# AGENDA REPORT

**Meeting Date:** July 1, 2014

**Item Number:** D-6

**To:** Honorable Mayor & City Council

**From:** Byron Pope, CMC City Clerk

**Subject:** APPROVING AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND **THE BEVERLY HILLS COURIER, LLC** TO PROVIDE ADVERTISING AND NOTICES; AND

APPROVING AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND **BEVERLY HILLS WEEKLY** TO PROVIDE ADVERTISING AND NOTICES.

**Attachments:**

1. Agreement – The Beverly Hills Courier, LLC
2. Agreement – Beverly Hills Weekly

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## RECOMMENDATION

Staff recommends that the City Council: (i) Award Bid No. 14-37 to The Beverly Hills Courier, LLC and approve an agreement between the City of Beverly Hills and The Beverly Hills Courier, LLC to provide advertising and notices, and (ii) Approve an agreement between the City of Beverly Hills and Beverly Hills Weekly to provide advertising and notices.

The City has a practice of providing as much public notice as possible, and private development applicants are required to pay for more extensive public noticing than in other cities. At the June 17, 2014 City Council Study Session, the City Council directed staff to award the bid to the Beverly Hills Courier, because of its more extensive distribution within the City, with a termination date of June 30, 2015, and also enter into an agreement with The Beverly Hills Weekly with a termination date of June 30, 2015 for public notices when deadlines permit and for display advertising, in accordance with the following caveats:

- Both newspapers must be willing to pick up the ads or accept faxed or electronically transmitted copies from the City.
- Both newspapers must satisfy the City's requirements for insurance and indemnification.

Staff will monitor distribution of the newspapers during the fiscal year to ensure all notices are reaching the intended audiences, and provide quarterly reports on the amount of advertising spend-by-department to the City Council during Study Sessions as directed.

## INTRODUCTION

On June 4, 2014, the City Clerk's Office received two responses to a Request for Bids for publication of the City's required notices from The Beverly Hills Courier and the Beverly Hills Weekly. No other responses were received.

## DISCUSSION

Bids were sought from legally adjudicated newspapers eligible to publish in the City of Beverly Hills to secure competitive price quotes and publication deadline dates. The bid governs not only legal notices and advertising but also covers all display advertising needs from other City departments in the same contract. This item was discussed at the June 17, 2014 City Council Study Session, and the Council consensus was to award the bid to the Beverly Hills Courier, and contract with the Beverly Hills Weekly based on the Advertising Ad Hoc Committee's (Councilmember Mirisch and Councilmember Krasne) recommendation. The City Clerk's Office will administer the approved agreements, and each department will be responsible for their own advertising needs (display ads) outside of legal advertising and notices.

This year, the recommendation is to maintain the same three-tiered pricing structure for the two locally adjudicated newspapers for fiscal year 2014/2015 as follows:

TIER 1 (65%)
Legal Advertising and Notices

| Category | Beverly Hills Courier | Beverly Hills Weekly |
|---|---|---|
| Schedule of Rates / Legal Square inch | | |
| Public notices up to page 5 with* | $12.10 | $7.86 |
| Public notices up to page 5 without** | $15.10 | $9.82 |
| Legal/classified ads with | $9.90 | $6.44 |
| Legal/classified ads without | $12.90 | $8.39 |
| Display advertising pages 1-5 with | $12.10 | $7.86 |
| Display advertising pages 1-5 without | $15.10 | $9.82 |
| Legal display advertising with | $9.90 | $6.44 |
| Legal display advertising without | $12.90 | $8.39 |

* with = with digitally transmitted text
** without = without digitally transmitted text

TIER 2 (65%)
Non-legal advertising intended to reach the entire City of Beverly Hills

| | **Beverly Hills Courier** | **Beverly Hills Weekly** |
|---|---|---|
| 1/8 page | $325.00 | $211.25 |
| 1/4 page | $546.00 | $354.90 |
| 1/2 page | $1,060.00 | $689.00 |
| Full page | $1,888.00 | $1,227.20 |

