

Council Meeting of
October 16, 2012

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

Members of the Council:

SUBJECT: City Attorney – Approve Agreement Amendment with Jerold A. Goddard, Esq.

Expenditure: \$50,000

RECOMMENDATION

Recommendation of the City Attorney that City Council approve a third amendment to fee agreement with Jerold A. Goddard, Esq. (C2010-220) to represent the City in defending *Pitches* motions, for an additional \$50,000, for total amount not to exceed \$95,000.

Funding

Funding is available from the City Attorney's General Fund operating budget.

BACKGROUND AND ANALYSIS

On October 26, 2010, the City entered into a \$25,000 fee agreement with Jerold A. Goddard, Esq. to defend the Torrance Police Department's officers' personnel files against discovery requests made by criminal defendants. Mr. Goddard is the retired city attorney of Redondo Beach.

On June 13, 2012, the City Council approved a First Amendment to Fee Agreement for Legal Services (C2010-220), in order to add \$20,000 to the contract, for an amount not to exceed \$45,000. The First Amendment also increased Mr. Goddard's hourly rate from \$100 to \$150 per hour, effective July 1, 2012.

On July 17, 2012, the City Council approved a Second Amendment to Fee Agreement which contained a revised fee agreement that incorporated language required by CALPERS for retirees working for public agencies.

The city attorney's office continues to receive a substantial number of *Pitches* motions. Besides the time involved in preparing oppositions to these motions, Mr. Goddard is required to spend as many as four hours in the courtroom defending each opposition. Currently, there are no outstanding invoices.

Therefore, the city attorney recommends that City Council approve the Third Amendment to Fee Agreement for an additional \$50,000, for a total amount not to exceed \$95,000.

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

Attachment A: Third Amendment to Fee Agreement

ATTACHMENT A**THIRD AMENDMENT TO FEE AGREEMENT FOR
LEGAL SERVICES (C2010-220)**

This Third Amendment to Fee Agreement for Legal Services is made and entered into as of October 1, 2012, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and JEROLD A. GODDARD, ESQ., an individual ("ATTORNEY").

RECITALS:

- A. The CITY and ATTORNEY entered into a Fee Agreement for Legal Services (the "Fee Agreement") on October 26, 2010, in the amount of \$25,000.
- B. On June 13, 2012, the City Council approved a First Amendment to Fee Agreement for Legal Services (C2010-220), in order to add \$20,000 to the contract for an amount not to exceed \$45,000. It also increased ATTORNEY's hourly rate from \$100 to \$150 per hour, effective July 1, 2012.
- C. On July 17, 2012, the City Council approved a Second Amendment to Fee Agreement which substituted the previous agreement to satisfy CALPERS requirements for retirees working for public agencies.
- D. The CITY is highly satisfied with the level of service provided by ATTORNEY.
- E. Both parties wish to amend the contract to add an additional \$50,000 to the contract, for a cumulative amount not to exceed the sum of \$95,000.

AGREEMENT:

- 1. Compensation Paragraph 3.1 entitled "Amount" is amended in its entirety to read as follows:

AMOUNT.

(\$150 per hour). Compensation under this Agreement shall be paid only for assigned work and after approval of hourly billing statement by the City Attorney however, that in no event will the total amount of money paid ATTORNEY, for services contemplated by this Agreement, exceed the sum of **\$95,000** unless otherwise first approved in writing by CITY.

2. In all other respects, the Fee Agreement, as previously amended by the First and Second Amendments is ratified and reaffirmed and remains in full force and effect.

CITY OF TORRANCE,
a municipal corporation

JEROLD A. GODDARD, ESQ.
an individual

Frank Scotto, Mayor

Jerold A. Goddard

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

Exhibit A) Second Amendment

EXHIBIT A**SECOND AMENDMENT TO FEE AGREEMENT FOR
LEGAL SERVICES (C2010-220)**

This Second Amendment to Fee Agreement for Legal Services is made and entered into as of July 1, 2012, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and JEROLD A. GODDARD, ESQ., an individual ("ATTORNEY").

