



AGENDA REPORT

Meeting Date: May 15, 2012

Item Number: H-7

To: Honorable Mayor & Council members

From: Scott Miller, Chief Financial Officer,
Noel Marquis, Assistant Director of Administrative Services - Finance
Sharon Rahban, CPA, Accounting Manager

Subject: **AGREEMENT BY AND AMONG THE CITY OF BEVERLY HILLS,
CITY OF BEVERLY HILLS COMMUNITY CHARITABLE
FOUNDATION AND MAYER HOFFMAN MCCANN P.C. FOR
PROFESSIONAL AUDIT SERVICES**

Attachments: 1.) Agreement

RECOMMENDATION

Staff recommends that the City Council move to approve an agreement between the City of Beverly Hills and Mayer Hoffman McCann P.C. for audit services; and also approve a purchase order in the amount of \$69,000.

INTRODUCTION

The most recent contract for annual financial audit services expired at the end of fiscal year 2010-2011. This prompted a request for proposal (RFP) to be sent out to various audit firms. The contract for audit services is three (3) years with two one-year-extension options. The audit firm of Mayer Hoffman McCann P.C., the City's current auditor, is being recommended to continue providing audit services.

DISCUSSION

The RFP process began on February 2nd, 2012, with a distribution of RFPs to 17 audit firms listed on the California Society of Municipal Finance Officers' website, which included the "Big Four" audit firms as follows:

- Brown Armstrong CPAs
- Caporicci & Larson
- Deloit and Touche
- Ernst and Young
- Grant Thornton
- KPMG
- Lance, Soll & Lunghard, CPA's LLP
- Macias, Gini & O'Connell LLP
- Mayer Hoffman McCann P.C.
- Maze & Associates
- Moss Adams LLP
- Moss Levy
- Price Waterhouse Coopers
- Simpson & Simpson, CPAs
- SotoMayor CPAs
- Teaman, Ramirez & Smith, Inc.
- White Nelson Diehl Evans LLP

A mandatory proposer's conference was held at City Hall on March 1st, at 10:00am. The proposals were due March 16th, 2012. A total of seven (7) audit firms attended the conference and submitted proposals.

The audit proposals were reviewed and analyzed and a short list of three were selected for final interviews by a panel made up of the City Treasurer, Chief Financial Officer / Director of Administrative Services, Assistant Director of Administrative Services – Finance, and the Accounting Manager. The firms selected for interview were the most experienced, best qualified, and exhibited the audit skills and experience needed to do the City's audit. In addition, these firms also proposed the most reasonable prices.

Following are the panel's findings based on proposer interviews:

	Firm Name	Pro	Con
1	White Nelson Diehl Evans	<ul style="list-style-type: none"> • Lowest price • Adequate experience • Maybe better suited for potentially needed consulting work, which needs to be kept separate from audit services for independence reasons 	<ul style="list-style-type: none"> • Limited audit experience with municipalities • Staff seemed dependent on audit partner for guidance • May have difficulty in understanding the City's complex accounting structure with enough time to assist in implementing the new accounting software • Office is located in Irvine

2	Macias Gini and O'Connell	<ul style="list-style-type: none"> • Adequate Experience • Maybe better suited for potentially needed consulting work, which needs to be kept separate from audit services for independence reasons • Office is located in Downtown Los Angeles and Century City • Experienced Technical Reviewer 	<ul style="list-style-type: none"> • Highest price • Appeared to be stronger in management consulting than audit • Too many new employees
3	Mayer Hoffman McCann	<ul style="list-style-type: none"> • Adequate Experience • Highly Experienced Technical Reviewer • Proven understanding of City's complex accounting transactions • Provides helpful recommendations for improvement. • Change of Audit Partner for new perspective • Same price as the prior year for City's audit • Offered 40 hours per year of free audit service for other internal-audit needs • Successfully concluded two peer review last year 	<ul style="list-style-type: none"> • Office is located in Irvine • Significant retirement of partners during the last fiscal year

After weighing the pros and cons of each firm, the interview panel selected the audit firm of Mayer Hoffman McCann.

The audit committee met on May 10, 2012 and concurs with the recommendation of Mayer Hoffman McCann P.C. as well.