TIER 3 (50%)
Non-legal advertising intended to reach the entire City of Beverly Hills and an audience **wider** than the City of Beverly Hills

| | **Beverly Hills Courier** | **Beverly Hills Weekly** |
|---|---|---|
| 1/8 page | $325.00 | $162.50 |
| 1/4 page | $546.00 | $273.00 |
| 1/2 page | $1,060.00 | $530.00 |
| Full page | $1,888.00 | $944.00 |

## FISCAL IMPACT

The City Council did not direct staff to place a spending limit on advertising for this fiscal year, but directed staff to closely monitor spending advertising dollars locally to reach the desired breakdown ratio of **63%** (to the Courier) to **37%** (to the Weekly) in total spending (legal and display advertising) for the fiscal year. These percentages are based on the verified circulation audited information provided with the bids this year.

With the above advertising rates for 2014-2015 and the City Council direction for advertising this fiscal year, the City of Beverly Hills can publish the legal advertising and notices portion in both newspapers for approximately $70,000 based on the past fiscal year 2013/2014 trend/average of placing legal notices, legal advertising and display advertising through the City Clerk's Office.

Byron Pope, CMC
Approved By

# Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND THE BEVERLY HILLS COURIER, LLC TO PROVIDE ADVERTISING AND NOTICES

| | |
|---|---|
| NAME OF VENDOR: | The Beverly Hills Courier, LLC |
| RESPONSIBLE PRINCIPAL OF VENDOR: | Marcia Wilson Hobbs,<br>President and Publisher |
| VENDOR'S ADDRESS: | 499 North Canon Drive<br>Beverly Hills, CA 90210 |
| CITY'S ADDRESS: | City of Beverly Hills<br>455 N. Rexford Drive, Suite 290<br>Beverly Hills, CA 90210<br>Attention: Byron Pope, City Clerk |
| COMMENCEMENT DATE: | July 1, 2014 |
| TERMINATION DATE: | June 30, 2015 |
| CONSIDERATION: | Based on the item costs set forth in Exhibit B-1, attached hereto and incorporated herein |

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND THE BEVERLY HILLS COURIER, LLC TO PROVIDE ADVERTISING AND NOTICES

THIS AGREEMENT is made by and between the City of Beverly Hills, a municipal corporation (hereinafter called "CITY"), and The Beverly Hills Courier, LLC (hereinafter called "VENDOR").

RECITALS

A. CITY desires to have certain services provided (the "Services") as set forth in Exhibit A, attached hereto and incorporated herein.

B. VENDOR represents that it is qualified and able to perform the Services.

NOW, THEREFORE, the parties agree as follows:

Section 1. VENDOR's Services. VENDOR shall perform the Services as described in Exhibit A to the full satisfaction of CITY.

Section 2. Time of Performance. VENDOR shall perform the Services until the Termination Date set forth above.

Section 3. Compensation. CITY agrees to compensate VENDOR, and VENDOR agrees to accept in full satisfaction for the Services required by this Agreement an amount based on the item costs described in Exhibit B-1, attached hereto and incorporated herein. Said Consideration shall constitute reimbursement of VENDOR's fee for the Services as well as the actual cost of any equipment, materials, and supplies necessary to provide the Services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). CITY shall pay VENDOR said Consideration in accordance with the schedule of payment set forth in Exhibit B-2, attached hereto and incorporated herein.

Section 4. Independent Contractor. VENDOR is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of VENDOR or any of VENDOR's employees, except as herein set forth. VENDOR shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 5. Assignment. This Agreement may not be assigned in whole or in part by either party, without the prior written consent of CITY.

Section 6. Responsible Principal.

(a) VENDOR's Responsible Principal set forth above shall be principally responsible for VENDOR's obligations under this Agreement and shall serve as principal liaison between CITY and VENDOR. Designation of another Responsible by VENDOR shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 7. Personnel. VENDOR represents that it has, or will secure at its own expense, all personnel required to perform the Services under this Agreement. All personnel engaged in the work shall be qualified to perform such Services.

Section 8. Insurance.

(a) VENDOR 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 General Liability Insurance, with minimum limits of Two Million Dollars ($2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by VENDOR.

