

Council Meeting of
February 26, 2008

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

Members of the Council:

**SUBJECT: City Attorney - Approve Fee Amendment for Legal Services
Expenditure: \$15,000**

RECOMMENDATION

Recommendation of the City Attorney that the City Council approve the Second Amendment to the Fee Agreement (C2005-214) with the law firm of Nossaman, Guthner, Knox & Elliott, LLP, to represent the City with respect to proceedings at the Local Agency Formation Commission (LAFCO) to realign the boundaries of Torrance and the City of Rolling Hills Estates for an additional \$15,000 for a total contract amount not to exceed \$39,000.

Funding

Funding is available from the City Attorney's Operating Budget.

BACKGROUND AND ANALYSIS

On October 18, 2005, the City Attorney entered into a Fee Agreement for legal services with the law firm of Nossaman, Guthner, Knox & Elliott, LLP to represent the City with regard to proceedings to align the boundaries of Torrance and the City of Rolling Hills Estates in an amount not to exceed \$10,000.

On December 6, 2006, the City Manager approved the Amendment to the Fee Agreement with the law firm of Nossaman, Guthner, Knox & Elliott, LLP in the additional amount of \$14,000 for a not to exceed total amount of \$24,000.

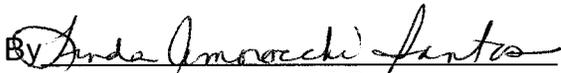
Counsel has provided the City with an estimate of additional costs in the amount of \$15,000 for a not to exceed amount of \$39,000. Therefore, the City Attorney recommends that the City Council approve the Second Amendment to the Fee

[Item to approve Nossaman funding]

Agreement with the law firm of Nossaman, Guthner, Knox & Elliott, LLP to provide legal services in the LAFCO proceeding in the additional amount of \$15,000 for a not to exceed amount of \$39,000 to contract No. C2005-214.

Respectfully submitted,

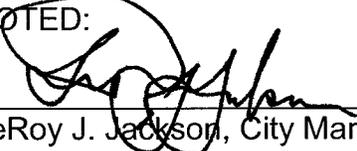
John L. Fellows III
City Attorney

By 
Linda Amorocchi Santos
Law Office Administrator

CONCUR:


John L. Fellows III, City Attorney


Eric E. Tsao, Finance Director

NOTED:

LeRoy J. Jackson, City Manager

Attachment: A) Second Amendment to Fee Agreement

SECOND AMENDMENT TO FEE AGREEMENT FOR LEGAL SERVICES

This Second Amendment to Fee Agreement for legal services (“Amendment”) is made and entered into as of December 1, 2007, by and between the **CITY OF TORRANCE**, a municipal corporation (“CITY”), and **NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP** (“FIRM”).

RECITALS:

- A. CITY and FIRM entered into a Fee Agreement for Legal Services (“Fee Agreement”) on October 18, 2005, in the amount of \$10,000. A copy of that Fee Agreement for Legal Services is attached as Exhibit A.
- B. On December 6, 2006, the CITY MANAGER approved additional funding in a total not to exceed amount of \$24,000. A copy of that First Amendment is attached as Exhibit B.
- C. FIRM advised that an additional \$15,000 is required to fund the litigation in this matter for a total not to exceed amount of \$39,000.

AGREEMENT:

- 1. The Fee Agreement for Legal Services (Contract No. C2005-214) and its Amendments are ratified and extended in an amount not to exceed the sum of \$39,000 unless otherwise first approved in writing by the CITY.

2. In all other respects the Fee Agreement between the CITY and FIRM is hereby ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE,
a municipal corporation

NOSSAMAN, GUTHNER, KNOX
& ELLIOTT, LLP

By: _____
Frank Scotto, Mayor

By: _____
Lloyd W. Pellman, Esq.

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

Attachments: Exhibit A Fee Agreement
Exhibit B First Amendment to Fee Agreement

LAW OFFICES

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

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THIRTY-FOURTH FLOOR
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18101 VON KARMAN AVENUE
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(916) 442-8888

THIRTY-FIRST FLOOR
445 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90071-1602
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AUSTIN, TEXAS 78701-2746
(512) 370-4977

REFER TO FILE NUMBER

111111 - 2222

October 18, 2005

John L. Fellows III
City Attorney
City of Torrance
3031 Torrance Boulevard
Torrance, CA 90503-5059

Re: Engagement for Services

Dear John:

We are very pleased to have the opportunity to provide legal services to the City of Torrance. (The terms "you" and "yours" as used in this letter shall refer to the client). We expect that these services will be provided principally by attorneys resident in our Los Angeles Office, although we may call upon attorneys in our other offices to provide advice or assistance on your matter if appropriate. This letter will serve to record our agreement of the terms and conditions of our representation.

