



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Tell and Members of the City Council

THROUGH:  David N. Carmany, City Manager

FROM: Vince Mastrosimone, Senior Management Analyst 

DATE: January 3, 2012

SUBJECT: Authorize the City Manager to Enter into a Contract with Holme Roberts & Owen LLP for Special Counsel Services.

RECOMMENDATION:

Staff respectfully recommends that the City Council Authorize the City Manager to Enter into a Contract with Holme Roberts & Owen LLP for Special Counsel Services.

FISCAL IMPLICATION:

Legal services will be provided at the blended hourly rate of \$350 per hour. Funding will come from the Insurance Fund.

BACKGROUND:

The City anticipates using the firm in connection with two pending litigation matters, one concerning the Manhattan Beach Open (*DFA PVA II Partners v. IMG Worldwide Inc. et al*) and the other concerning *Geoff Dolan v. City of Manhattan Beach*. The other matter to be handled by the firm is representation of the City in a cancellation proceeding for the Manhattan Beach Open trademark with the Patent and Trademark Office.

DISCUSSION:

Holme Roberts & Owen is a well respected law firm with broad and deep litigation experience as well as experience (both advisory and litigation) in intellectual property matters. It has been determined that the City would be best served in the matters mentioned above by outside special counsel due to the specialized nature of these cases.

The agreement contemplates that Mr. Donald Samuels and Ms. Jill Chalmers will be the attorneys responsible for providing services. Both are partners at the firm with more than twenty years of experience in litigation and intellectual property matters.

Attachments: A. Agreement with Holme Roberts & Owen LLP

**AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND HOLME
ROBERTS & OWEN LLP FOR SPECIAL COUNSEL SERVICES**

This Agreement is entered into by and between the City of Manhattan Beach, a Municipal Corporation (hereinafter “City”) and the law firm of Holme Roberts & Owen, LLP (hereinafter “Attorney”).

Section 1. Attorney’s Responsibilities. Attorney shall perform for City all necessary and reasonable special counsel services as requested by City, including the following:

(a) Represent City as counsel in a trademark cancellation proceeding at the US Patent and Trademark Office’s Trademark Trial and Appeal Board against DFA PVA II PARTNERS concerning the MANHATTAN BEACH OPEN trademark.

(b) Represent City as counsel in litigation filed in the US District Court of California by DFA PVA II PARTNERS (*DFA PVA II Partners v. IMG Worldwide Inc. et al.*) generally concerning alleged infringement of the MANHATTAN BEACH OPEN and AVP and design trademark and related claims.

(c) Represent City as counsel in litigation filed in the Superior Court of California in the County of Los Angeles (*Geoff Dolan v. City of Manhattan Beach et al.*), generally concerning breach of contract and other claims asserted by the City’s prior City Manager.

(d) Provide legal advice to City Council, City Manager, and City Attorney and such persons that they may designate as may be further requested by City.

(e) Prepare reports and opinions as may be requested by City.

Jill J. Chalmers and Donald L. Samuels shall be the partners with primary responsibility for the services provided to City pursuant to this Agreement. All work shall be performed by Jill

Chalmers, Donald Samuels, Adam Brezine, Katherine Keating, Leila Knox, James Phillips, David Greene, Diba Rastegar and Carrie Monyhan and supporting paralegals and trademark administrators unless advance approval is obtained from City Attorney. All personnel changes are subject to prior written approval of City. The services furnished by Attorney shall be under the direction of City Attorney.

Section 2. Consideration. For Attorney's services performed pursuant to this Agreement, City shall pay Attorney for the actual time of services rendered by all Attorneys at the blended rate of Three Hundred Fifty Dollars (\$350) an hour. Supporting paralegals and trademark administrators time will be billed at their annual published rates. Time shall be billed in increments of one tenth of one hour.

City shall reimburse Attorney for actual expenses reasonably incurred in the performance of legal services under this Agreement for travel costs from Attorney's Los Angeles office (regardless of Attorney's residence), court costs, services of process messengers, deliveries, postage, and other similar services incidental to the performance of this Agreement. City shall not reimburse or pay Attorney for word processing, document preparation or clerical tasks. Computerized research shall be billed at Attorney's cost without additional mark-up. City and Attorney agree that Attorney shall be reimbursed no more than fifty cents (50¢) per page for facsimiles, with a maximum charge of Forty-Five Dollars (\$45.00) for any individual facsimile transmission, and no more than ten cents (10¢) per page for photocopies.

Attorney shall send a monthly statement for services rendered during the previous month and for expenses incurred on City's account. The monthly statement shall describe the nature of the work performed, the attorney performing the work and the time spent for each task as well as

the nature of any fees and expenses incurred. Any expense over \$250 shall include the appropriate back-up documentation for that expense (i.e., invoice, receipt, etc.).

Section 3. Term. This Agreement shall commence on October 28, 2011, and shall continue until terminated.

Section 4. Indemnification. Attorney shall indemnify, defend, and hold harmless City, City Council, its officers, agents, and employees, from any and all claims or losses resulting from physical injury or property damage arising from the wrongful or negligent action or inaction of Attorney or any person employed by Attorney in the performance of this Agreement.

Section 5. Insurance.

(a) Attorney shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work by Attorney, its agents, representatives or employees. Insurance shall be of the type, in the amounts and subject to the provisions described below.

(i) Commercial general liability coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage (“occurrence” form CG0001, Ed. 11/88) with a minimum limit of One Million Dollars (\$1,000,000) per occurrence. If the insurance includes a general aggregate limit, that limit shall apply separately to this contract or it shall be at least twice the required per occurrence limit.

