Council Meeting of
March 8, 2011

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: $15,000

RECOMMENDATION

Recommendation of the City Attorney that the City Council approve the First Amendment to Fee Agreement (C2010-100) with the law firm of Buchalter Nemer to provide legal services in the matter of Sandberg, et al. v. City of Torrance, et al., Ninth Circuit Case No. 10-55608, for an additional $15,000, for a total contract amount not to exceed $40,000.

Funding

Funding is available from the Self-Insurance Fund.

BACKGROUND AND ANALYSIS

On May 3, 2010, the City Manager entered into Fee Agreement (Contract No. C2010-100) in an amount not to exceed $25,000 with the law firm of Buchalter Nemer to act as appellate counsel on behalf of the City in the lawsuit of Sandberg, et al. v. City of Torrance, et al., Ninth Circuit Case No. 10-55608.

The City's appellees' brief has been filed. The law firm has advised that an additional amount of $15,000 will be required to continue this appeal: update any research, prepare for and attend oral argument, and for additional fees relating to any post-opinion issues as a result of the Ninth Circuit court's decision.

Therefore, the City Attorney recommends that City Council approve the First Amendment to the Fee Agreement (Attachment A), for an additional $15,000 with the law firm of Buchalter Nemer, for a total contract amount not to exceed $40,000.

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 March 8, 2011, by and between the **CITY OF TORRANCE**, a municipal corporation ("CITY"), and **BUCHALTER NEMER,** a professional corporation ("FIRM").

RECITALS:

A. CITY and FIRM entered into a Fee Agreement for Legal Services ("Fee Agreement") on May 3, 2010, in the amount of $25,000 in the case of Sandberg, et al. v. City of Torrance, et al., Ninth Circuit Case No. 10-55608. A copy of that Fee Agreement for Legal Services is attached as Exhibit A (Contract No. C2010-100).

B. FIRM advised that an additional $15,000 is required to fund the litigation in this matter.

AGREEMENT:

1. Section 2 entitled "FIRM's Fee" is amended in its entirety to read:

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 ***$40,000.00*** unless otherwise first approved in writing by CITY.

3. In all other respects, the Agreement dated May 3, 2010 is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE,
a municipal corporation

By: _____
Frank Scotto, Mayor

BUCHALTER NEMER
a professional corporation

By: _____
Robert M. Dato

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

Exhibit A: Fee Agreement

EXHIBIT A

BuchalterNemer
A Professional Law Corporation

18400 Von Karman Avenue, Suite 800, Irvine, California 92612-0514
Telephone (949) 760-1121 / Fax (949) 720-0182

Direct Dial Number: (949) 224-6245
Direct Facsimile Number: (949) 224-6223
E-Mail Address: *rdato@buchalter.com*

May 3, 2010

LeRoy J. Jackson, City Manager
CITY OF TORRANCE
3031 Torrance Blvd.
Torrance, CA 90503

Re: **Agreement for Legal Services in *Sandberg v. City of Torrance***

Dear Mr. Jackson:

Pursuant to my communications with Della Thompson-Bell, we are pleased that you have selected Buchalter Nemer, a Professional Corporation (the "Firm") to act as appellate counsel on behalf of the City of Torrance and Officers Keith Thompson, Ryan Galassi, Tyrone Gribben, Ronald Salary and Jeremiah Hart in this matter. This letter agreement ("Agreement") will serve to memorialize this retention.

1. Scope of Services; Client Duties. You are hiring us as appellate counsel in *Sandberg v. City of Torrance*, Ninth Circuit Case No. 10-55608. Our firm will be responsible drafting the appellees' brief, participating in oral argument at the Ninth Circuit Court of Appeals, and coordinating with the City Attorney's office to hopefully preserve the result obtained in the district court. We will endeavor to keep you informed of the progress of the matter we are handling and respond to your inquiries. On your part, you understand the need for truthful and accurate information, and the need to cooperate and to keep us informed of any developments.

2. Legal Fees and Billing Practices. Our professional fees are usually determined by the number of hours expended, multiplied by guideline hourly billing rates. The rate for this matter will be $350 per hour for both of the attorneys who will or may work on this appeal, Efrat M. Cogan and the undersigned. Both Ms. Cogan and I have been certified as appellate specialists by the California State Bar Board of Legal Specialization. Although we do not currently anticipate it, the firm reserves the right to make upward or downward adjustments in the rate as may be appropriate in the circumstances. Our minimum billing unit for our legal personnel is one-tenth of an hour. Our standard guideline rates are set forth on the attached schedule. In the event of a change in these rates, you will receive a disclosure notice included with or reflected in your bill. Total legal fees are not to exceed $25,000 absent a separate agreement between the City and the Firm.

