

Council Meeting of
February 3, 2009

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

Members of the Council:

SUBJECT: City Attorney – Approve Second Amendment to Post-Retirement At-Will Employment Agreement to Extend Term and Scope of Service

Expenditure: None

RECOMMENDATION

Recommendation of the city attorney that the City Council approve a Second Amendment to Post-Retirement At-Will Employment Agreement with Robert Acciani, to extend the term of the agreement through January 7, 2010, and to add the defense of two additional police cases to the scope of services under the agreement.

Funding

Funding for this agreement has previously been approved. No additional funding is being requested at this time.

BACKGROUND AND ANALYSIS

On January 8, 2008, the city manager entered into a Post-Retirement At-Will Employment Agreement (Contract No. C2008-003, the "Agreement") with Robert Acciani (Employee), in an amount not to exceed \$24,000. On April 27, 2008, the City Council approved the First Amendment to the Post-Retirement At-Will Employment Agreement and authorized an additional \$50,000, for a total not to exceed \$74,000.

Employee is paid at the rate of \$90.52 per hour and a total of \$50,075.66 has been spent under the Agreement thus far: 378.7 hours in FY 2007-2008 and 174.5 hours in FY2008-2009. The amount remaining in the contract is \$23,924.34. This amount is anticipated to be sufficient funding for this Agreement for the balance of this fiscal year, so no additional funding is being requested at this time.

Employee was hired as a temporary appointee to handle the defense of three police cases for the City: *Bayley*, *Suarez* and *Plowden*. Employee settled *Bayley*, obtained a defense verdict in *Suarez*, which is now final, and obtained a defense verdict in *Plowden* in December 2008. Plaintiff's attorney in *Plowden* has filed a motion for new trial, which

has been briefed. The motion for new trial has been taken under submission by the judge.

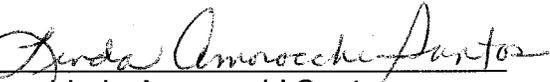
Recent staffing changes in the city attorney's office require that special counsel be retained to handle two additional litigation matters: *Vasquez* and *Sandberg*. These matters are expected to be active through the conclusion of Fiscal Year 2008-2009 and into the first half of Fiscal Year 2009-2010.

Pursuant to the California Government Code and regulations of the California Public Employees' Retirement System (PERS), temporary post-retirement employment of city employees may not exceed 960 hours per fiscal year and must be for a limited duration or to satisfy an emergency need. Employee has worked a total of 174.5 hours so far this Fiscal Year 2008-2009 and could work as many as 785.5 additional hours during the remainder of the current fiscal year, although existing funding would only support 264.3 hours.

The city attorney recommends that the City Council approve the Second Amendment to the Post-Retirement Agreement (Attachment A) with Robert Acciani, to extend the term of the Agreement through January 7, 2010, and to add defense of the *Vasquez* and *Sandberg* matters to the scope of work covered by the Agreement.

Respectfully submitted,

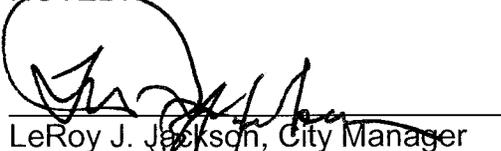
John L. Fellows III
City Attorney

By 
Linda Amorocchi Santos
Law Office Administrator

CONCUR:


John L. Fellows III, City Attorney

NOTED:


LeRoy J. Jackson, City Manager

Attachment A) Second Amendment to Post-Retirement At-Will Employment Agreement

SECOND AMENDMENT TO POST-RETIREMENT AT-WILL EMPLOYMENT AGREEMENT

This Second Amendment to Post-Retirement At-Will Employment Agreement (“Amendment”) is made and entered into as of January 8, 2009, by and between the **CITY OF TORRANCE**, a municipal corporation (“CITY”), and **Robert Acciani**, an individual (“EMPLOYEE”).