(b) VENDOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Media Liability Coverage that includes errors and omissions coverage for public notices, with minimum limits of One Million Dollars ($1,000,000) for each occurrence.

(c) VENDOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect Business Automobile Liability Insurance at least as broad as Insurance Services office form CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 "any auto" and endorsement CA 0029 (Ed. 12/88) with a limit not less than One Million Dollars ($1,000,000) per accident.

(d) VENDOR agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation and employer's liability insurance as required by law.

(e) VENDOR shall require each of its sub-consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(f) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(g) VENDOR agrees that if it does not keep the aforesaid insurance in full force and effect CITY may immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at VENDOR's expense, the premium thereon.

(h) At all times during the term of this Agreement, VENDOR shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. VENDOR shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming the CITY as an additional insured. All of the

policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(i) The insurance provided by VENDOR shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(j) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, VENDOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or VENDOR shall procure a bond guaranteeing payment of losses and expenses.

Section 9. Indemnification. VENDOR 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) arising from any claim of intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of VENDOR or any person employed by VENDOR in the performance of this Agreement.

Section 10. Termination.

(a) CITY may cancel this Agreement at any time upon five (5) days written notice to VENDOR. VENDOR 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 under paragraph (a), due to no fault or failure of performance by VENDOR, VENDOR shall be paid full compensation for all Services performed by VENDOR prior to termination.

Section 11. Notice. Any notice required to be given to VENDOR shall be deemed duly and properly given upon delivery, if sent to VENDOR postage prepaid to the VENDOR's address set forth above or personally delivered to VENDOR at such address or other address specified to CITY in writing by VENDOR.

Any notice required to be given to CITY shall be deemed duly and properly given upon delivery, if sent to CITY postage prepaid to CITY's address set forth above or personally delivered to CITY at such address or other address specified to VENDOR in writing by CITY.

Section 12. Records Audit. VENDOR shall keep and maintain full and accurate records with respect to all matters governed by this Agreement, including but not limited to (1) the rates paid by CITY under this Agreement, and (2) the distribution, delivery and circulation of The Beverly Hills Courier newspaper. CITY or its representative, including a third party auditor, shall be entitled to full access, without charge, during normal business hours to all records of VENDOR as deemed appropriate by CITY to determine compliance with this Agreement and shall have the right to examine, inspect and audit the same and to make transcripts or copies therefrom. If CITY or its representative determines that the rates paid by the CITY for

advertising exceed the rates paid by any other advertiser of VENDOR for the same advertising other than special introductory rates or special rates offered to advertisers who contract to purchase at least one half page in every edition of the newspaper for at least ninety (90) days, VENDOR shall promptly reimburse CITY for all fees paid in excess of those required by this Agreement. In addition, VENDOR shall reimburse CITY for all costs and expenses incurred by CITY in connection with such audit.

Section 13. Circulation. VENDOR shall, at all times during the term of this Agreement publish The Beverly Hills Courier newspaper and circulate such publication, free of charge, weekly on its regular date of publication to the areas shown in Exhibit D. Failure to comply with this section shall be a material breach of this Agreement.

Section 14. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and VENDOR, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and VENDOR.

Section 15. Attorney's Fees. In the event that CITY or VENDOR commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees.

Section 16. Governing Law. The interpretation and implementation of this Agreement shall be governed by the law of the State of California.

Section 17. 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.

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

CITY OF BEVERLY HILLS
A Municipal Corporation

_____
LILI BOSSE
Mayor of the City of
Beverly Hills, California

ATTEST:

_____
BYRON POPE
City Clerk

[Signatures continue]

VENDOR: THE BEVERLY HILLS COURIER PUBLISHING CO., LLC

MARCIA WILSON HOBBS
President and Publisher

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager

BYRON POPE
City Clerk

KARL KIRKMAN
Risk Manager

EXHIBIT A

Scope of Services

VENDOR shall, at CITY's written request, perform the following Services to the satisfaction of CITY:

Print and publish, on a non-exclusive basis, correctly and in a first-class manner in The Beverly Hills Courier, a newspaper that has been adjudicated as a newspaper of general circulation as defined in Section 6008 of the Government Code, for CITY, all legal advertising and notices of whatever kind or nature that may be requested in writing by an officer, board, commission or department of CITY, to be published and furnish proof of such publication.