FISCAL IMPACT

Overall the fiscal impact to the City is lower than the cost in Fiscal Year 2010-2011 which was \$73,000. The contract price for Fiscal Year 2011-2012 is \$66,600. The price increases to \$72,360 for each subsequent year until contract expiration for Fiscal Year 2015-2016. In addition, audit costs ranging from \$2,400 – \$8,200 each year have been added for the City of Beverly Hills Charitable Community Foundation FY2011-2012 is the first year of its operations. The total contract cost of \$390,640 includes the audit cost of the City of Beverly Hills Charitable Community Foundation. Funds have been budgeted and are available for this purpose.


 Noel Marquis
 Finance Approval


 Scott G. Miller
 Approved By

Council will be advised if agreement is not signed by Tuesday.

Attachment 1

AGREEMENT BY AND AMONG THE CITY OF BEVERLY HILLS, CITY OF BEVERLY HILLS COMMUNITY CHARITABLE FOUNDATION AND MAYER HOFFMAN MCCANN P.C. FOR PROFESSIONAL AUDIT SERVICES

NAME OF CONSULTANT: Mayer Hoffman McCann P.C

RESPONSIBLE PRINCIPAL OF CONSULTANT: Matthew Lenton, Shareholder

CONSULTANT'S ADDRESS: 2301 Dupont Drive, Suite 200
Irvine, California 92612

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: Scott Miller, Director of
Administrative Services/Chief Financial
Officer

FOUNDATION'S ADDRESS: Beverly Hills Community Charitable
Foundation
455 N. Rexford Drive, Suite 290
Beverly Hills, CA 90210

COMMENCEMENT DATE: July 1, 2012

TERMINATION DATE: July 31, 2014, unless extended pursuant to
Section 7B.

CONSIDERATION: City Audit services covering the following
fiscal years: FY 2012-13: \$66,000; FY
2013-14: \$72,360; FY 2014-15: \$72,360;
2015-16: \$72,360; FY 2016-17: \$72,360

Foundation Audit services covering the
following fiscal years: FY 2012-13: \$2,400;
FY 2013-14: \$2,460; FY 2014-15: \$2,520;
2015-16: \$2,580; FY 2016-17: \$2,640

AGREEMENT BY AND AMONG THE CITY OF BEVERLY HILLS, CITY OF BEVERLY HILLS COMMUNITY CHARITABLE COMMUNITY FOUNDATION AND MAYER HOFFMAN MCCANN P.C. FOR PROFESSIONAL AUDIT SERVICES

THIS AGREEMENT (Agreement) is entered into by and among the CITY OF BEVERLY HILLS, a municipal corporation, hereinafter referred to as "City," CITY OF BEVERLY HILLS COMMUNITY CHARITABLE FOUNDATION, a 501(c)(3) public benefit corporation, hereinafter referred to as "Foundation" and MAYER HOFFMAN McCANN, P.C., hereinafter referred to as "Consultant."

RECITALS

A. It is the intention of the City and Foundation, to provide for the continued financial and compliance audits of their financial statements and federal grant programs, and for operational audits of the various City departments and City's Financial Reporting Entity ("Reporting Entity"), as defined by the Government Accounting Standards Board ("GASB").

B. Foundation is a 501(c)(3) public benefit corporation created to benefit the residents of City.

C. Consultant represents that it has the professional qualifications to provide such professional services, is "independent" of the City and Foundation as defined by professional literature and federal, state and local requirements, and City and Foundation desire to retain Consultant to perform such services;

NOW, THEREFORE, the parties hereto mutually agree as follows:

Section 1. SCOPE OF WORK.

A. City and Foundation hereby engage Consultant, and Consultant hereby agrees to examine the City's and Foundation's annual basic financial statements and required supplementary information ("RSI") in accordance with the auditing standards outlined in Section 1.E. below, with the objective of expressing an opinion on each opinion unit of the financial statements that collectively comprise the basic financial statements, including the budgetary comparison statements of the General Fund and/or major special revenue funds. In addition, Consultant shall express an "in-relation-to" opinion on the combining and individual nonmajor fund financial statements, budgetary comparison statements or schedules of any major fund with a legally-adopted budget (excluding those budgetary comparisons included in the basic financial statements), other governmental capital assets schedules, any other supplementary information included in the Financial Section of the City's and Foundation's comprehensive annual financial report ("CAFR"), and the Schedule of Expenditures of Federal Awards, if applicable (included in the separately-issued Single Audit Reports of the City's federal grant programs). Consultant will determine that information provided in the Introductory Section and Statistical Section of the CAFR conforms to amounts reported in the basic financial statements.

