaining any such experts regarding the scope of their services and the rates to be charged. Although the experts' statements may be submitted to McGuinness & Associates, you acknowledge that you are responsible for the payment of these fees and charges.

You have the right at any time to terminate our services, upon written notice to us. The firm would then, cease to render additional services. Such termination shall not, however, relieve you of the obligation to pay any balance owed for costs and/or attorney fees accruing before the termination notice is received.

Likewise, we shall have the right at our sole option and discretion to terminate this agreement, withhold further services, cease our representation and withdraw as counsel of record in any proceeding. In this event, you agree to take all steps necessary to free us of any obligation to perform any additional services, including the execution of any documents necessary to complete our discharge or withdrawal from your representation.

We can of course make no promises or guarantees regarding the outcome of any matter, and nothing contained in this agreement or in our statements to you shall be construed as a promise, guarantee, representation or assurance about the outcome of a particular matter.

You have all rights provided by applicable California law under certain circumstances to seek arbitration of any disputes regarding our contingency agreement. Subject to applicable laws and state bar rules the prevailing party in any such arbitration shall be awarded its reasonable costs and attorneys' fees incurred in connection with the dispute. The laws of the State of California will be applied in any dispute between McGuinness & Associates and you.

Further, you agree that jurisdiction for any dispute regarding this agreement or the services rendered hereunder shall be the State of California, County of Los Angeles. Both parties hereto stipulate to resolve any dispute arising hereunder by means of an arbitration, subject only

to the approval of any interested insurance carrier. Such an arbitration will be by the American Arbitration Association ("AAA") and according to AAA rules. The parties hereto stipulate to forgo any discovery in any such proceeding. This agreement applies to venue as well as personal jurisdiction.

For purposes of billing, correspondence and/or service of any legal process, legal action, and/or any motion to be relieved as counsel, pertaining to this agreement, the mailing and/or service address of each and every client represented hereby, shall be City of Torrance 3031 Torrance Boulevard, Torrance, CA 90503.

In order to enable us to effectively render our services to you in this matter, it is important that you be forthright with us in discussing matters and keep us appraised of all developments regarding particular matters. Additionally, it is important that you cooperate with us in connection with our representation of you. You also agree to be reasonably available to attend meetings, court appearances, or other proceedings in connection with the matter for which McGuinness & Associates has been retained.

By your signature below, you are indicating that you have read this agreement in its entirety and understand its contents. Further, you acknowledge that we have advised you that you may seek the advice of an independent attorney as to the meaning and effect of this agreement and that you have either sought and obtained such independent advice or waive your opportunity to do so. All persons executing this Agreement on behalf of any entity hereby represent that they have proper authority to do so and to bind the entity to it.

This agreement contains the entire agreement between this law firm and you. No other agreement, statement, or promise made on or before the effective date of this agreement will be binding on either this firm or you. This Agreement can only be changed, altered, modified in any respect, by an instrument in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and the entire agreement will be separable and remain in effect. This agreement may be modified by subsequent agreement between this firm and you only by an instrument in writing signed by both of us or an oral agreement to the extent that the parties carry it out.

This Agreement is prepared, negotiated and considered entered into in Los Angeles County, California and governed by, construed and enforced in accordance with the laws of the State of California and enforcement of said Agreement shall be venued in Los Angeles County, California.

In the event it becomes necessary for us to institute arbitration or litigation to collect any fees or disbursements due McGuinness & Associates, we will be entitled to recover our reasonable costs and attorneys' fees incurred in any such proceedings.

I look forward to working with you. Please do not hesitate to contact me with respect to any questions you might have, and in particular with respect to the terms under which we will be providing services to you. If you agree that we may proceed to provide legal services to you on the terms set forth in this letter, please sign this letter agreement and return it to me at your earliest convenience.

This Agreement may be executed in counterparts which together will constitute a binding agreement. If any questions arise or if I may further elaborate on any of the above, please feel free to contact me.

Best regards,

Joseph G. McGuinness
McGUINNESS & ASSOCIATES

READ AND AGREED:

Dated: September 8, 2011

By: _____
City of Torrance

By: Tatia Strader

Its: Deputy City Attorney