RECITALS:

- A. The CITY and ATTORNEY entered into a Fee Agreement for Legal Services (the "Fee Agreement") on October 26, 2010, in the amount of \$25,000. A copy of the Fee Agreement is attached as Exhibit A.
- B. On June 13, 2012, the City Council approved a First Amendment to Fee Agreement for Legal Services (C2010-220), in order to add \$20,000 to the contract for an amount not to exceed \$45,000. It also increased ATTORNEY's hourly rate from \$100 to \$150 per hour, effective July 1, 2012.
- C. Subsequent to the June 13, 2012 City Council approval, a revised draft Agreement for Legal Services was received. (Exhibit B)
- D. The CITY is satisfied with the level of service provided by ATTORNEY.
- E. Both parties wish to amend the contract to replace in its entirety the original Fee Agreement, as previously amended, with the revised form of agreement attached as Exhibit B, because it incorporates language required by CALPERS for retirees working for public agencies.

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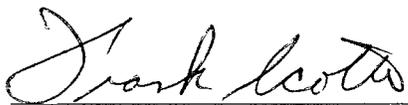
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AGREEMENT:

In all other respects, the First Amendment dated July 1, 2012 is ratified and reaffirmed and remains in full force and effect.

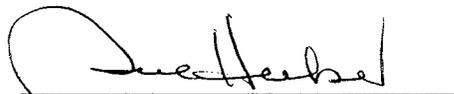
CITY OF TORRANCE,
a municipal corporation

JEROLD A. GODDARD, ESQ.
an individual


Frank Scotto, Mayor


Jerold A. Goddard

ATTEST:


Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: 

Exhibit A) Fee Agreement
Exhibit B) Agreement

EXHIBIT A

FEE AGREEMENT FOR LEGAL SERVICES

This Fee Agreement for legal services ("Agreement") is made and entered into as of October 26, 2010, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and JEROLD A. GODDARD, ESQ., an individual ("ATTORNEY").

RECITALS:

1. CITY wishes to retain the services of an experienced and qualified attorney to provide certain legal services to CITY.
2. ATTORNEY represents that he is qualified to perform those services.

AGREEMENT:

1. Services to be Performed by ATTORNEY.
ATTORNEY will advise and represent CITY in the defense of *Pitchess* motions. *Pitchess* motions are brought by criminal defendants looking for material in police officer personnel files to be used to attack testifying officers' credibility. ATTORNEY warrants that all services set forth herein will be performed in a competent, professional and satisfactory manner.
2. Attorney's Fee.
For services rendered pursuant to this Agreement, ATTORNEY will be paid \$100 per-hour; provided, however, that in no event will the total amount of money paid ATTORNEY, for services contemplated by this Agreement, exceed the sum of **\$25,000**, unless otherwise first approved in writing by CITY.
3. Expenses and other charges.
In addition to fees for professional services, there will be charges for such incurred expenses as court costs, long distance telephone charges, travel costs, computerized legal research, copying and faxes. Expenses incurred will be billed at amounts that are competitive with other sources of the same products or services.
4. Conflict of Interest.
ATTORNEY warrants that all necessary conflict clearances have been obtained.

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5. Insurance.

ATTORNEY is not required to maintain professional liability insurance. CITY will defend, hold harmless and indemnify ATTORNEY against any tort, except intentional torts, professional liability claim, demand, or other legal action, arising out of any alleged act or omission occurring solely within the performance of ATTORNEY's duties under this Agreement. CITY agrees that it will defend or compromise and settle any claims or suits and pay the amount of any settlements or judgments rendered, to the extent permitted by California law.

6. Business License Exemption.

CITY waives any requirement for ATTORNEY to obtain a City of Torrance business license for the purpose of work assigned pursuant to this Agreement.

CITY OF TORRANCE,
a municipal corporation

JEROLD A. GODDARD, ESQ.,
an individual

By: Frank Scotto
Frank Scotto, Mayor

Jerrold A. Goddard
Jerrold A. Goddard

ATTEST:

Sue Herbers
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: John L. Fellows III

AGREEMENT FOR LEGAL SERVICES
JEROLD A. GODDARD, ESQ.