B. Consultant shall conduct an examination of the City and Foundation federal awards in conformance with the auditing standards outlined in Section 1.E. below. In addition to the audit of the City's and Foundation's federal awards, Consultant shall review any materials included in the reporting package accompanying the Single Audit data collection form submitted to the Federal Government at the completion of the Single Audit.

C. Consultant shall perform agreed-upon procedures to test and report on the GANN appropriation limitation calculations for City and, if applicable, Foundation required by California State Law ("State Law").

D. Consultant shall assist the City and Foundation, as necessary, to meet the requirements of the Government Finance Officers Association of the United States and Canada ("GFOA") Certificate of Achievement in Financial Reporting Program and the California Society of Municipal Finance Officers ("CSMFO") Certificate of Award for Outstanding Financial Reporting Program.

E. Consultant's examinations shall be conducted in accordance with the following standards:

(1) Auditing standards generally accepted in the United States of America, as promulgated by the American Institute of Certified Public Accountants ("AICPA") or any successor body, including standards related to fraud detection. Such standards must include the requirements of the AICPA Audit Guide, *Audits of States and Local Governments*.

(2) *Government Auditing Standards*, issued by the Comptroller General of the United States.

(3) The provisions of the Single Audit Act, as amended.

(4) The provisions of the U.S. Office of Management and Budget ("OMB") Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*.

(5) Specific auditing standards relating to any grant or other agreement determined to be material by Consultant for purposes of the examination of the basic financial statements.

(6) Any other applicable standards for conducting examinations of those items identified in Section 1.A – D above.

F. Consultant shall have the responsibility, within the standards outlined in Section 1.E. and within the inherent limitations of the auditing process, to plan the examination in order to identify fraud, errors or irregularities (as defined in authoritative professional literature) that would have a material effect on the City's and Foundation's financial statements.

G. Consultant shall review internal controls related to the City's and Foundation's financial systems, federal grant programs and other systems and procedures during the course of its examinations in accordance with standards identified in Section 1.E. Consultant shall recommend improvements in these areas, as well as such other areas as may come to its attention

during the course of its examinations. Consultant shall report these findings and recommendations in writing to the City Council and Board of Directors of Foundation (“Foundation Board”).

H. Consultant shall attend meetings of the City Council, City Council Finance Committee and/or City Council Audit Committee and Foundation Board as requested from time to time. City and Foundation anticipate that such meetings shall generally be conducted at least twice annually, prior to the commencement of significant procedures and upon the completion of all audit procedures and the preparation and submission of the various financial reports.

I. Consultant shall provide advisory services as required by City and Foundation on matters that affect accounting, auditing, reporting and operating procedures.

J. Prior to the commencement of work in connection with services provided annually, Consultant may develop an annual “Engagement Letter” outlining the terms of the engagement, limitations, requirements and other information regarding the annual scope of work and services, which shall be subject to City’s and Foundation’s approval.

K. Consultant shall perform up to 40 hours per fiscal year of operational or financial audits.

Section 2. SCOPE OF SERVICES. Consultant shall perform the work described in Section 1 including, without limitation, the following services:

A. Planning

- (1) Update Consultant’s understanding of the City’s and Foundation’s operating environment.
- (2) Develop an in-depth understanding of areas of City concern.
- (3) Conduct detailed meetings with City Officials and staff, and Foundation Board and staff.
- (4) Review data processing operations.
- (5) Conduct analytical reviews to identify other audit areas that might require attention.
- (6) Identify major areas of audit concern and define the major audit objectives.
- (7) Discuss and agree upon financial statement formats.
- (8) Perform Single Audit administrative matters, including identification of “pass-through” programs and related compliance requirements and conduct Single Audit planning.
- (9) Develop audit plan.

(10) Communicate status in writing through “Flash Reports.”

B. Interim Audit Work

(1) Update Consultant’s understanding of the City’s and Foundation’s major transaction cycles.

(2) Identify internal control strengths and weaknesses.

(3) Refine Consultant-tailored audit programs.

(4) Conduct progress conferences.

(5) Communicate status in writing through “Flash Reports.”

C. Final Audit Work

(1) Perform compliance testing to determine whether expected strengths within the systems are functioning as described as well as to determine the City’s and Foundation’s compliance with applicable laws, regulations, contracts and grants.

(2) Perform substantive tests to provide reasonable assurance of the validity of the information produced by the accounting system.

