

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: \$60,000**

RECOMMENDATION

Recommendation of the City Attorney that the City Council approve the Third Amendment to the Fee Agreement (C2005-145) with the law firm of Liebert Cassidy Whitmore to provide legal services relating to a personnel termination appeal proceeding for an additional \$60,000 for a total contract amount not to exceed \$149,000.

Funding

Funding is available from the Police Department's Operating Budget.

BACKGROUND AND ANALYSIS

On June 15, 2005, the City Manager entered into a Fee Agreement for legal services with the law firm of Liebert Cassidy Whitmore to represent the City with regard to a personnel termination appeal proceeding in an amount not to exceed \$24,000.

On February 28, 2006, the City Council approved the Amendment to the Fee Agreement with the law firm of Liebert Cassidy Whitmore in the additional amount of \$25,000 for a not to exceed total amount of \$49,000.

On July 17, 2007, the City Council approved a Second Amendment to the Fee Agreement in the additional amount of \$40,000 for a not to exceed total amount of \$89,000.

Counsel has provided the City with an estimate of additional costs to defend the appeal in this proceeding in the additional amount of \$60,000 for a not to exceed amount of \$149,000. Therefore, the City Attorney recommends that the City Council approve the

Third Amendment to the Fee Agreement with the law firm of Liebert Cassidy Whitmore to provide legal services relating to a personnel termination appeal proceeding in the additional amount of \$60,000 for a not to exceed amount of \$149,000 to contract No. C2005-145.

Respectfully submitted,

John L. Fellows III
City Attorney

By Linda Amorocchi Santos
Linda Amorocchi Santos
Law Office Administrator

CONCUR:

John L. Fellows III
John L. Fellows III, City Attorney

Eric E. Tsao
Eric E. Tsao, Finance Director

John Neu
John Neu, Police Chief

NOTED:
LeRoy J. Jackson
LeRoy J. Jackson, City Manager

Attachment: A) Third Amendment to Fee Agreement

THIRD AMENDMENT TO FEE AGREEMENT FOR LEGAL SERVICES

This Third 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 **LIEBERT CASSIDY WHITMORE**, a professional corporation (“FIRM”).

RECITALS:

- A. CITY and FIRM entered into a Fee Agreement for Legal Services (“Fee Agreement”) on June 15, 2005 in the amount of \$24,000. A copy of the Fee Agreement for Legal Services is attached as Exhibit A.
- B. On February 28, 2006 the CITY COUNCIL approved additional funding in the amount of \$25,000 for a total not to exceed amount of \$49,000. A copy of the First Amendment is attached as Exhibit B.
- C. On July 17, 2007, the City Council approved additional funding in the amount of \$40,000 for a total not to exceed amount of \$89,000. A copy of that Second Amendment is attached as Exhibit C.
- D. FIRM advised that an additional \$60,000 is required to fund the appeal in this personnel termination proceeding for a total not to exceed amount of \$149,000.

AGREEMENT:

- 1. The Fee Agreement for Legal Services (Contract No. C2005-145) and its amendments are ratified and extended in an amount not to exceed the sum of \$149,000 unless otherwise first approved in writing by the CITY.

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

CITY OF TORRANCE,
a municipal corporation

LIEBERT CASSIDY WHITMORE
a professional corporation

By: _____
Frank Scotto, Mayor

By: _____
Melanie M. Poturica,
Managing Partner

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
Exhibit C Second Amendment to Fee Agreement

AGREEMENT FOR SPECIAL SERVICES

This Agreement is entered into between the law firm of LIEBERT CASSIDY WHITMORE, A Professional Corporation ("Attorney"), and the CITY OF TORRANCE, A Municipal Corporation ("City").

1. Conditions

This Agreement will not take effect, and Attorney will have no obligation to provide services, until City returns a properly signed and executed copy of this Agreement.

2. Attorney's Services

Attorney agrees to provide City with consulting, representational and legal services pertaining to the John Brumbaugh Termination Appeal.

3. Fees, Costs, Expenses

City agrees to pay Attorney the sums billed monthly for time spent by Attorney in providing the services, including reasonable travel time.