All advertisements to be published under this Agreement shall be inserted in every edition of The Beverly Hills Courier issued upon the day of publication, and not in any supplement thereof, and shall be published for the number of days directed in writing by the officer or employee requesting such publication and no more. If specified by CITY in writing, certain Public Notices, which together may contain up to one page of text, shall be inserted on pages 2 through 5 of the front section of The Beverly Hills Courier (up front ads) except that a public notice may be placed on page 6 or 7 with written permission of the officer or employee requesting the publication.. If CITY requests more than one page of up front ads in any single edition of The Beverly Hills Courier, up to one page of up front ads shall be placed on pages two through five of the first section of that edition and any up front ads in excess of one page shall be inserted within the first thirteen pages of the first section of that edition.

Unless CITY approves a different font style and font size, VENDOR shall publish CITY's legal notices and advertising in the following font style and size:

serif=Times New Roman eight point font
san serif=Arial seven point font

VENDOR shall be required during the term of the Agreement to deliver free of charge fifty (50) copies of each issue of The Beverly Hills Courier to the City Clerk's office.

Written copy furnished by CITY for publication shall not be photocopied and published in "as is" condition unless expressly authorized by CITY. All such written copy shall be typeset as required by CITY. CITY may also provide VENDOR with camera-ready copy.

In the event VENDOR fails to publish an advertisement or notice, or publishes improperly, VENDOR shall, at the election of CITY, republish the advertisement or notice on the next available publication date at no charge to CITY or shall not charge CITY for the improperly published advertisement.

Prior to the commencement of Services under this Agreement and again on request by CITY, VENDOR shall submit evidence satisfactory to CITY of its newspaper delivery area within the CITY and its certificate of adjudication. Evidence of its newspaper delivery area shall

indicate where newspapers are delivered without charge in the CITY and where newspapers are only delivered pursuant to a paid subscription and where newspapers are not delivered in the CITY, and the number of residences in the CITY to which the newspaper is delivered.

VENDOR's deadline for publication of notices/advertising shall be 12:00 noon (Pacific Time) for space reservation and 5 p.m. (Pacific Time) for receipt of copy every Wednesday for publishing on the Friday of the same week.

VENDOR shall provide an affidavit of publication within two weeks of each publication.

VENDOR shall pick up the notice/advertising copy from CITY or accept fax or digital transmission of the copy from CITY.

EXHIBIT B-1

Schedule of Rates

| ITEM | ARTICLE | PRICE PER LEGAL SQUARE INCH |
|---|---|---|
| 1. | For the typesetting as necessary, printing and publishing of Public Notices up to Page 5 of the first section of the newspaper (up front ads), using a bold face title. Such notice shall be two columns in width with heavy border. | $12.10 (with digitally transmitted text)<br>$15.10 (without digitally transmitted text) |
| 2. | For the typesetting as necessary, printing and publishing of official advertising on pages dedicated to legal and classified advertising (legal/classified ads). | $ 9.90 (with digitally transmitted text)<br>$12.90 (without digitally transmitted text) |
| 3. | For the printing and publishing of display advertising on Pages 1 through 5 (up front ads) **as typeset by City** | Same as Item 1 |
| 4. | For the printing and publishing of display advertising on pages dedicated to legal and classified advertising **as typeset by City** (legal/classified ads) | Same as Item 2 |

Display Advertising in modular form shall be provided at the following rates on request by CITY:

| | |
|---|---|
| 1/8 page: | $ 325.00 |
| 1/4 page: | $ 546.00 |
| 1/2 page: | $1,060.00 |
| Full page: | $1,888.00 |

VENDOR's rates shall not exceed the rates VENDOR charges any other advertiser for the same size advertising in the same location, other than special introductory rates or special rates charged to advertisers who contract to purchase at least one half page of advertising in every edition of the newspaper for a duration of at least ninety (90) days. For those advertisements that require typesetting, VENDOR's rates shall not exceed the rates VENDOR charges any other advertiser for the same size advertising, in the same location, and typeset by the VENDOR, other than special introductory rates or special rates charged to advertisers who contract to purchase at least one half page of advertising in every edition of the newspaper for a duration of at least ninety (90) days. VENDOR shall submit quarterly to CITY a certified rate sheet which sets forth the rates it charges for advertising. CITY shall have the right to audit VENDOR's business records as provided in Section 12 of the Agreement.