THIS RETAINER AGREEMENT is made this 1st day of July, 2012, by the CITY OF TORRANCE, a municipal corporation, ("CITY"), and JEROLD A. GODDARD, ESQ. ("ATTORNEY").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Torrance City Council authorization on July 17, 2012.
2. The CITY is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
3. The ATTORNEY is member of the State Bar of California in good standing, authorized to practice law under the statutes of the State of California.
4. The CITY and ATTORNEY desire to enter into an Agreement for services upon the terms and conditions herein.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover services rendered from July 1, 2012, and until terminated. This agreement supersedes any previous agreements.
2. **Services to be Provided.** The services to be performed by ATTORNEY shall consist of the following: Professional Legal Services as assigned by the City Attorney's Office.
3. **Independent Contractor.** It is agreed that ATTORNEY shall work as an independent contractor and not as employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
4. **Compensation** ATTORNEY shall be compensated as follows:

- 3.1 Amount. (\$150 per hour). Compensation under this Agreement shall be paid only for assigned work and after approval of hourly billing statement by the City Attorney.
- 3.2 Payment. For work under this Agreement, payment shall be made per monthly invoice. ATTORNEY will receive a 1099 M Form at the end of each calendar year.
- 3.3 Records of Expenses. ATTORNEY shall keep accurate records of time and expenses. These records will be made available to CITY.
- 3.4 Hours. No specific number of hours of work is guaranteed. It is expected that Attorney's services will be on an as needed basis depending upon the work assigned. ATTORNEY will retain control of the manner and mean of accomplishing the work.
- 3.5 Termination. CITY and ATTORNEY shall have the right to terminate this Agreement, without cause, by giving fifteen (15) days written notice.

5. **Insurance Requirements.**

- 4.1 Workers' Compensation Insurance. ATTORNEY shall maintain Workers' Compensation Insurance where applicable.
- 4.2 Insurance Amounts. ATTORNEY is not authorized to drive an automobile for the CITY or on CITY business. ATTORNEY will maintain adequate insurance on his private vehicles for any travel on City business.

6. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

7. **Non-Discrimination.** ATTORNEY covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

8. **Compliance with Law.** ATTORNEY shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

9. **Ownership of Work Product.** All documents or other information developed or received by ATTORNEY in the course and scope of work for the City shall be the property of CITY. ATTORNEY shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

10. **Conflict of Interest and Reporting.** ATTORNEY shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement. ATTORNEY agrees to complete and file a California State Form 730 disclosure statement if required by the City Attorney.
11. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.
- a. Address of ATTORNEY' OFFICE is as follows:
- 611 Susana Ave,
Redondo Beach, Ca 90277
- b. Address of CITY is as follows:
- City Attorney's Office
3031 Torrance Blvd.
Torrance, California 90503
12. **Licenses, Permits, and Fees.** ATTORNEY shall obtain and maintain a current **California State Bar License**, and all permits, fees, or licenses as may be required by this Agreement. Attorney is required may be required to have a City Business License.
13. **Familiarity with Work.** By executing this Agreement, ATTORNEY warrants that: (1) he has investigated the work to be performed, (2) he has investigated the site of the work and is aware of all conditions there; and (3) he understands the difficulties and restrictions of the work under this Agreement. Should ATTORNEY discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at ATTORNEY'S risk, until instructions are received from CITY.
14. **Time of Essence.** Time is of the essence in the performance of this Agreement.
15. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement or any portion shall be assigned by ATTORNEY without prior consent of the CITY ATTORNEY.
16. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
17. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written

agreement executed by CITY and ATTORNEY.

- 18. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Los Angeles County Superior Court.
- 19. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.
- 20. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
- 21. **Confidentiality of Legal Matters Assigned.** The nature of the work assigned to ATTORNEY will deal with confidential information involving prosecution matters, police investigative files and personnel records. ATTORNEY will be granted access to city records and agrees to maintain the highest standards of confidentiality and security regarding these matters. During the period of this agreement, ATTORNEY will represent no other client as a criminal defense attorney.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

CITY OF TORRANCE,
a municipal corporation

By: _____
Frank Scotto, Mayor

"ATTORNEY"

By: _____
Jerold A. Goddard, Esq.

Date: _____

ATTEST:

Sue Herbers, City Clerk

JOHN L. FELLOWS III
City Attorney

By: _____