(3) Perform a Single Audit of the City’s federal awards and Foundation’s federal awards, if applicable, in accordance with applicable standards.

(4) Conduct formal exit conferences with City Officials and staff, and Foundation Board and staff.

(5) Communicate status in writing through “Flash Reports.”

D. Reports. Following completion of the examinations, Consultant shall, at a minimum, issue the following written reports:

(1) A report on the fair presentation of the City’s and Foundation’s basic financial statements, including the budgetary comparison statements of the General Fund and/or major special revenue funds, in conformity with accounting principles generally accepted in the United States of America, together with an “in-relation-to” opinion on the combining and individual nonmajor fund financial statements, budgetary comparisons of any major fund with a legally-adopted budget (excluding those budgetary comparisons included in the basic financial statements), other governmental capital assets schedules, and any other supplementary information included in the Financial Section of the City’s and Foundation’s CAFR. The City and Foundation estimate that they shall require no more than 400 copies each of this report annually. The City and Foundation shall prepare and print the CAFR; Consultant shall assist in its preparation.

(2) Separate “Single Audit” reports on the City’s federal award programs, and Foundation’s federal programs, if applicable. Such reports shall include reports, schedules and opinions required by the Single Audit Act, as amended, OMB Circular A-133, Government Auditing Standards and any other applicable standards or requirements. The City and Foundation estimate that they shall require no more than 100 copies each of this report annually. Consultant shall print these reports. At a minimum, such reports shall include:

(a) An “in-relation-to” report on the City’s and Foundation’s Schedule of Expenditures of Federal Awards (note that this may be included in the report described in Section 2.D. (2).c. below).

(b) A report on compliance and on internal control over financial reporting based on an audit of the basic financial statements performed in accordance with *Government Auditing Standards*.

(c) A report on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133.

(d) A Schedule of Expenditures of Federal Awards together with applicable notes to this schedule (note that the City, and Foundation, if applicable, shall prepare this schedule, but Consultant shall include this schedule in the Single Audit Reports).

(e) A Schedule of Findings and Questions Costs.

(f) A Status of Prior Year Findings (if applicable).

(g) Form SF-SAC, *Data Collection Form for Reporting on Audits of States, Local Governments and Non-Profit Organizations*.

(h) Any other report or opinion required to be in conformance with the Single Audit Act, as amended, and OMB Circular A-133.

(3) A report on agreed-upon procedures related to the City’s (or Foundation’s, if applicable) GANN Appropriations Limit Calculation, as required by State Law. The City estimates that it shall require no more than 10 copies of this report annually. Consultant shall print these reports.

(4) A report to management concerning material weaknesses and/or reportable conditions, if any, as defined by the AICPA. Such report may be included in the annual letter to management described in Section 2.D. (5) below, provided that the report on such items is segregated from the report on other matters. The City estimates that it shall require no more than 100 copies of this report annually. Consultant shall print these reports.

(5) An annual letter to management addressing any observations concerning the City’s internal control structure, as well as areas of potential economy and efficiency. Consultant shall include any matters from the prior year(s)’ letter to management that have not

been addressed during the subsequent fiscal year to Consultant's satisfaction. The City estimates that it shall require no more than 100 copies of this report annually. Consultant shall print these reports.

(6) An immediate, written report of all irregularities and illegal acts, or indicators of such irregularities and illegal acts, of which Consultant becomes aware to the City Manager and the Chief Financial Officer. In addition, Consultant shall make any other reports necessary regarding irregular or illegal acts in accordance with *Government Auditing Standards*.

(7) A report to the City Council and the Chief Financial Officer of standard communications required by auditing standards, including:

(a) Consultant's responsibility under auditing standards generally accepted in the United States of America.

(b) Significant accounting policies.

(c) Management judgments and accounting estimates.

(d) Significant audit adjustments.

(e) Other information in documents containing audited financial statements.

(f) Disagreements with management.

(g) Management consultation with other accountants.

(h) Major issues discussed with management prior to retention.

(i) Difficulties encountered in performing the audit.

(j) Any other communications required by standards outlined in Section 1.E.

Section 3. COMPLETION OF AUDIT AND DELIVERY OF REPORTS

A. Consultant shall complete all field work and issue all reports within 90 days after the books and records of the City for the appropriate fiscal year are closed and City staff is prepared for Final Audit Work to begin.