(ii) Workers Compensation Insurance as required by the State of California.

(iii) Professional Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000).

(b) Evidence of Coverage:

(i) Within 14 days after approval of this Agreement by City, Attorney shall file with the Certificate of General Liability Insurance and a Confirmation of Malpractice Insurance evidencing coverage in compliance with this Agreement on a form acceptable to City Attorney. Except as required by law, City shall not disclose the information contained on such certificates of insurance.

(ii) During the term of this Agreement, Attorney shall maintain with City current valid proof of insurance coverage. Proof of renewals shall be filed prior to expiration of any required coverage and shall be provided on a form acceptable to City Attorney. Except as required by law, City shall not disclose the information contained on such proof of insurance form.

(iii) Failure to submit any required evidence of insurance within the required time period shall be cause for termination.

(iv) In the event Attorney does not maintain current, valid, evidence of insurance on file with City, City may, at its option, withhold payment of any moneys owed to Attorney, or which it subsequently owes to Attorney, until proper proof is filed.

(c) All insurance coverage shall be provided by insurers admitted in the State of California and with a rating of B+;VII or better in the most recent edition of Best's Key Rating Guide, Property-Casualty Edition.

(d) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled and shall not be reduced in coverage or limits except after 30 days

prior written notice provided to City. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of non-payment of premium.

(e) Attorney's insurance and any insurance provided in compliance with this Agreement, shall be primary with respect to any insurance or self-insurance programs covering City, its City Council and any officer, agent or employee of City.

(f) Where available, the insurer shall agree to waive all rights of subrogation against City, its City Council and every officer, agent and employee of City.

(g) Any deductibles or self-insured retentions shall be declared to and are subject to approval by City. At the option of City, either the insurer shall reduce or eliminate the deductibles or self-insured retentions as respects City, or Attorney shall procure a bond guaranteeing payment of losses and expenses.

(h) In the event that Attorney does not provide continuous Insurance coverage, City shall have the right, but not the obligation, to obtain the required Insurance coverage at Attorney's expense, and City may deduct all such costs from moneys City owes to Attorney or from moneys which it subsequently owes to Attorney.

(i) All commercial general liability insurance coverage required to be maintained pursuant to this Agreement by Attorney shall name City, its City Council and every officer, agent and employee of City as additional insureds with respect to work under this Agreement.

Section 6. Successors and Assigns. This Agreement may not be assigned by Attorney. This Agreement may not be amended without the written agreement of both parties hereto.

Section 7. Facilities and Equipment. Attorney shall, at its own cost and expense, provide all facilities and equipment which may be required for performance of services required by this Agreement.

Section 8. Termination. This Agreement may be terminated by City, without prior notice, at any time. Attorney shall be entitled to the compensation earned by it prior to the date of termination. Attorney shall be entitled to no further compensation after the date termination. Attorney reserves the right to terminate this Agreement in the event that City fails to timely pay for Attorney's services after Attorney provides City reasonable notice and opportunity to cure such failure or if a reason arises requiring or allowing the Attorney to withdraw pursuant to the applicable, ethical rules.

Section 9. Conflict of Interest. Attorney agrees not to accept any employment during the term of this Agreement by any other person or entity which employment is or may likely develop a conflict of interest between City's interest and the interests of such other person or entity. "Conflict" as used herein, shall be defined and interpreted in accordance with Section 1090 of the California Government Code and as set forth in the Rules of Professional Conduct of the State Bar of California.

Section 10. Notice. Whenever it shall be necessary for either party to serve notice on the other respecting this Agreement, such notice shall be served personally or by certified mail addressed to City Attorney of City of Manhattan Beach, c/o Roxanne Diaz, Richards, Watson & Gershon, 355 S. Grand Avenue, 40th Floor, Los Angeles, California 90071; or to Jill J. Chalmers, Holme Roberts & Owens LLP, 90 S. Cascade Avenue, Suite 1300, Colorado Springs, CO 80903, or Donald L. Samuels, Holme Roberts & Owens LLP, 1700 Lincoln Street, Suite

4100, Denver, CO 80203 with a copy to General Counsel, Holme Roberts & Owen LLP, 1700 Lincoln Street, Suite 4100, Denver, CO 80203, unless and until different addresses may be furnished in writing by either party to the other, and such notice shall be deemed to have been served within seventy-two (72) hours after the same has been deposited in the United States Post Office by certified mail. This shall be valid and sufficient service of notice for all purposes.

Section 11. Extent of Agreement. This Agreement represents the entire and integrated Agreement between City and Attorney and supersedes any and all prior negotiations representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both City and Attorney.

Section 12. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

Section 13. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of California.

Executed on this ____ day of _____ 2011 at Manhattan Beach California.

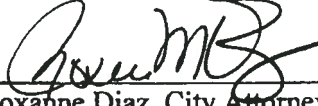
CITY OF MANHATTAN BEACH
A Municipal Corporation

David N. Carmany, City Manager

ATTTEST:

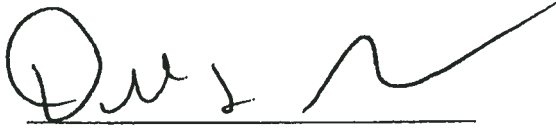
Liza Tamura, City Clerk

APPROVED AS TO FORM:



Roxanne Diaz, City Attorney

HOLME ROBERTS & OWEN, LLP



Donald L. Samuels, Partner