Council Meeting of
July 20, 2010

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 fees

Expenditure: $55,000

RECOMMENDATION

Recommendation of the City Attorney that the City Council approve the Fourth Amendment to Fee Agreement (C2008-212) with the law firm of Liebert Cassidy Whitmore to provide legal services in the matter of Brumbaugh v. City of Torrance, Los Angeles Superior Court Case No. BS116891, for an additional $55,000 for a total not to exceed the amount of $175,000.

Funding

Funding is available from the Self-Insurance Fund.

BACKGROUND AND ANALYSIS

On September 19, 2008, the City Manager entered into Fee Agreement (Contract No. C2008-212) in an amount not to exceed $25,000 with the law firm of Liebert Cassidy Whitmore to act as legal counsel on behalf of the City in the lawsuit of Brumbaugh v. City of Torrance, Los Angeles Superior Court Case No. BS116891.

On May 5, 2009, the City Council approved a First Amendment to the Fee Agreement adding additional compensation for an amount not to exceed $45,000.

On July 14, 2009, the City Council approved a Second Amendment to the Fee Agreement in the amount of $35,000 for an amount not to exceed $80,000.

On February 23, 2010, the City Council approved a Third Amendment to the Fee Agreement in the amount of $40,000 for an amount not to exceed $120,000.

The law firm has advised the City that additional work is required to continue with this litigation in an additional amount of $55,000 for a total not to exceed the amount of $175,000.

The City Attorney recommends that the City Council approve the Fourth Amendment to the Fee Agreement (Attachment A) with the law firm of Liebert Cassidy Whitmore to act as legal counsel in the lawsuit of Brumbaugh v. City of Torrance, LASC Case Number BS116891 in an amount not to exceed $175,000.

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) Fourth Amendment to Fee Agreement

ATTACHMENT A

FOURTH AMENDMENT TO FEE AGREEMENT FOR LEGAL SERVICES

This Fourth Amendment to Fee Agreement for legal services ("Amendment") is made and entered into as of June 1, 2010, 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 September 19, 2008, in the amount of $25,000. A copy of that Fee Agreement for Legal Services in the matter of Brumbaugh v. City of Torrance, Los Angeles Superior Court Case No. BS116891 is attached as Exhibit A (Contract No. C2008-212).

B. On May 5, 2009, the City Council approved a First Amendment to the Fee Agreement in the additional amount of $20,000 for a total not to exceed the amount of $45,000. A copy of that Amendment is attached as Exhibit B.

C. On July 14, 2009, the City Council approved a Second Amendment to the Fee Agreement in the additional amount of $35,000 for a total not to exceed the amount of $80,000. A copy of that Amendment is attached as Exhibit C.

D. On February 23, 2010, the City Council approved a Third Amendment to the Fee Agreement in the additional amount of $40,000 for a total not to exceed the amount of $120,000. A copy of that Amendment is attached as Exhibit D.

E. An additional $55,000 is required to fund the litigation in this matter for a total not to exceed the amount of $175,000.

AGREEMENT:

1. Section 3 entitled "FIRM's Fee" is amended in its entirety to read:

2. FIRM's Fee.
For services rendered pursuant to this Fourth 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 ***$175,000*** unless otherwise first approved in writing by CITY.

3. In all other respects, the Agreement dated September 19, 2008, the First Amendment dated February 1, 2009, the Second Agreement dated June 1, 2009 and the Third Amendment dated November 1, 2009 is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE,
a municipal corporation

By: _____
Frank Scotto,
Mayor

LIEBERT, CASSIDY, WHITMORE,
a professional corporation

By: _____
J. Scott Tiedemann,
Partner

ATTEST:

_____
Sue Herbers

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

Exhibit A) Fee Agreement
Exhibit B) First Amendment
Exhibit C) Second Amendment
Exhibit D) Third Amendment

EXHIBIT A

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 Petition for Writ of Mandate regarding John Brumbaugh (#BS116891).

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 Ninety Dollars ($160.00 - $290.00), and from One Hundred to One Hundred Thirty Dollars ($100.00 - $130.00) for time of paraprofessional staff. Attorney reviews its hourly rates on an annual basis and, if appropriate, adjusts them effective July 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.