B. Consultant shall make all reasonable efforts to assist the City to issue its CAFR prior to the deadlines for submission for the GFOA and CSMFO award programs.

C. Consultant shall assist the City to meet all statutory reporting deadlines for its financial reports, for example, the Single Audit Data Collection Form and reporting package must be submitted no later than 30 days after issuance of the Single Audit Reports.

Section 4. ASSIGNMENT OF AUDIT PERSONNEL

A. Consultant shall assign personnel to this Project with a high level of municipal expertise. “Key Professional Staff” include partners, senior managers/managers, and in-charge accountants (regardless of title). Key Professional Staff identified in this Section shall be assigned by Consultant to perform the services required by this Agreement. There shall be no substitution of assignment of any individual so specified without prior written approval of the City. If such individual leaves Consultant’s employ or is transferred, City shall have the right of approval of any replacement.

<u>Title</u>	<u>Individual</u>
Engagement Shareholder	Matt Lenton
Technical Review Shareholder	Ken Al-Imam
Engagement Manager	Steen Dobrenen
Field Supervisor	Kayla Stevko

B. During the term of this Agreement, continuity of personnel assigned to this Project shall be maintained at the management level, while allowing for sufficient rotation of staff to provide a fresh examination of controls and detailed records.

C. Consultant and all personnel assigned to the Project shall maintain independence as defined in standards described in Section 1.E., requirements of the U.S. Securities and Exchange Commission (“SEC”) and any other successor authoritative bodies.

D. All applicable Consultant personnel shall maintain continuing professional education (“CPE”) requirements, including governmental CPE, in accordance with both State of California Board of Accountancy rules for certified public accountants and standards described in Section 1.E. during the term of this Agreement.

Section 5. WORKING PAPERS. The auditor’s journals and financial analysis of Consultant (“working papers”) for this engagement are the property of Consultant. However, City acknowledges and grants assent that representatives of the oversight agency(ies) or their designee, other government audit staffs and the U.S. General Accounting Office, shall have access to the audit working papers upon their request; and that Consultant shall maintain the working papers for a period of at least 3 years after the date of the report, or for a longer period if Consultant is requested to do so by the oversight agency(ies). Access to requested work papers shall be provided under the supervision of Consultant audit personnel and at a location designated by Consultant.

Section 6. TERM OF AGREEMENT. The term of this Agreement shall cover the fiscal years 2011-12, 2012-13, and 2013-14, and shall automatically be extended for two (2) successive one-year periods unless, at least ninety (90) days prior to the end of a fiscal year, City’s Chief Financial Officer and/or Foundation’s Chief Financial Officer gives Consultant written notice of cancellation in the manner provided in Section 14 of this Agreement.

Section 7. COMPENSATION

A. City agrees to pay Consultant for and in consideration of the faithful performance of the services and duties set forth in this Agreement, and Consultant agrees to accept from City, as and for compensation for the faithful performance of said services and duties, an annual fee of the following amounts: (i) City Audit: for fiscal year 2011-12, Sixty-Six Thousand Six Hundred Dollars (\$66,600); for fiscal year 2012-2013, Seventy-Two Thousand Three Hundred Sixty Dollars (\$72,360); and for fiscal year 2013-14, Seventy-Two Thousand Three Hundred Sixty Dollars (\$72,360); and (ii) Foundation Audit: for fiscal year 2011-12, Two Thousand Four Hundred Dollars (\$2,400); for fiscal year 2012-2013, Two Thousand Four Hundred Sixty Dollars (\$2,460); and for fiscal year 2013-14, Two Thousand Five Hundred Twenty Dollars (\$2,520).

B. The annual fee for each of the additional years shall be the following amounts: (i) City Audits for fiscal year 2014-15, Seventy-Two Thousand Three Hundred Sixty Dollars (\$72,360); and for fiscal year 2015-16, Seventy-Two Thousand Three Hundred Sixty Dollars (\$72,360); (ii) . Foundation Audit: for fiscal year 2014-15, Two Thousand Five Hundred Eighty Dollars (\$2,580); for fiscal year 2015-2016, Two Thousand Six Hundred Forty Dollars (\$2,640).

C. The annual fee for the services described in Sections 1 and 2 of this Agreement shall include all costs and expenses of Consultant for performance of the services described in this Agreement.

