

Council Meeting of
July 7, 2009

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

Members of the Council:

**SUBJECT: City Attorney - Approve Amendment to Agreement to Waive Any
Conflict of Interest**

Expenditure: None

RECOMMENDATION

Recommendation of the City Attorney that the City Council approve the Second Amendment to Agreement for Consulting Services (C2009-003) to waive any conflict of interest with the law firm of SMITHTRAGER LLP to provide legal services to the City in connection with the proposed purchase of the 465 Crenshaw Boulevard site.

Funding

None

BACKGROUND AND ANALYSIS

The City Manager entered into a Fee Agreement on December 1, 2008, with the law firm of SMITHTRAGER LLP in the amount of \$14,000 to provide legal services in connection with the proposed purchase of the 465 Crenshaw Boulevard site.

On February 1, 2009, the City Manager amended the Fee Agreement in an amount not to exceed \$24,000.

SMITHTRAGER LLP has disclosed to the City of Torrance that one of their clients has taken a position adverse to the City of Torrance in an unrelated case regarding water rights in the Central and West Coast Basins. SMITHTRAGER LLP has requested that the City of Torrance amend the Agreement to acknowledge the disclosure of the conflict of interest and that the City of Torrance waive any conflict of interest.

The City Attorney recommends that the City Council approve the Second Amendment to Agreement for Consulting Services to waive any conflict of interest with SMITHTRAGER LLP.

Respectfully submitted,

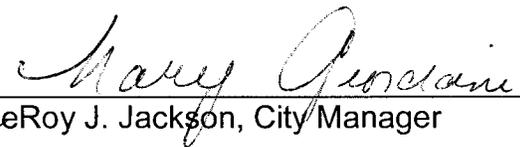
John L. Fellows III, City Attorney

By: 
Patrick Q. Sullivan
Deputy City Attorney

CONCUR:


John L. Fellows III, City Attorney

NOTED;


LeRoy J. Jackson, City Manager

Attachment A: Second Amendment to Agreement for Consulting Services

SECOND AMENDMENT TO AGREEMENT FOR CONSULTING SERVICES

WAIVER OF CONFLICTS

This Second Amendment to the Letter Agreement for professional legal services (2nd Amendment) is made and entered into as of June 1, 2009 by and between the **CITY OF TORRANCE**, a municipal corporation (“CITY”), and **SMITHTRAGER LLP**, a partnership of professional corporations (“FIRM”).

RECITALS:

- A. CITY and FIRM entered into a Letter Agreement on December 1, 2008 (the “Letter Agreement”), as amended by that certain First Amendment to Agreement for Consulting Services dated February 1, 2009 (the “1st Amendment”) (the Letter Agreement and 1st Amendment are collectively referred to as the “Agreement”), whereby CITY engaged FIRM to provide FIRM with certain legal services as identified in the Agreement. The Agreement is fully incorporated herein by this reference.
- B. Pursuant to the terms of the Agreement, FIRM may represent clients other than CITY so long as the work FIRM does for them remains unrelated to the work FIRM does for CITY, and so long as FIRM has not, as a result of its representation, obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client, could be used in any such other matter by such client to FIRM’s disadvantage.
- C. FIRM now finds itself representing a client known as Hillside Mortuary (“Hillside”) in a matter unrelated to the services of the Agreement but in a matter in which the CITY, along with numerous other parties, has taken a position adverse to the protection of certain water rights, which protection is sought by Hillside, another long-time client of the FIRM.
- D. FIRM has disclosed the nature of this potential representation of this existing client in a memorandum prepared by FIRM dated June 4, 2009 (the “Hillside Memo”).
- E. FIRM seeks a waiver of conflicts concerning its representation of Hillside from CITY.

AGREEMENT:

1. Acknowledgment of Disclosure

CITY acknowledges that it has reviewed the Hillside Memo attached as Exhibit A and incorporated into this Amendment by this reference. CITY acknowledges that the Hillside Memo fully discloses the nature of FIRM’s representation of Hillside for CITY’s conflict waiver purposes. CITY agrees that as disclosed in the Hillside Memo, FIRM’s representation of Hillside complies with the terms of the Agreement.