1. You have asked us and we agree to represent the City of Torrance with respect to proceedings at the Local Agency Formation Commission to realign the boundaries of Torrance and the City of Rolling Hills Estates. The client has appointed you as its designee to receive our billings and other information with respect to this Agreement and to give us instructions as to how we are to provide service to the client under this Agreement.

2. On matters covered by this Agreement, we agree to provide such legal services as we determine are reasonably required to represent you, to take reasonable steps to keep you informed of facts and developments concerning the subject matter of this engagement as they come to our attention, and to respond to your reasonable inquiries. You agree to cooperate with us, to keep us informed of developments, to abide by this Agreement and to pay our statements for services in a timely manner.

3. Our fees for services provided to you pursuant to this Agreement will be calculated and billed based upon hourly rates established for each attorney,

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paralegal and clerk rendering services on your matters. Our statements for services will provide you with a description of the services performed, the date they were performed, the time devoted to your matters and the specific hourly rate of the attorney, paralegal or clerk that performed the services on your behalf.

4. The hourly rates of individuals who are currently expected to perform services with respect to your matters are set forth on Attachment A hereto and will generally be recorded and billed in tenth-hour increments. If other personnel are asked to perform services, you will be informed of their billing rates on the first statement following their initial service. We expect that the attorneys listed on Attachment A will render the bulk of the services. From time to time, our rate structure in general, or the rates of particular attorneys, paralegals or clerks, may be increased. If so, you will be advised of the new rates. The new rates shall apply to all work performed after you have been advised of the new rates.

5. Our hourly rates apply to all time spent on your behalf, including but not limited to court appearances; motion practice; preparing, analyzing, reviewing and revising correspondence and documents; factual and legal research; consultation and advice; conducting negotiations; engaging in depositions and other discovery; conferences; preparing for and conducting trials and appeals; out of town travel; conferring with other attorneys in our firm, or with witnesses or attorneys also involved in the matter; and such other services of a professional nature as this engagement may require.

6. We will ordinarily incur various costs and expenses or will provide certain in-house services while performing legal services. You agree to pay for these items in addition to our fees for legal services. The costs and expenses and in-house services may include, but will not necessarily be limited to, filing fees fixed by law or assessed by courts or other agencies; court reporters' fees; witness fees; experts' fees; consultants' fees; process server fees; investigation expenses; out of town travel expenses; long distance telephone charges; messenger and private courier delivery charges; photocopying and other reproduction services; computerized research charges; and similar items.

In-house services such as duplicating and fax expenses will be charged in accordance with our general firm policies which are designed to reimburse us for our cost of providing those services. Currently, our firm charges \$1 for outgoing faxes and 15 cents per page for copying. External costs and expenses are charged at our cost, except for computer research for which the firm maintains fixed subscription charges with the service providers. Instead of prorating the cost of the fixed subscription charges among all of the clients using computerized research during a given month, we simply bill the clients at the provider's regular rates which may be more or less than a

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prorated share of our monthly subscription fee depending upon the usage in any given month. We will not charge you for word processing, overtime expenses associated with administrative or secretarial personnel, local phone calls and similar items unless these items are unusually large in amount and we obtain your agreement in advance. We will not add a "handling" charge for costs and expenses incurred on your behalf.

We are normally not required to advance payment for any external expenses. Instead, clients agree to pay such charges directly to the vendors, in a timely manner, upon our submission of their invoices to them. We may, from time to time, but are not required to, pay minor expenses of outside vendors as a convenience to you and will then include them within our statements for services. In addition, if you do not make timely payment to vendors, we reserve the right to pay those vendors on your behalf and include such charges in our statements and require reimbursement from you. It is important that vendors be promptly reimbursed so that we can retain good professional relationships with those vendors.

7. Our files for work prepared pursuant to this Agreement are your property. We will release our files for work performed pursuant to this Agreement to you or to anyone else you designate upon your written request delivered to the attorney in charge of this matter. However, you agree that we may, in our sole discretion, copy all or any portion of the file and charge the copying costs to you, and that we may have a reasonable period of time before releasing the documents to you or anyone else you designate in order to copy all or any portion of the files you have directed us to surrender. We will, from time to time, send portions of your files that are not currently needed to an off-site storage facility. The cost of this facility will be our sole expense. However, we are not the guarantor of the security of any off-site storage facility. Accordingly, you agree that the firm will not be responsible for any damages which may occur as a result of the loss of any of your files which we store at an off-site storage facility. You also agree that we may, after the passage of two years without our having performed any work for you pursuant to this engagement for services, destroy your files unless you provide us with written instruction to forward the files to you or to another person you designate.