D. For additional services requested by Consultant and approved in writing by City that are outside of the scope of work and services described in Sections 1 and 2 of this Agreement, City shall compensate Consultant for "audit" projects at the following rates:

<u>Staff Level</u>	
Shareholders	\$ 150
Senior Managers	135
Managers	125
Senior Auditors	115
Staff Auditors	110

For non-audit projects, City shall compensate Consultant for such services at a mutually agreed-upon sum. Upon request of City, Consultant shall provide City with an estimate of the cost of such additional services. Consultant shall not commence performance of such additional services without prior written approval of City.

E. City shall pay Consultant the annual fee for each fiscal year upon satisfactory completion of the work required to be performed for that fiscal year pursuant to this Agreement, within thirty (30) days of Consultant's submittal of a statement to City describing the services performed for that fiscal year.

F. Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with Section

7.D. 10% of each progress billing will be withheld until satisfactory completion of all work for that particular fiscal year. All billings must include the purchase order number on the face of the invoice, type of services provided (e.g., planning, interim fieldwork, final fieldwork) and percentage complete, personnel used, hours and rates, extension and comparison to not-to-exceed total amount for the fiscal year. Billings must be for periods of time not less than thirty (30) days and will be paid by City within thirty (30) days of submission to City by Consultant. The final billing shall include amounts retained from progress billings.

G. Billings for services described in Section 1 and 2 shall not exceed the dollar amounts described Section 7A. and Section 7.B.

Section 8. CHANGES. City shall have the right to order, in writing, changes in the work or the services to be performed. Any changes in the scope of work requested by Consultant must be made in writing and approved by both parties.

Section 9. TIME OF COMMENCEMENT. Upon written notification by City to proceed, Consultant shall commence performance of the services and duties set forth in this Agreement.

Section 10. INDEMNIFICATION. Consultant agrees to indemnify, hold harmless, and defend City, City Council and each member thereof, and every officer, employee and agent of City, from any claim, liability or financial loss (including, without limitation, attorneys' fees and costs) for death, bodily injury or damage to tangible property arising directly or indirectly from any and all intentional, willful, negligent or other wrongful acts, errors or omissions of Consultant or any person employed by Consultant in the performance of this Agreement.

Section 11. INSURANCE

A. Consultant shall at all times during the term of this Agreement carry, maintain and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance with minimum limits of Two Million Dollars (\$2,000,000) combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Consultant.

B. Consultant shall at all times during the term of this Agreement carry, maintain and keep in full force and effect, a policy or policies of Commercial Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Consultant in performing the services required by this Agreement.

C. Consultant shall at all times during the term of this Agreement and for four (4) years thereafter, carry, maintain and keep in full force and effect a claims made policy or policies of professional liability insurance with a minimum limit of One Million Dollars (\$1,000,000).

D. Consultant agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation insurance as required by law.

E. The policies of insurance required by this Agreement shall be issued by an insurer rated in the most recent edition of Best's Insurance Guide with a rating of at least B+VII or otherwise be approved by the City's Risk Manager. All insurance policies shall provide that the insurance coverage shall not be cancelled by the insurance carrier without thirty (30) days written notice to City. Consultant agrees that it will not cancel or reduce said insurance coverage.

F. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City or Foundation may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

G. At all times during the term of this Agreement, Consultant shall maintain on file with the City Clerk of City, and Chief Financial Officer of Foundation, a certificate or certificates of insurance in the form set forth in Exhibit A, attached hereto and incorporated herein by this reference, showing that the aforesaid policies are in effect in the required amounts. The comprehensive general liability policy or policies shall contain an endorsement naming City and Foundation as an additional insured.

H. The insurance provided by Consultant shall be primary to any coverage available to City. The insurance policies shall include provisions for waiver of subrogation against City or Foundation.

I. Any deductibles or self-insured retentions shall be declared to and must be approved by City or Foundation. At the option of City or Foundation, either the insurer shall reduce or eliminate the deductibles or self-insured retentions as respects City or Foundation, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

Section 12. ATTORNEYS' FEES. In the event of litigation between the parties arising out of or connected with this Agreement, the prevailing party in such litigation shall be entitled to recover, in addition to any other amounts, actual attorneys' fees and costs of such litigation.

Section 13. INDEPENDENT CONTRACTOR. Consultant is and shall at all times remain, as to City or Foundation, an independent contractor. Neither City nor Foundation, nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees is in any manner an agent or employee of City or Foundation.

Section 14. CANCELLATION OF AGREEMENT

A. City or Foundation may cancel this Agreement with respect to its own services at any time upon five (5) days written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice.