The range of hourly rates for Attorney time is from One Hundred Sixty to Two Hundred Sixty Dollars (\$160.00 - \$260.00), and from Ninety-Five to One Hundred Ten Dollars (\$95.00 - \$110.00) for time of paraprofessional staff. Scott Tiedemann's hourly rate is Two Hundred Fifty Dollars (\$250.00). Attorney reviews its hourly rates on an annual basis and, if appropriate, adjusts them effective January 1. Attorneys and paraprofessional staff bill their time in minimum units of one-tenth of an hour. Communications advice (telephone, voice-mail, e-mail) is billed in a minimum increment of three-tenths (.30) of an hour.

C2005-145

COPY

City agrees to reimburse Attorney for necessary costs and expenses incurred by Attorney on behalf of City. Attorney bills photocopying charges at Fifteen Cents (\$.15) per page and facsimile charges at Fifty Cents (\$0.50) per page. A Public Agency Fee Schedule is attached to this Agreement.

Payment by City against monthly billings is due upon receipt of statements, and is considered delinquent if payment is not received within thirty (30) days of the date of the invoice.

The California Business & Professions code requires us to inform you whether we maintain errors and omissions insurance coverage applicable to the services to be rendered to you. We hereby confirm that the firm does maintain such insurance coverage.

4. **Arbitration of Professional Liability or Other Claims**

Disputes. If a dispute between City and Attorney arises over fees charged for services, the controversy will be submitted to binding arbitration in accordance with the rules of the California State Bar Fee Arbitration Program, set forth in California Business and Professions Code, sections 6200 through 6206. The arbitrator or arbitration panel shall have the authority to award to the prevailing party attorneys' fees, costs and interest incurred. Any arbitration award may be served by mail upon either side and personal service shall not be required.

If a dispute arises between City and Attorney over any other aspect of the attorney-client relationship, including, without limitation, a claim for breach of professional duty, that dispute will also be resolved by arbitration. It is understood that any dispute as to any alleged breach of professional duty (that is, as to whether any legal

services rendered under this agreement were allegedly unnecessary, unauthorized, omitted entirely, or were improperly, negligently or incompetently rendered) will be determined by submission to arbitration as provided by California law, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. **Both parties to this agreement, by entering into it, are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration.** Each party is to bear its own attorney's fees and costs.

5. File Retention

After our services conclude, Attorney will, upon City's request, deliver the file for the matter to City, along with any funds or property of City's in our possession. If City requests the file for the matter, Attorney will retain a copy of the file at the City's expense. If City does not request the file for this matter, we will retain it for a period of seven (7) years after this matter is closed. If City does not request delivery of the file for this matter before the end of the seven (7) year period, we will have no further obligation to retain the file and may, at our discretion, destroy it without further notice to City. At any point during the seven (7) year period, City may request delivery of the file.

6. Assignment

This Agreement is not assignable without the written consent of City.

7. Independent Contractor

It is understood and agreed that Attorney, while engaged in performing the terms of this Agreement, is an independent contractor and not an employee of City.

8. Authority

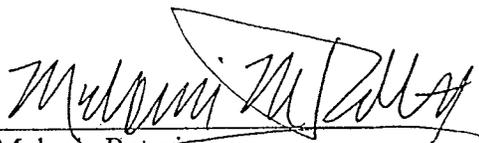
The signators to this Agreement represent that they hold the positions set forth below their signatures, and that they are authorized to execute this Agreement on behalf of their respective parties and to bind their respective parties hereto.

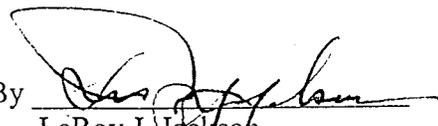
9. Term

This Agreement is effective June 15, 2005, ongoing and may be modified by mutual agreement of the parties. This agreement shall be terminable by either party upon thirty (30) days written notice.

LIEBERT CASSIDY WHITMORE,
A Professional Corporation

CITY OF TORRANCE
A Municipal Corporation

By 
Melanie Poturica
Managing Partner

By 
LeRoy J. Jackson
City Manager

Date 6-15-05

Date 11 July 2005

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: 

I. PUBLIC AGENCY FEE SCHEDULE

(Hourly Rates)

Partners	\$225.00 - \$260.00
Of Counsel	\$225.00 - \$240.00
Associates	\$160.00 - \$210.00
Labor Relations Professional	\$160.00 - \$180.00
Paraprofessionals	\$95.00 - \$110.00

II. COST SCHEDULE

1. Photocopies	\$0.15 per copy
2. Facsimile Transmittal	\$0.50 per page

AMENDMENT TO FEE AGREEMENT FOR LEGAL SERVICES

This Amendment to Fee Agreement for legal services ("Amendment") is made and entered into as of December 1, 2005, by and between the **CITY OF TORRANCE**, a municipal corporation ("CITY"), and **LIEBERT CASSIDY WHITMORE**, a professional corporation ("FIRM").

