

Council Meeting of
October 26, 2010

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

Members of the Council:

**SUBJECT: City Attorney – Approve Fee Agreements with The Law Office of
Robert D. Acciani**

Expenditure: Not to exceed \$70,000

RECOMMENDATION

Recommendation of the City Attorney that City Council approve two fee agreements with The Law Office of Robert D. Acciani in the cases of Jim McKinniss v. City of Torrance, et al., USDC Case No. CV05-08705 CW and Andrew Nishimoto v. City of Torrance, et al., USDC Case No. CV09-08328 SVW (AJWx), in the total amount not to exceed \$70,000.

Funding

Funding is available from the Police Department's General Fund operating budget.

BACKGROUND AND ANALYSIS

Robert Acciani retired from his employment with the City of Torrance on December 27, 2007. Mr. Acciani worked for the City for over fifteen years and successfully defended the City and Police Department in numerous federal civil rights lawsuits. His specialized expertise in this area is of great value to the City.

On December 12, 2006, Mr. Acciani filed a Motion for Summary Judgment in the matter of Jim McKinniss v. City of Torrance, et al., USDC Case No. CV05-08705 CW. After almost four years, our office recently received the Court's decision. Although the individual police officers were dismissed from the lawsuit, the City of Torrance and former Chief of Police James Herren remain in the case. Since Mr. Acciani is most familiar with this case it is logical that he continue to defend the City in this lawsuit through trial.

Approximately six months ago the City was served with the lawsuit, Andrew Nishimoto v. City of Torrance, et al., USDC Case No. CV09-08328 SVW (AJWx). During this period, there has been extensive discovery. This case will require many additional hours of work, which our office is unable to handle due to the shortage of staff.

Upon consideration of the amount of time necessary to defend these two federal civil rights lawsuits, the City Attorney recommends that the City Council enter into the attached two fee agreements with The Law Office of Robert D. Acciani:

Fee Agreement to represent the City in the defense of the lawsuit entitled Jim McKinniss v. City of Torrance, et al., USDC Case No. CV05-08705 CW, in the amount of \$35,000 (Attachment A).

Fee Agreement to represent the City in the defense of the lawsuit entitled Andrew Nishimoto v. City of Torrance, et al., USDC Case No. CV09-08328 SVW (AJWx), in the amount of \$35,000 (Attachment B).

Respectfully submitted,

John L. Fellows III
City Attorney

By



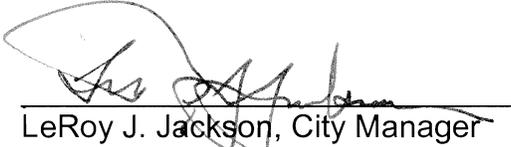
Alice Rusa
Law Office Administrator

CONCUR:



John L. Fellows III, City Attorney

NOTED:



LeRoy J. Jackson, City Manager

Attachment A) Fee Agreement re Jim McKinniss case
Attachment B) Fee Agreement re Andrew Nishimoto case

FEE AGREEMENT FOR LEGAL SERVICES

This Fee Agreement for legal services ("Agreement") is made and entered into as of October 1, 2010, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and the LAW OFFICE OF ROBERT D. ACCIANI, a sole proprietorship ("ATTORNEY").

RECITALS:

1. CITY wishes to retain the services of an experienced and qualified attorney to provide legal services to CITY.
2. ATTORNEY represents that he is qualified to perform those services.