B. In the event of termination or cancellation of this Agreement by City or Foundation, due to no fault or failure of performance by Consultant, Consultant shall be paid full

compensation for all services performed by Consultant, in an amount to be determined as follows: For work done in accordance with all of the terms and provisions of this Agreement, Consultant shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation; provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid Consultant for the full performance of the services required by this Agreement.

Section 15. FAIR EMPLOYMENT PRACTICES/EQUAL OPPORTUNITY ACTS. In the performance of the Agreement, Consultant shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Section 12940-48) and the applicable equal employment provisions of the Civil Right Act of 1964 (42 U.S.C. 200e-217), whichever is more restrictive.

Section 16. PRODUCTS OF SERVICE UNDER THIS AGREEMENT. All deliverables required under this Agreement shall become the property of City or Foundation and City or Foundation may use all or any portion of the deliverables under this Agreement as City or Foundation deem appropriate.

Section 17. SUCCESSORS AND ASSIGNS. This Agreement covers professional services of a specific and unique nature, and Consultant shall not assign or attempt to assign any portion of this Agreement without written approval of City or Foundation.

Section 18. CONFLICTS OF INTEREST. Consultant agrees not to accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code Section 1090 and 87100) in any decision made by City or Foundation on any matter in connection with which Consultant has been retained pursuant to this Agreement.

Section 19. CITY REPRESENTATIVE.

A. The City Manager or his designee shall represent City in the implementation of this Agreement.

B. The Chief Financial Officer or his designee shall represent Foundation in the implementation of this Agreement.

Section 20. NOTICE. Whenever it shall be necessary for either party to serve notice on the other respecting this Agreement, such notice shall be served by certified mail addressed to the (a) City Manager of the City of Beverly Hills, 455 N. Rexford Drive, Fourth Floor, Beverly Hills, California 90210; (b) Chief Financial Officer, Beverly Hills Community Charitable Foundation, City of Beverly Hills, 455 N. Rexford Drive, Suite 290, Beverly Hills, California 90210; or to Consultant, Mayer Hoffman McCann, P.C., 2301 Dupont Drive, Suite 200, Irvine, California 92612, Attention, Michael A. Harrison, Shareholder, unless and until different addresses may be furnished in writing by either party to the other pursuant to this Section. 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, or upon personal delivery to the address stated herein. Service as described in this Section shall be valid and sufficient notice for all purposes.

Section 21. EXTENT OF AGREEMENT. This Agreement represents the entire and integrated agreement between City or Foundation and Consultant and supercedes any all prior negotiations, representations, or agreement, either written or oral. This Agreement may be amended only by written instrument signed by both City or Foundation and Consultant.

Section 22. 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 23. EFFECTIVE DATE OF THIS AGREEMENT.

A. With respect to services performed for City, this Agreement, made in duplicate, shall be effective from and after the date signed by the City.

B. With respect to services performed by Consultant for the Foundation, this Agreement, made in duplicate shall be effective upon approval of the Foundation's Board of Directors and execution of the Agreement by an authorized representative of the Foundation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the _____ day of _____, 20____ at Beverly Hills, California.

"City"
CITY OF BEVERLY HILLS
A Municipal Corporation

WILLIAM W. BRIEN, M.D.
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE
City Clerk

"Consultant"
MAYER HOFFMAN McCANN,
a professional corporation

MICHAEL A. HARRISON
Shareholder

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager

SCOTT G. MILLER
Director of Administrative Services/ Chief
Financial Officer

KARL KIRKMAN
Risk Manager

“Foundation”
BEVERLY HILLS COMMUNITY
CHARITABLE FOUNDATION, a 501(c)3
public benefit corporation

NAME:
Title

“Consultant”
MAYER HOFFMAN McCANN,
a professional corporation

MATTHEW LENTON
Shareholder

APPROVED AS TO FORM:

LAURENCE S. WIENER
General Counsel

APPROVED AS TO CONTENT:

JEFFREY KOLIN
Executive Director

SCOTT G. MILLER
Treasurer

KARL KIRKMAN
Risk Manager

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

A.
B.
C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATIO N DATE	B.I.	LIMITS P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days'** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____
Authorized Insurance Representative

AGENCY: _____

TITLE: _____
 ADDRESS: _____

RM02.DOC REVISED 10/14/96.

EXHIBIT A