C2010-100

COPY

We normally charge for all activities undertaken in providing legal services to you under this Agreement, including but not limited to the following: conferences, including preparation and participation; preparation and review of correspondence and other documents; legal research; court and other appearances, including preparation and participation; necessary travel related to court appearances, meetings or evidence preparation; and telephone calls, including calls with you, other attorneys, or persons involved with this matter. The legal personnel assigned to your matter will confer among themselves about the matter, as required. When they do confer, each person may charge for the time expended. Likewise, if more than one of our legal personnel attends a meeting, court hearing or other proceeding, each may charge for the time spent. We will charge for travel time, both local and out of town.

3. Costs and Other Charges. We will incur various costs and expenses in the normal course of performing legal services under this Agreement. Our preference is for you to advance all major expenses. We do not anticipate any such major expenses in this matter. In circumstances where it is not practical for you to advance the costs, you agree to reimburse us for those costs and expenses that we advance, in addition to the hourly fees.

Except as listed on the enclosed Rate Schedule, all costs and expenses will be charged at our cost, which includes our direct and indirect costs, as well as a small handling fee. Invoices for costs from third party vendors may not reflect actual costs to the Firm, where for example, the Firm may be entitled to early payment or volume discounts. The items listed on the Rate Schedule are subject to periodic increases.

4. Retainer. Although it is our usual custom to require a retainer before commencing representation, a retainer will be waived in view of prior relationship between the undersigned and the City.

5. Billing Statements. We will send you monthly statements indicating fees and costs incurred and any current balance owed. Upon request, we can provide various levels of detail in your billing statement, including the legal personnel working on your matter for that billing period with their current guideline hourly rate.

Statements are generally sent monthly, although if no fees or costs are incurred for a particular month, or they are minimal, the statement may be held and combined with that for the following month. Each statement will be due on receipt, but in any event no later than 30 days thereafter. Should you have any questions concerning any statement, we encourage you to discuss them with us so that we may have an

opportunity to resolve any misunderstandings or questions. We do, however, reserve the right to charge interest on all delinquent accounts at the rate of the lesser of either 10 percent per annum, compounded monthly, or the maximum allowed by law. We reserve the right to charge and collect interest even if such accrued and accruing interest is not reflected on any statement or invoice presented. We also reserve the right to suspend further work at any time that there is an outstanding invoice to you more than 30 days past due. In the event that an outstanding invoice is not paid in accordance with this Agreement, if requested by us, you expressly agree consent to our disassociation with the City Attorneys' office as counsel of record.

6. Discharge and Withdrawal. You may discharge us at any time and we have the right to withdraw from representing you at any time, subject to any required court approvals. Reasons for our withdrawal include, but are not limited to, your breach of this Agreement, your failure to pay our invoices when due, your refusal to cooperate with us or to follow our advice on a material matter or any fact or circumstance that would render our continuing representation of you unlawful or unethical.

When our services conclude, all unpaid charges will immediately become due and payable. After our services conclude, we will, upon your written request, deliver your file to you along with any funds or property of yours in our possession. The work product produced in the course of our representation will remain our property.

7. Disclaimer of Guarantee. Nothing in this Agreement should be construed as a promise or guarantee about the outcome of any matter which we are handling on your behalf. Our comments about the outcome of your matter are expressions of opinion only.

8. Future Conflict. Our undertaking to represent you in the above matter will not act as a bar so as to prevent us from representing any existing or future client with respect to a claim adverse to yours, so long as in the course of our representation of you we have not obtained any information that would be adverse to your interests with respect to such claim.

9. Duties Upon Termination of Active Representation. Upon cessation of our active involvement in a particular matter in which we have been engaged we will have no further duty to inform you of future developments or changes in the law as may be relevant to such matter in which our representation has ceased. Further, unless you request in writing to the contrary, we will have no obligation to monitor renewal or notice dates or similar deadlines which may arise from the matters for which we have been retained. If your matter involves obtaining a judgment and such judgment is obtained, we will only be responsible for those post judgment obligations as are expressly requested by

you in writing and for which you will be obligated. This includes recording abstracts, filing judgment liens and calendaring renewals of judgments.

10. Disputes. We appreciate the opportunity to serve as your attorneys and anticipate a productive, harmonious relationship. If you become dissatisfied for any reason with the services we have performed or the fees charged, we encourage you to bring that to our attention immediately. If we perceive a problem with the representation, we will discuss it with you. Most such problems should be rectified by communication and discussion. However, a dispute could arise between us which cannot be resolved by negotiation. We believe that such attorney-client disputes are most satisfactorily resolved through binding arbitration than by litigation in court.

