

Council Meeting of
February 15, 2011

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

Members of the Council:

**SUBJECT: City Attorney – Approve First Amendment to Fee Agreement with
Woodruff, Spradlin & Smart**

Expenditure: \$150,000

RECOMMENDATION

Recommendation of the City Attorney that City Council approve a First Amendment to Fee Agreement C2010-238 with Woodruff, Spradlin & Smart for an additional \$150,000, for a total amount not to exceed \$175,000.

Funding

Funding is available from the Self-Insurance Fund.

BACKGROUND AND ANALYSIS

On December 7, 2010, the City Council approved a fee agreement (Contract No. C2010-238) in an amount not to exceed \$25,000 with the law firm of Woodruff, Spradlin & Smart, to provide legal representation to the City in the lawsuit of Jill Carlton, et al. v. City of Torrance, et al., LASC Case No. YC061411.

Since December, the law firm has been actively engaged in discovery, including several hours of deposition testimony. Trial is scheduled to begin on March 10, 2011. The firm is preparing to defend the City at trial and has advised us that an additional \$150,000 is required to fund the litigation through trial and post-trial motions.

The City Attorney recommends that City Council approve the First Amendment to Fee Agreement (Attachment A) with the law firm of Woodruff, Spradlin & Smart for an additional \$150,000, for a total amount not to exceed \$175,000.

Respectfully submitted,

John L. Fellows III
City Attorney

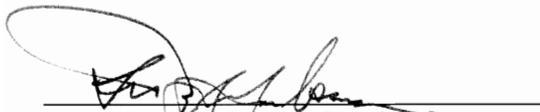

By _____
Alice Rusa
Law Office Administrator

CONCUR:



John L. Fellows III, City Attorney

NOTED:



LeRoy J. Jackson, City Manager

Attachment A) First Amendment to Fee Agreement

ATTACHMENT A**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 15, 2011, by and between the **CITY OF TORRANCE**, a municipal corporation ("CITY"), and **WOODRUFF, SPRADLIN & SMART**, a professional corporation ("FIRM").

RECITALS:

- A. CITY and FIRM entered into a Fee Agreement for Legal Services ("Fee Agreement") on November 17, 2010, in the amount of \$25,000. A copy of that Fee Agreement for Legal Services is attached as Exhibit A (Contract No. C2010-238).
- B. FIRM advised that an additional \$150,000 is required to fund the litigation in this matter through trial and post-trial motions.

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 \$175,000 unless otherwise first approved in writing by CITY.
- 3. In all other respects, the Agreement dated November 17, 2010 is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE,
a municipal corporation

WOODRUFF, SPRADLIN &
SMART, a professional corporation

By: _____
Frank Scotto
Mayor

By: _____
Daniel K. Spradlin

ATTEST:

Sue Herbers
City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

Exhibit A) Fee Agreement



WOODRUFF, SPRADLIN & SMART
A Professional Corporation

DANIEL K. SPRADLIN
DIRECT DIAL: (714) 415-1018
DIRECT FAX: (714) 415-1118
E-MAIL: DSPRADLIN@WSS-LAW.COM

November 17, 2010

John Fellows, City Attorney
City of Torrance
3031 Torrance Boulevard
Torrance, CA 90503-5059

Attn: Tatia Strader

Re: **Jill Carlton, et al. v. City of Torrance, et al.**
Case #: YC061411

Dear Mr. Fellows:

At the direction of Deputy City Attorney Tatia Strader, I have prepared two retaining letters for separate legal representation of the City of Torrance in connection with the above-referenced lawsuit. These two areas of representation are described as follows:

1. Assist and litigate as directed by the City Attorney in efforts to obtain defense and indemnity in the above-referenced action from Sully-Miller Contracting Company and Liberty Mutual Fire Insurance Company. Such assistance may include the prosecution of separate legal actions against such parties for breach of contract and other legal remedies.
2. Associate as defense counsel for the City of Torrance in defense of the above-referenced action to provide legal services as directed by the City Attorney up to and including trial and post-trial motions. Pursuit or defense of any appeal shall be the subject of a separate agreement.

This letter confirms our representation and your authorization for us to act on behalf of the City of Torrance in connection with the services described in paragraph 2 above.

Professional services and fees. Our professional fees for legal services will be determined by the amount of time our attorneys and paralegals spend on this engagement based on their applicable hourly rates in effect at the time our invoices are rendered. The applicable hourly rates for attorneys and paralegals are listed on the attached rate schedule. As indicated on the Rate Schedule, our hourly rates may be adjusted from time to time. We have provided Ms. Strader with an estimate of the likely fees that may be incurred by the City for our services in the

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COPY

November 17, 2010

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event that matter should require litigation through trial. We have advised Ms. Strader that should circumstances dictate that we must litigate this matter fees likely will exceed \$25,000.00. Ms. Strader has requested that our initial scope of work be limited to the number of hours which is the equivalent of \$25,000.00 unless the City authorizes us to continue.

Expenses and other charges. In addition to fees for our professional services, there will be charges for expenses which we incur such 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.

Expert Witnesses. In addition to fees and expenses, it is likely that the representation of the Defendants in this matter will require the retention of expert consultants and witnesses. We will not retain any expert without advance consultation with you and the Defendants. However, typically for cases of this nature experts are required. It is understood that the City will be responsible for payment of all fees associated with the retention of such expert consultants and witnesses.

Invoices and payments. We will render our invoices to you monthly for legal services, expenses and other charges. Our invoices are payable upon receipt and are considered overdue if not paid within thirty (30) days. Any statement not paid within sixty (60) days of the date of the statement will incur finance charges at the rate of one and one-half percent (1½ %) per month, compounded monthly.

Termination of Agreement. The City shall at all times have the right to terminate the services of our firm for any reason upon twenty-four (24) hours written notice of the same. The firm retains the right to terminate this agreement if, in the sole discretion of the firm, we conclude that the City or any individual named Defendants are not cooperating with the defense of this matter, or if we believe that our continued representation would be unethical or impractical, or if the City fails to pay our invoices for services rendered upon presentation.

Acceptance of Engagement. If the terms as set forth in this letter are acceptable to the City, please have the enclosed copy executed by the appropriate representative of the City and return it to us. Unless terminated earlier by you or us, this engagement will end when we have completed the work described in the scope of engagement paragraph above.

November 17, 2010

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We are pleased that you have selected Woodruff, Spradlin & Smart to act as defense counsel in this matter.

Cordially,

WOODRUFF, SPRADLIN & SMART
A Professional Corporation



DANIEL K. SPRADLIN

Attachments:

Copy of This Letter With Return Envelope
"Rate Schedule"

CITY OF TORRANCE



(Signature)

Dated: 12-21-2010

FRANK SCOTTO, MAYOR

Name and Title

APPROVED AS TO FORM:



On behalf of the City of Torrance

ATTEST:



SUE HERBERS, CITY CLERK

RATE SCHEDULE

Hourly Rates for Legal Personnel

Attorneys: \$195 per hour
Paralegals: \$125 per hour

Standard Charges

Attorney charges for Attorney's time in minimum units of six minutes.

Costs and Expenses

Costs advanced will be charged at rates that are competitive with other sources of the same products or services. Rates for in-house costs are currently:

In-office photocopying	\$ 0.15 per page
Mileage	\$ 0.55 per mile
Clerical staff overtime:	\$50.00 per hour

Subject to Change

The rates on this schedule are subject to change on 30 days' written notice. If Client declines to pay any increased rates, attorney will have the right to withdraw as Client's lawyers.

Rate Schedule