RECITALS:

- A. CITY and EMPLOYEE entered into a Post-Retirement At-Will Employment Agreement (Contract No. C2009-003, the “Agreement”) on January 8, 2008. EMPLOYEE was hired as a temporary appointee employed to handle the defense of three lawsuits against CITY’s police department: *Bayley, Suarez and Plowden*. On May 6, 2008, the City Council approved a First Amendment to Post-Retirement At-Will Employment Agreement (the “First Amendment”). A copy of the First Amendment is attached as Exhibit A to this Second Amendment.
- B. CITY is satisfied with the services of EMPLOYEE and desires to amend the scope of services set forth in Paragraph 1 of the Agreement to add defense of the *Vasquez* and *Sandberg* cases. Existing funding is anticipated to be sufficient for the remainder of this fiscal year.

AGREEMENT:

1. The Agreement, as amended by the First Amendment, is ratified and the term extended through January, 7, 2010.

2. The Scope of Duties, as set forth in Paragraph 1 of the Agreement, is amended to include, among other things, defense of *Estate of William John Vasquez et al. v. City of Torrance et al.*, USDC Case No. CV08-05901 FMC (PLAx), and *Christina Sandberg et al. v. City of Torrance et al.*, USDC Case No. CV08-08335 VDF (SSx).
3. In all other respects, the Agreement, as amended by the First Amendment, is ratified and reaffirmed and remains in full force and effect.

CITY OF TORRANCE,
a municipal corporation

ROBERT ACCIANI,
an individual

Frank Scotto, Mayor

By: _____
Robert Acciani

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

By: _____
JOHN L. FELLOWS III
City Attorney

Exhibit A: Amendment to Post-Retirement At-Will Employment Agreement

**AMENDMENT TO POST-RETIREMENT AT-WILL EMPLOYMENT
AGREEMENT**

This Amendment to Post-Retirement At-Will Employment Agreement ("Amendment") is made and entered into as of April 27, 2008 by and between the **CITY OF TORRANCE**, a municipal corporation ("CITY"), and **Robert Acciani**, an individual ("EMPLOYEE").

RECITALS:

- A. CITY and EMPLOYEE entered into a Post-Retirement At-Will Employment Agreement ("Agreement") on January 8, 2008 as a temporary appointee employed to handle the following cases: Suarez, Plowden and Bayley. A copy of that Agreement is attached as Exhibit A (Contract No. C2008-003).
- B. CITY is satisfied with the services of EMPLOYEE and desires to increase the available funding by an additional amount of \$50,000 for a not to exceed amount of \$74,000.

C2008-003

AGREEMENT:

1. The Agreement (Contract No. C2008-003) is ratified and extended to completion of the cases in an amount not to exceed the sum of \$74,000 unless otherwise first approved in writing by the CITY.

2. In all other respects, the Agreement dated January 8, 2008 between CITY and EMPLOYEE is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE,
a municipal corporation


Frank Scotto, Mayor

ROBERT ACCIANI,
an individual

By: 
Robert Acciani

ATTEST:


Sue Herbers, City Clerk

APPROVED AS TO FORM:

By: 
JOHN L. FELLOWS III
City Attorney

Exhibit A: Post-Retirement At-Will Employment Agreement

POST-RETIREMENT AT-WILL EMPLOYMENT AGREEMENT

This POST-RETIREMENT AT-WILL EMPLOYMENT AGREEMENT ("AGREEMENT") is made and entered into as of January 8, 2008 by and between CITY OF TORRANCE, a municipal corporation ("CITY"), and Robert Acciani, an individual ("EMPLOYEE").