C20081212

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 September 19, 2008, 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

By _____
Scott Tiedemann
Partner

Date 9/22/08

CITY OF TORRANCE,
A Municipal Corporation

By _____
Leroy J. Jackson
City Manager

Date 14 Oct 2008

APPROVED AS TO FORM:

By: _____

CITY OF TORRANCE,
a municipal corporation

By: _____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

I. PUBLIC AGENCY FEE SCHEDULE

Hourly Rates (As of Contract Date)

Partners	$260.00 - $290.00
Of Counsel	$240.00 - $260.00
Associates	$160.00 - $240.00
Labor Relations Professional	$170.00 - $200.00
Paraprofessionals	$100.00 - $130.00

II. COST SCHEDULE

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

EXHIBIT B

FIRST AMENDMENT TO FEE AGREEMENT FOR LEGAL SERVICES

This First Amendment to Fee Agreement for legal services ("Amendment") is made and entered into as of February 1, 2009, 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 September 19, 2008, in the amount of $25,000. A copy of that Fee Agreement for Legal Services is attached as Exhibit A (Contract No. C2008-212)

B. FIRM advised that an additional $20,000 is required to fund the litigation in this matter.

C2008-212

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 First Amendment by this reference. FIRM warrants that all services set forth in the Fee Agreement and this Amendment will be performed in a competent, professional and satisfactory manner.

2. FIRM's Fee.
For services rendered pursuant to this First 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 ***$45,000*** unless otherwise first approved in writing by CITY.

3. Conflict of Interest.
FIRM warrants that all necessary conflict clearances have been obtained.

COPY

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

CITY OF TORRANCE,
a municipal corporation

By: _____
Frank Scotto,
Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

LIEBERT, CASSIDY, WHITMORE,
a professional corporation

By: _____
Scott Tiedemann,
Partner

Exhibit A) Fee Agreement

EXHIBIT C

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 June 1, 2009, 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 September 19, 2008, in the amount of $25,000. A copy of that Fee Agreement for Legal Services is attached as Exhibit A (Contract No. C2008-212)

B. On May 5, 2009, the City Council approved a First Amendment to the Fee Agreement in the additional amount of $20,000 for a total not to exceed amount of $45,000;

C. An additional $35,000 is required to fund the litigation in this matter for a total not to exceed amount of $80,000.

C2008-212

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 Second Amendment by this reference. FIRM warrants that all services set forth in the Fee Agreement and this Amendment 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 ***$80,000*** unless otherwise first approved in writing by CITY.

COPY

3. Conflict of Interest.
FIRM warrants that all necessary conflict clearances have been obtained.

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

CITY OF TORRANCE,
a municipal corporation

By: _____
Frank Scotto,
Mayor

LIEBERT, CASSIDY, WHITMORE,
a professional corporation

By: _____
Scott Tiedemann,
Partner

ATTEST:

_____
Sue Herbers

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

Exhibit A) Fee Agreement

EXHIBIT D

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 November 1, 2009, 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 September 19, 2008, in the amount of $25,000. A copy of that Fee Agreement for Legal Services is attached as Exhibit A (Contract No. C2008-212).

B. On May 5, 2009, the City Council approved a First Amendment to the Fee Agreement in the additional amount of $20,000 for a total not to exceed amount of $45,000.

C. On July 14, 2009, the City Council approved a Second Amendment to the Fee Agreement in the additional amount of $35,000 for a total not to exceed amount of $80,000.

D. An additional $40,000 is required to fund the litigation in this matter for a total not to exceed amount of $120,000.

C2008-212

AGREEMENT:

1. Section 3 entitled "FIRM's Fee" is amended in its entirety to read:

2. FIRM's Fee.
For services rendered pursuant to this Third 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 **$120,000** unless otherwise first approved in writing by CITY.

COPY

3. In all other respects, the Agreement dated September 19, 2008, the First Amendment dated February 1, 2009 and the Second Agreement dated June 1, 2009 is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE,
a municipal corporation

By: _____
Frank Scotto,
Mayor

LIEBERT, CASSIDY, WHITMORE,
a professional corporation

By: _____
J. Scott Tiedemann,
Partner

ATTEST:

_____
Sue Herbers

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____
for Tatum Strader

Exhibit A) Fee Agreement