




Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

FROM:  David N. Carmany, City Manager

DATE: May 17, 2011

SUBJECT: Consideration of Contract with Jenkins and Hogin, LLP for Legal Advice and Assistance (\$195 Per Hour) and Ratification of Expenditures Totaling \$9,738

RECOMMENDATION:

Staff recommends that the City Council: a) approve a contract with Jenkins and Hogin, LLP for on-going legal consultation services, with an hourly rate of \$195; and b) ratify recent expenditures for legal services totaling \$9,738.

FISCAL IMPLICATION:

It is anticipated that legal expenditures with Jenkins and Hogin, LLP will total approximately \$12,000 through the end of this fiscal year, which can be accommodated within current budgetary appropriations. The prior expenditures totaling \$9,738 for Council ratification were for legal services provided by Jenkins and Hogin for the McKee case as well as other municipal legal issues (contracts, land use issues, etc.).

BACKGROUND:

On April 5th, the City Council appointed an interim City Attorney, Leland Dolley. The City Attorney will require additional outside legal assistance from a number of sources until a permanent City Attorney is appointed.

DISCUSSION:

While the City Council has appointed an interim City Attorney, additional outside legal counsel will be necessary in the coming weeks to assist with on-going issues. As a result, staff recommends that the law firm of Jenkins and Hogin, LLP be retained to provide such service. The firm has recently provided legal services regarding the McKee case with satisfactory results.

The initial contract with Jenkins and Hogin, LLP to assist with the McKee case was for an amount not-to-exceed \$20,000 (which did not require advanced City Council approval due to the amount). However, the final total cost for the McKee services, as well as additional legal services outside the scope of the initial contract, have exceeded that original contract by \$9,738. Therefore, because the

final total exceeded \$20,000, staff requests that the City Council ratify the total expenditures in excess of \$20,000 (\$9,738). The new contract, if approved, will cover any necessary legal service costs going forward. Sufficient funds are available in the General Fund for these expenses without further appropriation.

Attachment A - Contract

AGREEMENT FOR LEGAL SERVICES

NAME

THIS AGREEMENT is entered into by the CITY OF MANHATTAN BEACH, a municipal corporation, ("CITY"), and Jenkins & Hogin, LLP ("ATTORNEY")

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into on May 18, 2011.
2. The CITY is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California as a general law city.
3. The CITY and ATTORNEY desire to enter into an Agreement for legal services upon the terms and conditions herein.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover services rendered from May 18, 2011 until terminated.
2. **Services to be Provided.** The services to be performed by ATTORNEY shall consist of being available to the City for consultation on legal issues as requested.
3. **Compensation.** ATTORNEY shall be compensated as follows:
 - 3.1 **Amount.** \$195 per hour. Compensation under this Agreement shall be paid only for assigned work and after approval of hourly billing statement by the City Manager.

3.2 Records of Expenses. ATTORNEY shall keep accurate records of payroll, travel, and expenses. These records must be submitted to CITY along with any invoice which requests payment for such expenses.

3.3 Termination. CITY and ATTORNEY shall have the right to terminate this Agreement, without cause, by giving twenty-four (24) hours written notice.

3.4 Costs. CITY will only reimburse actual cost of necessary court charges, transcripts, or overnight delivery. Before retaining experts, consultants or incurring substantial expenses for exhibits, computer research (e.g., Westlaw or Lexus) or other services consent shall be obtained from the City Manager. Excessive use of Federal Express or equivalent services and messengers (particularly for service on motions) may result in an audit of the firm's procedures. ATTORNEY represents that it does not charge for telephone, fax, computer research for California case law and statutes or nominal copies.

3.5 Payment. For work under this Agreement, payment shall be made per monthly invoice. However, where City has raised legitimate questions or objections to a specific charge, City may withhold payment of that specific charge until it is satisfied the amount or the service for which the charge is made is justified.

3.6 Hours. No number of hours of work is guaranteed. It is expected that Attorney's services will be on an as-needed basis at the discretion of the City Manager and City Council.

4. **Insurance Requirements.**

4.1 Workers' Compensation Insurance. ATTORNEY shall maintain Workers' Compensation Insurance where applicable.

4.2 Insurance Amounts. ATTORNEY is not authorized to drive an automobile for the CITY or on CITY business.

- 4.3 **Malpractice Insurance.** ATTORNEY shall maintain malpractice insurance in the amount of \$4 million aggregate and \$2 million per occurrence with an A-rated, California licensed carrier .
5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
6. **Non-Discrimination.** ATTORNEY covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that ATTORNEY shall work as an independent contractor and not as employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** ATTORNEY shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
9. **Ownership of Work Product.** All documents or other information developed or received by ATTORNEY in the course and scope of work for the City shall be the property of CITY. ATTORNEY shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
10. **Conflict of Interest and Reporting.** ATTORNEY shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement. ATTORNEY agrees to complete and file a Form 730 disclosure statement if required by the City Attorney.

11. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.
- a. Address of ATTORNEY is as follows:
- Jenkins & Hogin, LLP
Attn: Christi Hogin
1230 Rosecrans Avenue – Suite 110
Manhattan Beach, CA 90266
- b. Address of CITY is as follows:
- Manhattan Beach City Manager
1400 Highland Avenue
Manhattan Beach, California 90266
12. **Key Person.** During the term of this Agreement ATTORNEY shall provide the services of Christi Hogin, who may be assisted by Michael Jenkins and Gregg Kovacevich. No services under this Agreement shall be provided by any other individual without the express consent of CITY.
13. **Licenses, Permits, and Fees.** ATTORNEY shall obtain and maintain a current **California State Bar License**, and all permits, fees, or licenses as may be required by this Agreement and by law.
14. **Familiarity with Work.** By executing this Agreement, ATTORNEY warrants that: (1) it has investigated the work to be performed, (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties, and restrictions of the work under this Agreement. Should ATTORNEY discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at ATTORNEY'S risk, until written instructions are received from CITY.
15. **Time of Essence.** Time is of the essence in the performance of this Agreement.

16. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement or any portion shall be assigned by ATTORNEY without prior written consent of CITY.
17. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
18. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and ATTORNEY.
19. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the Southwest branch of the Los Angeles County Superior Court.
20. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.
21. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

Date: _____, 2011

CITY OF MANHATTAN BEACH

By: _____

David N. Carmany, City Manager

ATTEST:

City Clerk

"ATTORNEY"

By: 

Date: 5/5/2011