Arbitration is a process by which both parties to a dispute agree to submit the matter to a retired judge or other arbitrator who has expertise in the area and to abide by the arbitrator's decision, instead of litigation in court. In arbitration, there is no right to a trial by jury and the arbitrator's legal and factual determinations are generally not subject to appellate review. Arbitration rules of evidence and procedure are often less formal and rigid than in a court trial. Arbitration usually results in a decision more quickly than proceedings in court, and the attorneys' fees and other costs incurred by both sides are usually substantially less.

Both the United States and California Supreme Courts have endorsed arbitration as an accepted and favored method of resolving disputes, because it is economical and expeditious. Arbitration is also less acrimonious and more confidential than traditional litigation and is therefore particularly suited to resolution of disputes between attorneys and their clients.

By signing this Agreement, you agree that, if any dispute arises out of or relating to this Agreement, our relationship, or the services performed (including but not limited to disputes regarding attorneys' fees or costs and claims of negligence, breach of contract or fiduciary duty, fraud or any claim based upon a statute), such dispute shall be resolved by submission to binding arbitration in Los Angeles County, California, before a retired judge or justice. If we are unable to agree on a retired judge or justice, each party will name one retired judge or justice and the two named persons will select a neutral judge or justice who will act as the sole arbitrator. Any decision of the arbitrator(s) may be confirmed by a court of competent jurisdiction and the ensuing judgment may thereafter be enforced in the same manner as a judgment in a civil action. The ensuing judgment may also be appealed pursuant to Code of Civil Procedure section 1294.2.

You are free to discuss the advisability of arbitration with us or your independent counsel or any of your other advisors and to ask any questions which you have.

In addition, California law requires that you be given the opportunity to seek arbitration of any fee disputes which may subsequently arise between us. If you elect such arbitration, it is agreed that the decision of the arbitrators shall be binding upon the both of us. Any decision of the arbitrator(s) may be confirmed by a court of competent jurisdiction and the ensuing judgment may thereafter be enforced in the same manner as a judgment in a civil action. The ensuing judgment may also be appealed pursuant to Code of Civil Procedure section 1294.2.

If any legal action or proceeding is initiated concerning the terms and provisions of this Agreement, it is agreed and understood that any such legal action, arbitration or proceeding shall be brought in California, whose laws and procedures shall apply.

11. Entire Agreement. Unless otherwise agreed in writing between us, all other matters referred to us for representation shall be governed by the terms of this letter, except that our obligation to represent you described above shall consist of an obligation to furnish appropriate representation in such matters with reasonable diligence as applicable to the matter in question. This Agreement contains all terms of the agreement between us applicable to our representation of you, and may not be modified except by a written agreement signed by both of us.

12. File Maintenance. We will maintain your file(s) and documents throughout the period in which we are actively handling a particular matter and for three years thereafter. We will have the right to destroy your files after three years or any longer time we deem appropriate given the circumstances, without any obligation to notify you. The Firm routinely purges its files and records of matters that have been resolved. Of course, you may request your files or documents at any time prior to such destruction, and they will be promptly returned to you or as directed.

13. Effective Date. If this letter accurately reflects our agreement, please sign the enclosed duplicate copy and return it to us in the enclosed envelope. We will have no obligation to provide legal services until this Agreement takes effect. This Agreement will take effect when we receive the executed Agreement and the retainer. Even if this Agreement does not take effect, you agree to pay us the reasonable value of any services we may have performed for you.

If you have any questions concerning the provisions of this Agreement, we invite

your inquiries. We look forward to working with you.

Very truly yours,

BUCHALTER NEMER
A Professional Corporation

By

Robert M. Dato

The undersigned has read and understands the foregoing terms and those set forth on the attached Rate Schedule and agrees to them, as of the date Buchalter Nemer, a Professional Corporation, first provided services. The undersigned agrees to be liable for all obligations under this Agreement.

CITY OF TORRANCE

By: _____
LeRoy J. Jackson, City Manager
City of Torrance, a Municipal Corporation

APPROVED AS TO FORM:

JOHN L. FELLOWS III

By: _____

BUCHALTER NEMER
RATE SCHEDULE
Guideline Hourly Rates For Legal Personnel

Shareholders	$375 - $600
Of Counsel/Senior Counsel	$335 - $595
Associates	$235 - $450
Specialists	$200 - $220
Paralegals	$90 - $220
Case Clerks	$50 - $65

These rates are subject to periodic adjustment, as discussed in the Agreement

STANDARD CHARGES FOR DISBURSEMENTS ON BEHALF OF CLIENTS

Bates stamping	.15/page
Mileage	.50/mile
Video Conferencing	Cost
Overnight mail	Cost
Messenger	Cost
Online database/research	Cost
Word processing/Clerical overtime	No Charge

These rates are subject to periodic adjustment, as discussed in the Agreement