

Council Meeting of  
April 26, 2011

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

**Members of the Council:**

**SUBJECT: City Attorney – Approve agreement amendment to provide legal services**

**Expenditure: \$40,000 (subject to reimbursement)**

**RECOMMENDATION**

Recommendation of the city attorney that City Council approve the first amendment to the fee agreement with Rutan & Tucker, LLP (C2011-009) to provide legal services in the California Environmental Quality Act (CEQA) action, Building an Economically Sound Torrance, et al. v. City of Torrance, et al. The amendment adds an additional \$40,000 to the contract, for a total amount not to exceed \$90,000, subject to full reimbursement from Wal-Mart.

Funding

Initial funding is available from the city attorney's General Fund operating budget.

**BACKGROUND AND ANALYSIS**

The city attorney has retained the services of M. Katherine Jenson, John Ramirez and Peter Howell of the law firm of Rutan & Tucker, LLP, to provide legal representation to the City in Building an Economically Sound Torrance, et al. v. City of Torrance, et al., LASC Case No. BS129420, which is a writ of mandate action challenging lack of environmental review prior to issuance of City permits to construct a new Walmart store at 22015 Hawthorne Boulevard. Rutan & Tucker's specialized expertise in CEQA litigation and general municipal law will greatly assist the City with the issues associated with this lawsuit.

Walmart is the real party in interest in these proceedings, since its ability to construct its planned store is dependent upon successful defense of the pending lawsuit. Wal-Mart Real Estate Business Trust has indemnified the City against the significant financial burden the City would otherwise face in defending this lawsuit and will reimburse the City for its expenditures in so doing. The City prevailed at the trial court level. No appeal has yet been filed.

To date, the City has received three invoices from Rutan & Tucker, in the aggregate amount of \$75,426.20. The City has paid two of the invoices totaling \$45,306.44, leaving an outstanding \$30,119.76 invoice.

The city attorney recommends Your Honorable Body approve the attached first amendment to the Rutan & Tucker fee agreement, to pay the outstanding invoice and any future invoices up to an appeal, if filed.

Respectfully submitted,

John L. Fellows III  
City Attorney



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NOTED:



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LeRoy J. Jackson, City Manager

Attachment A) First Amendment to Fee Agreement

**FIRST AMENDMENT TO FEE AGREEMENT FOR  
LEGAL SERVICES (C2011-009)**

This First Amendment to Fee Agreement for legal services ("Amendment") is made and entered into as of April 26, 2011, by and between the **CITY OF TORRANCE**, a municipal corporation ("CITY"), and **RUTAN & TUCKER**, a limited liability partnership ("FIRM").

**RECITALS:**

- A. CITY and FIRM entered into a Fee Agreement for Legal Services ("Fee Agreement") on December 8, 2010, in the amount of \$50,000. A copy of that Fee Agreement for Legal Services relating to Building an Economically Sound Torrance et al. v. City of Torrance et al., LASC Case No.BS129420 is attached as Exhibit A (Contract No. C2011-009.)
- B. The CITY is satisfied with the level of service provided by FIRM.
- C. Both parties wish to amend the contract to add an additional \$40,000 to the contract for an amount not to exceed the sum of \$90,000.

**AGREEMENT:**

- 1. Services to be Performed by FIRM.  
FIRM will continue to 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, 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 the Fee Agreement, as amended, exceed the sum of **\$90,000** unless otherwise first approved in writing by CITY.

3. In all other respects, the Fee Agreement is ratified and reaffirmed and remains in full force and effect.

CITY OF TORRANCE,  
a municipal corporation

RUTAN & TUCKER,  
a limited liability partnership

\_\_\_\_\_  
Frank Scotto, Mayor

By: \_\_\_\_\_  
M. Katherine Jenson,  
Partner

ATTEST:

\_\_\_\_\_  
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III  
City Attorney

By: \_\_\_\_\_

Exhibit A) Fee Agreement

**RUTAN**  
RUTAN & TUCKER, LLP

M. Katherine Jenson  
Direct Dial: (714) 641-3413  
E-mail: kjenson@rutan.com

December 8, 2010

John L. Fellows, City Attorney  
City of Torrance  
3031 Torrance Boulevard  
Torrance, CA 90503

Re: Fee Agreement for Legal Services -- Wal-Mart CEQA Challenge

Dear John:

This letter will serve as Rutan & Tucker, LLP's fee agreement for legal representation rendered to the City with regard to the CEQA Petition filed against the City by Building an Economically Sound Torrance, Ralph Martinez and Sandra Munoz with regard to the Wal-Mart project on Hawthorne Boulevard.

Pursuant to our discussion, I will be the lead working attorney on this matter. John Ramirez and Peter Howell will assist as needed. (John has handled numerous cases involving Wal-Mart projects, and Peter, John and I are currently defending Merced in a challenge to its Wal-Mart project.) Other attorneys and paralegals may assist on an as-needed basis. The hourly rate Rutan & Tucker would charge the City for legal services is the standard hourly rates of attorneys in our office which begin at \$225 per hour, with a cap of \$330 per hour. Paralegals would be billed at an hourly rate of \$135 per hour, and documents clerks would be billed at \$45 per hour. Under this proposal, the City would be charged either the attorney's standard hourly rate, or the agreed rate, whichever is less.

Rutan & Tucker also requires reimbursement for various costs incurred in performing legal services, including long distance telephone charges for calls outside the Los Angeles/Orange County area, postage, parking, out-of-town travel expenses (not mileage), duplication (@ 19¢ per page), telecopying, messengers, computer-assisted research (e.g. LEXIS), and other out-of-pocket expenses.

Detailed monthly invoices will be sent directly to you.

If this proposal is acceptable to the City, please execute and return a copy of this letter to me.

C2011-009

**COPY**

John L. Fellows, City Attorney  
December 8, 2010  
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If you have any questions regarding this proposal, please call me at 1-800-76RUTAN.  
Type of Entity

The City of Torrance accepts the above proposal.

CITY OF TORRANCE  
a Municipal Corporation

RUTAN & TUCKER, LLP

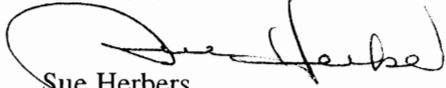


Frank Scotto, Mayor



M. Katherine Jensen, Partner

ATTEST:



Sue Herbers  
City Clerk

APPROVED AS TO FORM:  
JOHN L. FELLOWS III  
City Attorney