RECITALS:

- A. CITY and FIRM entered into a Fee Agreement for Legal Services ("Fee Agreement") on June 15, 2005 in the amount of \$24,000.
- B. FIRM advised CITY that an additional \$25,000 is required to fund the Contract through completion of the appeal proceedings.

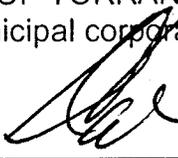
AGREEMENT:

1. Services to be Performed by FIRM.
FIRM will provide the services set forth in the Fee Agreement attached as Exhibit A and incorporated into this Amendment by this reference. FIRM warrants that all services set forth in the Fee Agreement and Amendments will be performed in a competent, professional and satisfactory manner.
2. FIRM's Fee.
For services rendered pursuant to this Amendment, 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 this Amendment, exceed the sum of **\$49,000.00** unless otherwise first approved in writing by CITY.
3. Conflict of Interest.
FIRM warrants that all necessary conflict clearances have been obtained.
4. Insurance.
FIRM must maintain at its sole expense professional liability coverage with combined single limits of at least \$1,000,000 per occurrence.
5. Business License.
FIRM will not be required to obtain a City business license.

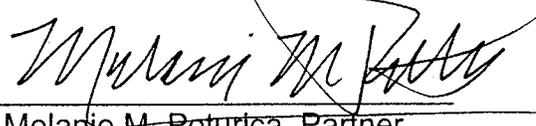
C2005-145

CITY OF TORRANCE,
a municipal corporation

LIEBERT CASSIDY WHITMORE
a professional corporation

By: 

Dan Walker, Mayor

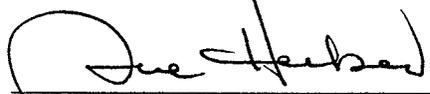
By: 

Melanie M. Poturica, Partner

APPROVED AS TO FORM:

ATTEST:

JOHN L. FELLOWS III
City Attorney



Sue Herbers, CMC
City Clerk

By: 

Exhibit A 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 May 1, 2007, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and LIEBERT CASSIDY WHITMORE, a professional corporation ("FIRM").

RECITALS:

- A. CITY and FIRM entered into a Fee Agreement for Legal Services ("Fee Agreement") on June 15, 2005 in the amount of \$24,000. A copy of that Fee Agreement for Legal Services is attached as Exhibit A (Contract No. C2005-145)
- B. On February 28, 2006 the CITY COUNCIL approved additional funding in the amount of \$25,000 for a total not to exceed amount of \$49,000. A copy of that First Amendment is attached as Exhibit B (Contract No. C2005-145)
- C. FIRM advised that an additional \$40,000 is required to fund the litigation in this matter.

C2005-145

AGREEMENT:

1. Services to be Performed by FIRM.
FIRM will provide the services set forth in the Fee Agreement and incorporated into this Second Amendment by this reference. FIRM warrants that all services set forth in the Fee Agreement and Amendments will be performed in a competent, professional and satisfactory manner.
2. FIRM's Fee.
For services rendered pursuant to this Second Amendment, 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 this Amendment, exceed the sum of **\$89,000.00** unless otherwise first approved in writing by CITY.
3. Conflict of Interest.
FIRM warrants that all necessary conflict clearances have been obtained.

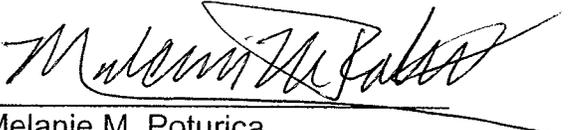
- 4. Insurance.
FIRM must maintain at its sole expense professional liability coverage with combined single limits of at least \$1,000,000 per occurrence.

- 5. Business License.
FIRM will not be required to obtain a City business license.

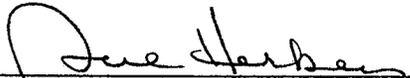
CITY OF TORRANCE,
a municipal corporation

LIEBERT CASSIDY WHITMORE
a professional corporation

By: 
Frank Scotto, Mayor

By: 
Melanie M. Poturica,
Managing Partner

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