8. You agree to keep us informed of any change in your address or telephone numbers or electronic mail address so that we may effectively communicate with you. We will also advise you promptly of any change in the firm's business address, electronic mail address or telephone or facsimile numbers. You agree that we may communicate with you via electronic mail even though it may not be completely secure.

9. Please be advised that we have adopted a privacy policy in compliance with the requirements of the Gramm-Leach-Bliley Act, a copy of which is

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attached to this letter. If you have any questions concerning our Privacy Policy, please contact us.

10. To aid in your matters, it may become necessary to hire experts, consultants or investigators. Such persons will be employed by us on your behalf, not by you, so as to protect any privileged work; but we will not hire such persons unless you approve and also agree to pay their fees and charges. The responsibility to pay for their services is solely yours.

11. We will send you periodic statements for fees and costs incurred. Each statement will be payable upon presentation. If any statement or any portion thereof is not paid within 90 days, then the unpaid amount of such statement will bear interest at the maximum legal rate allowed by law, but not in excess of twelve percent interest per annum compounded monthly, and we will also have the right to withdraw as your attorneys.

12. We require a retainer of \$1,000.00, payable before we commence work pursuant to this Agreement. We will hold the retainer in the firm's client trust account. We may apply the retainer to legal fees and costs which are not paid when due. Upon conclusion of our professional services to you, we will return any portion of the retainer not so applied. The amount of the retainer does not set a limit on the amount of our legal fees and expenses and is not an estimate of the amount of our fees and expenses on this engagement. You understand that our agreement is based strictly upon hourly rates and that any opinions we provide to you from time to time about what the services we are providing pursuant to this agreement may cost are simply estimates and do not constitute an amendment of this agreement or a limitation on the amount of our legal fees.

It is understood and agreed that the provision of the retainer does not relieve you of your responsibility to pay Nossaman's invoices on a timely basis from funds other than the retainer. Nossaman may apply the retainer to legal fees and costs which are not paid when due, and may, in its sole discretion, require replenishment of the retainer to its original level if it does so.

You agree that you will pay to us any additional retainers as we may reasonably determine are necessary in view of the likely scope of future fees and disbursements, it being understood that the retainers are designed to minimize or avoid any credit risk to Nossaman. You agree to pay such additional retainers within 30 days of our written request. You authorize Nossaman to withdraw the principal from any and all retainers to pay legal fees and costs as they are incurred to the extent you do not pay any invoice within 30 days. You will receive monthly invoices as the costs and fees

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are incurred. **Please read your statements carefully and immediately notify Nossaman of any error.**

13. You may discharge us as your attorneys at any time. We may withdraw as your attorneys with your consent, or for good cause. Good cause includes but is not limited to the following: your breach of this Agreement; your failure to pay our bills on time; your refusal to cooperate with us; your refusal to follow our advice on a material matter; the development of irreconcilable disagreement between you and us as to the conduct of the engagement; or any other fact or circumstance that would render our continuing representation contrary to your interests, or to law, or to the rules of professional conduct. Failure to withdraw as your attorneys on any one occasion shall not be a waiver of our right to do so if such other occasions arise.

If you discharge us, or if we elect to withdraw, you agree to secure forthwith other counsel of your own selection to represent you and, if we are your attorneys of record in any litigation, to cooperate fully in substituting such new counsel as your attorneys of record in the litigation.

14. Nothing in this Agreement and nothing in our statements to you should be construed as a guarantee or promise about the outcome of the client's matter or any phase thereof. We make no such guarantees or promises. Comments about the course or outcome of your matter or any phase thereof which we may make from time to time are expressions of opinion only. You acknowledge that the amount of legal fees and costs which may be incurred on your behalf pursuant to this Agreement is not capable of precise prediction; and you acknowledge that we have made no guarantees or promises and that you have set no limits with regard to the cost of services we provide you. We both acknowledge that this Agreement constitutes the entire agreement regarding our engagement to provide you with legal services.

15. If an action or proceeding is commenced to enforce this Agreement or any provision hereof, the prevailing party in such an action or proceeding shall be entitled to recover the reasonable amount of his, her or its fees and costs thereof, in addition to compensatory damages. For the purposes of enforcing this Agreement only, and as otherwise required by law, you agree that this Agreement may be disclosed to a court or arbitrator.

16. This Agreement is made under and shall be construed in accordance with the substantive laws of the State of California without reference to its choice of law rules.

17. We carry professional liability insurance which would cover the services we will be providing to you under the terms of this Agreement. That insurance is subject to a significant self-insured retention.