RECITALS:

- A. EMPLOYEE has retired from public employment with CITY and is receiving or has made application to receive, service retirement benefits from the California Public Employment Retirement System ("CalPERS").
- B. A service retiree under CalPERS is permitted to obtain temporary employment as a retired annuitant by a public agency employer provided that all of the following conditions are met:
 - (1) the service retiree has the skills needed to perform work of limited duration, or the service retiree employee is needed during an emergency to prevent stoppage of public business;
 - (2) The temporary employment will not exceed 960 hours per fiscal year; and
 - (3) The rate of pay the service retiree will receive will not be less than the minimum, nor exceed the maximum that is paid to employees performing comparable duties.
- C. EMPLOYEE has the skills needed to perform work of limited duration and desires temporary post-retirement employment with CITY on terms that will not result in a reduction of CalPERS retirement benefits.
- D. CITY desires to employ EMPLOYEE on an at-will basis as a temporary appointee pursuant to Torrance Municipal Code Section 14.1.16, for a term that will not exceed 960 hours per fiscal year.

C2008-003

AGREEMENT:

1. SCOPE OF DUTIES

EMPLOYEE will be employed as a litigation attorney to handle the following cases:

- Suarez v. City of Torrance
- Plowden v. City of Torrance
- Bayley v. City of Torrance

From time to time EMPLOYEE may be assigned additional work, so long as EMPLOYEE's employment remains temporary in nature. EMPLOYEE will also perform such other duties and responsibilities as are customarily performed by other persons in similar such positions, as well as other duties which may be assigned to him by the City Attorney or the City Attorney's designee.

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2. **CARE OF WORK**

EMPLOYEE will devote all of his working time, attention, knowledge, and skills to CITY's business interests and will do so in good faith, with best efforts, and to the reasonable satisfaction of CITY. EMPLOYEE understands that he is only entitled to compensation as set forth in this AGREEMENT.

3. **TERM**

Unless earlier terminated by CITY or EMPLOYEE, this AGREEMENT will continue in full force and effect through January 7, 2009.

4. **COMPENSATION**

In consideration of the services rendered by EMPLOYEE, EMPLOYEE will be paid \$90.52 per hour.

5. **PLACE AND HOURS OF WORK**

EMPLOYEE agrees that his duties will be primarily rendered at CITY's business premises or at such other places as CITY may in good faith require. In no event may EMPLOYEE's hours of work exceed 960 hours in a fiscal year.

6. **EMPLOYEE'S TIME RECORDS**

EMPLOYEE will maintain appropriate time records, reflecting the number of hours in .25 hour increments and activities undertaken on each case on which EMPLOYEE works during any day.

7. **OFFICE SUPPORT**

CITY agrees to provide EMPLOYEE with customary secretarial and office support during the term of his employment.

8. **BUSINESS EXPENSES**

CITY will reimburse EMPLOYEE for all reasonable and necessary travel expenses and other disbursements incurred by him for on behalf of CITY in the performance of his duties under this AGREEMENT, provided EMPLOYEE presents CITY with the appropriate expense reports in a timely manner and said expenses fall within CITY policies and procedures for reimbursement of expenses.

9. **AT-WILL EMPLOYMENT**

EMPLOYEE acknowledges and agrees that his employment with CITY is expressly "at will." This means that either party may terminate EMPLOYEE's employment for any reason with or without cause.

10. **TERMINATION OF AGREEMENT FOR CONVENIENCE**

If EMPLOYEE decides to terminate the AGREEMENT for convenience prior to expiration of the term, EMPLOYEE will provide a minimum of two weeks notice to CITY. If CITY decides to terminate the AGREEMENT for convenience prior to expiration of the term, CITY will provide a minimum of two weeks notice to EMPLOYEE.