AGREEMENT:

1. Services to be Performed by ATTORNEY.
ATTORNEY will advise and represent CITY in the defense of the lawsuit entitled Andrew Nishimoto v. City of Torrance, et al., USDC Case No. CV09-08328 SVW (AJWx). ATTORNEY will defend and represent the interests of CITY and any individual CITY-affiliated defendants in all stages of the litigation through trial and post-trial motions. In the event of an appeal, the parties may agree to extend the terms of this agreement or enter into a new agreement. ATTORNEY warrants that all services set forth herein will be performed in a competent, professional and satisfactory manner.
2. Attorney's Fee.
For services rendered pursuant to this Agreement, ATTORNEY will be paid \$165 per hour; provided, however, that in no event will the total amount of money paid ATTORNEY, for services contemplated by this Agreement, exceed the sum of **\$35,000**, unless otherwise first approved in writing by CITY.
3. Expenses and other charges.
In addition to fees for professional services, there will be charges for such incurred expenses as court costs, long distance telephone charges, travel costs, computerized legal research, copying and faxes. Expenses incurred will be billed at amounts that are competitive with other sources of the same products or services.

4. Expert Witnesses.

In addition to fees and expenses, it is likely that the representation of CITY and CITY-affiliated defendants in the course of this representation will require the retention of expert consultants and witnesses. No expert will be retained without advance consultation between CITY and ATTORNEY. It is understood that CITY will be responsible for payment of all fees associated with the retention of expert consultants and witnesses.

5. Conflict of Interest.

ATTORNEY warrants that all necessary conflict clearances have been obtained.

6. Insurance.

ATTORNEY must maintain at its sole expense professional liability coverage with combined single limits to the satisfaction of CITY's Risk Manager. ATTORNEY must provide a certificate of insurance to CITY before the commencement of work.

CITY OF TORRANCE,
a municipal corporation

LAW OFFICE OF ROBERT D. ACCIANI,
a sole proprietorship

By: _____
Frank Scotto, Mayor

By: _____
Robert D. Acciani

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

FEE AGREEMENT FOR LEGAL SERVICES

This Fee Agreement for legal services ("Agreement") is made and entered into as of October 1, 2010, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and the LAW OFFICE OF ROBERT D. ACCIANI, a sole proprietorship ("ATTORNEY").

RECITALS:

1. CITY wishes to retain the services of an experienced and qualified attorney to provide legal services to CITY.
2. ATTORNEY represents that he is qualified to perform those services.

AGREEMENT:

1. Services to be Performed by ATTORNEY.
ATTORNEY will advise and represent CITY in the defense of the lawsuit entitled Jim McKinniss v. City of Torrance, et al., USDC Case No. CV05-08705 CW. ATTORNEY will defend and represent the interests of CITY and any individual CITY-affiliated defendants in all stages of the litigation through trial and post-trial motions. In the event of an appeal, the parties may agree to extend the terms of this agreement or enter into a new agreement. ATTORNEY warrants that all services set forth herein will be performed in a competent, professional and satisfactory manner.
2. Attorney's Fee.
For services rendered pursuant to this Agreement, ATTORNEY will be paid \$165 per hour; provided, however, that in no event will the total amount of money paid ATTORNEY, for services contemplated by this Agreement, exceed the sum of **\$35,000**, unless otherwise first approved in writing by CITY.
3. Expenses and other charges.
In addition to fees for professional services, there will be charges for such incurred expenses as court costs, long distance telephone charges, travel costs, computerized legal research, copying and faxes. Expenses incurred will be billed at amounts that are competitive with other sources of the same products or services.

4. Expert Witnesses.

In addition to fees and expenses, it is likely that the representation of CITY and CITY-affiliated defendants in the course of this representation will require the retention of expert consultants and witnesses. No expert will be retained without advance consultation between CITY and ATTORNEY. It is understood that CITY will be responsible for payment of all fees associated with the retention of expert consultants and witnesses.

5. Conflict of Interest.

ATTORNEY warrants that all necessary conflict clearances have been obtained.

6. Insurance.

ATTORNEY must maintain at its sole expense professional liability coverage with combined single limits to the satisfaction of CITY's Risk Manager. ATTORNEY must provide a certificate of insurance to CITY before the commencement of work.

CITY OF TORRANCE,
a municipal corporation

LAW OFFICE OF ROBERT D. ACCIANI,
a sole proprietorship

By: _____
Frank Scotto, Mayor

By: _____
Robert D. Acciani

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____