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18. This Agreement will take effect when you sign this Agreement and return it to us together with the retainer described in paragraph 13 of this Agreement, \$1,000.00; but its effect will be retroactive to the date we first performed services on your behalf.

We are very proud of our client relationships, and occasionally identify clients to others who ask about our client base, or in institutional materials. Unless you object in writing, we assume that you agree that we may state that we represent you in such matters as we deem appropriate, although of course we would not publish or disseminate any confidential information pursuant to the privacy policy attached hereto.

If these terms are acceptable to you, please sign in the space provided below and return this Agreement to us in the envelope enclosed for your convenience, together with any retainers required by this Agreement.

We appreciate your confidence in our firm and look forward to working with you.

Sincerely,



Lloyd W. Pellman
 of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

LWP/vcd

Enclosure

ACCEPTANCE

I have read and understand the foregoing terms and agree to them as of the date that Nossaman, Guthner, Knox & Elliott LLP first provided services to the City of Torrance.

Dated: 10/25/2005 City of Torrance

By: [Handwritten Signature]
 Printed Name: John L Fellows III
 Title: City Attorney

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ATTACHMENT A TO FEE AGREEMENT

Billing Rates, charged in one-tenth hour increments:

TIMEKEEPER

Hourly Rate

Attorneys

Partners:

Lloyd W. Pellman

\$350.00

Associates:

Melissa A. Poole

\$200.00

Paralegals/Clerks:

If needed, will be billed at rates
 between \$40-\$145 per hour



Nossaman Partner



Client Initials

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PRIVACY POLICY OF NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

Lawyers, as providers of certain personal services, are now required by the Gramm-Leach-Bliley Act to inform their clients of their policies regarding privacy of client information. Our law firm understands your concerns as a client for privacy and the need to ensure the privacy of all your information. Your privacy is important to us and maintaining your trust and confidence is a high priority. Lawyers have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by such Act. Therefore, we have always protected your right to privacy. The purpose of this notice is to explain, as now required by law, our Privacy Policy with regard to personal information about you that we obtain and how we keep that information secure.

NONPUBLIC PERSONAL INFORMATION WE COLLECT

We collect nonpublic personal information about you that is provided to us by you or obtained by us with your authorization or consent, or otherwise furnished to us in the performance of our engagement, as through discovery in litigation.

WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT OUR CLIENTS OR FORMER CLIENTS TO ANYONE, EXCEPT AS PERMITTED OR REQUIRED BY LAW AND ANY APPLICABLE STATE ETHICS RULES.

We do not disclose any nonpublic personal information about current or former clients obtained in the course of representation of those clients, except as expressly or impliedly authorized by those clients to enable us to effectuate the purpose of our representation or as required or permitted by law or applicable provisions of codes of professional responsibility or ethical rules governing our conduct as lawyers. In that regard, California law generally provides that lawyers are absolutely required not to reveal confidential information about clients, except as authorized by the client or as compelled by law.

CONFIDENTIALITY AND SECURITY

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and to comply with professional guidelines or requirements of law. In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

CONTRACT AUGMENTATION APPROVAL

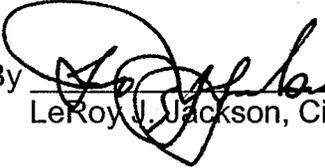
This Contract Augmentation Approval (APPROVAL) is made with reference to the following facts:

1. On October 18, 2005, the City Attorney entered into an Agreement with the law firm of Nossaman, Guthner, Knox & Elliott, LLP to provide the City with legal services relating to proceedings at the Local Agency Formation Commission to realign the boundaries of Torrance and the City of Rolling Hills Estates (Chandler Landfill).
2. That Agreement (C 2005-214) a copy of which is attached hereto as Exhibit A, was signed by the City Attorney in an authorized amount not to exceed \$10,000 in accordance with City contract authority and procedure.
3. Continued costs associated with this matter mandate that the authorized amount be increased to a "not to exceed amount of \$24,000."

THEREFORE:

Pursuant to the authority granted to the City Manager under Section 22.3.13 of the Torrance Municipal Code, APPROVAL is hereby granted authorizing the payment in an amount not to exceed an aggregate of \$24,000 under Agreement C 2005-214.

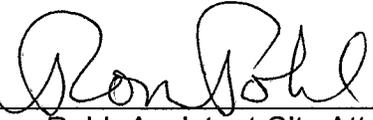
CITY OF TORRANCE

By: 
LeRoy J. Jackson, City Manager

Date: 6 Dec. 2006

CONCUR AND
APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: 
Ron Pohl, Assistant City Attorney

Date: 12/05/06

C 2005-214

COPY