11. **TERMINATION OF AGREEMENT FOR CAUSE**
If EMPLOYEE or CITY fails to perform any term, covenant or condition in this AGREEMENT the AGREEMENT may be immediately terminated for cause, upon written notice to the other party.
12. **PROFESSIONAL LICENSES**
EMPLOYEE is obligated to maintain an active membership with the State Bar of California in order to carry out the functions and duties set forth in this AGREEMENT. CITY will pay EMPLOYEE's State Bar dues during the term of this AGREEMENT.
13. **EMPLOYEE NOT SUBJECT TO CITY EMPLOYEE RESOLUTIONS**
EMPLOYEE understands and agrees that due to the temporary and limited nature of his post-retirement employment under this AGREEMENT, EMPLOYEE's employment will not be subject to any Resolution between any employee group and CITY.
14. **NO BENEFIT ENTITLEMENTS**
EMPLOYEE will not be entitled to the benefit of any CITY policies or administrative regulations and procedures relating to evaluation, compensation, performance pay, benefits, grievances, due process, leave, transfer or seniority.
15. **CITY REPRESENTATIVE**
John L. Fellows III is designated as the "City Representative" authorized to act in CITY's behalf with respect to the work and service specified in this AGREEMENT and to make all decisions in connection with this AGREEMENT. Whenever approval, directions, or other actions are required by CITY under this AGREEMENT, those actions will be taken by the City Representative, unless otherwise stated. The City Attorney has the right to designate another City Representative at any time, by providing notice to EMPLOYEE.
16. **INDEMNIFICATION**
Pursuant to Government Code Section 995 CITY will provide for the defense of any civil action or proceeding brought against EMPLOYEE in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of CITY.
17. **RETURN OF MATERIALS**
Upon termination of EMPLOYEE's employment with CITY for any reason, including without limitation termination by CITY with or without cause, EMPLOYEE will promptly deliver to CITY any and all documents and electronic files of any kind or character relating to any litigation matters as well as any and all documents and electronic files of any kind or character relating to any other matters EMPLOYEE has handled for CITY during his employment.
18. **CONFLICT OF INTEREST**
EMPLOYEE agrees that he will not engage in any form of activity that produces a conflict of interest with CITY unless agreed to in advance and in writing.

19. NOTICE

A. All notices under this AGREEMENT must be in writing. Notice will be sufficiently given for all purposes as follows:

1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

EMPLOYEE: Robert Acciani
 1704 Espinosa Circle
 Palos Verdes, CA 90274

CITY: City Clerk
 City of Torrance
 3031 Torrance Boulevard
 Torrance, CA 90505-2970
 Fax: (310) 618-2931

AND

City Attorney
 City of Torrance
 3031 Torrance Boulevard
 Torrance, CA 90505-2970
 (310) 618-5813

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this AGREEMENT.

20. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING

This AGREEMENT is personal in nature and EMPLOYEE may not assign or subcontract work under this AGREEMENT without the prior written consent of the other.

21. INTEGRATION; AMENDMENT

This AGREEMENT represents the entire understanding of CITY and EMPLOYEE as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this AGREEMENT. The AGREEMENT may not be modified or altered except in writing signed by both parties.

22. INTERPRETATION

The terms of this AGREEMENT should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this AGREEMENT or any other rule of construction that might otherwise apply.

23. SEVERABILITY

If any part of this AGREEMENT is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the AGREEMENT will remain in full force and effect.

24. TIME OF ESSENCE

Time is of the essence in the performance of this AGREEMENT.

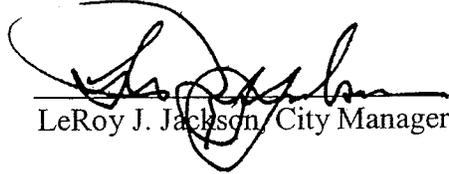
25. GOVERNING LAW; JURISDICTION

This AGREEMENT will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the AGREEMENT will be in Los Angeles County, California.

26. **COMPLIANCE WITH STATUTES AND REGULATIONS**

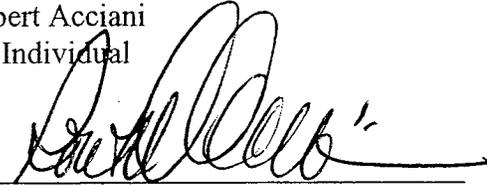
EMPLOYEE will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

CITY OF TORRANCE,
a Municipal Corporation



LeRoy J. Jackson, City Manager

Robert Acciani
An Individual

By: 

Robert Acciani

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: 