2. Waiver of Conflicts

CITY hereby waives all conflicts of interest in connection with FIRM’s representation of Hillside as disclosed in the Hillside Memo. FIRM may continue its representation of CITY pursuant to the Agreement and FIRM may continue its representation of Hillside without protest or interference by CITY with respect to any conflict of interest by FIRM.

CITY OF TORRANCE,
a municipal corporation

ATTEST:

By: _____
Frank Scotto, Mayor

By: _____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

AGREEMENT WITH 2ND AMENDMENT
SMITHTRAGER, LLP, a partnership of
professional corporations

JOHN L. FELLOWS III
City Attorney

By: _____

By: _____
Diane R. Smith, Partner
SMITHTRAGER, LLP

Attachment: Exhibit A– Hillside Memo



SMITH TRAGER_{LLP}

MEMORANDUM

TO: Diane R. Smith

FR: Susan M. Trager *fm*

RE: City of Torrance and Hillside Mortuary and the Motion to Amend the West Coast Basin Judgment litigation: *California Water Service Company, et al., v. City of Compton* LA Superior Court Case No. 786 656, and L.A. Superior Court Case No. 506 806

DT: June 4, 2009

CL: Hillside Mortuary; City of Torrance

I have represented Hillside Mortuary ("Hillside") for a number of years with issues involving its water rights, wastewater issues, and waste discharge permitting issues before the California Regional Water Quality Control Board, Los Angeles Region.

On the water issues, one of our assignments for Hillside was to procure additional water rights for Hillside which had insufficient rights under the Judgments entered in the West Coast Basin adjudication to satisfy its irrigation requirements. We leased water in the West Basin market to accommodate Hillside's requirements. Hillside asked us to find a willing seller of water rights to procure a permanent supply. Hillside has expanded during the last year and also found that its calculations of water demand had been incorrect.

Last year, when Hillside decided that it should purchase water rights in the West Coast Basin, we worked through an intermediary. We found a seller, negotiated a price, and then, suddenly, the seller withdrew from going through with the transaction. We went back out into the lease market, and found that we could not even lease water rights. Unbeknownst to Hillside (and to me), the large investor-owned utilities and larger public agencies (including Torrance) were holding meetings to plan significant amendments to the judgments governing both the West Coast Basin, and the adjacent Central Basin, as well. They planned to operate the basins jointly.

My analysis of the proposed amendments show that if they are approved by the Court, they would dry up the market for the smaller pumpers, significantly harming pumpers such as Hillside, and disadvantaging many of the smaller pumpers who cannot staff up to attend all of the meetings and complicated administration anticipated. I anticipate that the price of water for smaller pumpers such as Hillside will skyrocket because of speculation in the newly structured market. Hillside asked me to evaluate the pleadings served it asking the court to Amend the Judgment.

I have reviewed the pleadings. I was surprised to see that the City of Torrance was a moving party.

Because the relief sought would harm the small, non-government and non-utility pumpers, I plan to recommend to Hillside that it oppose the proposed amendments. This would place one of our clients in direct opposition to another of our clients, the City of Torrance.

The City of Torrance has joined with the Golden State Water Company, the Water Replenishment District of Southern California, the California Water Service Co., the West Basin Municipal Water District, and the cities of Los Angeles, Manhattan Beach, Inglewood, and Long Beach in an extensive planning effort to re-operate the two basins and to amend the judgments entered in both the Central Basin and in the West Basin. This coalition of large producers has already filed litigation to amend the West Basin Judgment, and has named and served Hillside. In his declaration, Mr. Robert Beste, the Director of Public Works for Torrance, has said ". . . [t]o my knowledge, no holder of groundwater rights in the West Basin objects to the Judgment Amendments". This would appear to place two of our clients at odds, because Hillside is disadvantaged. Because I did not know anything about the ongoing planning efforts, or that Torrance might be adverse to Hillside, and because we were dealing with possible contamination issues for Torrance, and water issues for Hillside, it did not occur to me to mention it to you.

In terms of relative size, Torrance holds 5,638.86 AFA in the West Coast Basin (it leases out 366 AFA to the Roman Catholic Archbishop, pumps approximately 3000 AFA, and carries over some). Hillside holds 92.30 AFA, which is 35 AFA less than it requires, which is why it has gone out into the market place first to lease, and then to purchase 35 additional acre feet.

Please advise.