EXHIBIT B-2

Schedule of Payment

Within 30 days after the end of each month, VENDOR shall submit to CITY an itemized statement which shall set forth in detail a description of the Services performed during that month. VENDOR shall also submit an affidavit of publication for each advertisement placed in The Beverly Hills Courier. CITY shall pay VENDOR the amount of such billing within thirty (30) days of receipt of the itemized statement and affidavits of publication.

# EXHIBIT C

## CERTIFICATE OF INSURANCE

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

**NAMED INSURED**

**ADDRESS**

**COMPANIES AFFORDING COVERAGE**
**A.**
**B.**
**C.**

| COMPANY (A. B. C.) | COVERAGE | POLICY NUMBER | EXPIRATION DATE | LIMITS B.I. | P.D. | AGGREGATE |
|---|---|---|---|---|---|---|
| | ☐ **AUTOMOBILE LIABILITY** | | | | | |
| | ☐ **GENERAL LIABILITY** | | | | | |
| | ☐ PRODUCTS/COMPLETED OPERATIONS | | | | | |
| | ☐ BLANKET CONTRACTUAL | | | | | |
| | ☐ CONTRACTOR'S PROTECTIVE | | | | | |
| | ☐ PERSONAL INJURY | | | | | |
| | ☐ EXCESS LIABILITY | | | | | |
| | ☐ **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

TITLE: _____

AGENCY: _____

ADDRESS: _____

_____

**RM02.DOC REVISED 10/14/96.**

EXHIBIT D

CIRCULATION MAP

# BEVERLY HILLS COURIER INSERT CIRCULATION

*Serving The Community Since 1965*

8840 West Olympic Boulevard, Beverly Hills, CA 90211 • (310) 278-1322 • Fax (310)271-5118 •E-Mail COURIERUSA@AOL.COM

# Attachment 2

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND BEVERLY HILLS WEEKLY TO PROVIDE
ADVERTISING AND NOTICES

| | |
|---|---|
| NAME OF VENDOR: | Beverly Hills Weekly |
| RESPONSIBLE PRINCIPAL OF VENDOR: | Josh E. Gross, Chief Executive Officer |
| VENDOR'S ADDRESS: | 140 South Beverly Drive, Suite 201<br>Beverly Hills, CA 90212 |
| CITY'S ADDRESS: | City of Beverly Hills<br>455 N. Rexford Drive, Suite 290<br>Beverly Hills, CA 90210<br>Attention: Byron Pope, City Clerk |
| COMMENCEMENT DATE: | July 1, 2014 |
| TERMINATION DATE: | June 30, 2015 |
| CONSIDERATION: | Based on the item costs set forth in Exhibit B-1, attached hereto and incorporated herein |

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND BEVERLY HILLS WEEKLY TO PROVIDE
ADVERTISING AND NOTICES

THIS AGREEMENT is made by and between the City of Beverly Hills, a municipal corporation (hereinafter called "CITY"), and the Beverly Hills Weekly (hereinafter called "VENDOR").

RECITALS

A. CITY desires to have certain services provided (the "Services") as set forth in Exhibit A, attached hereto and incorporated herein.

B. VENDOR represents that it is qualified and able to perform the Services.

NOW, THEREFORE, the parties agree as follows:

Section 1. VENDOR's Services. VENDOR shall perform the Services as described in Exhibit A to the full satisfaction of CITY.

Section 2. Time of Performance. VENDOR shall perform the Services until the Termination Date set forth above.

Section 3. Compensation. CITY agrees to compensate VENDOR, and VENDOR agrees to accept in full satisfaction for the Services required by this Agreement an amount based on the item costs described in Exhibit B-1, attached hereto and incorporated herein. Said Consideration shall constitute reimbursement of VENDOR's fee for the Services as well as the actual cost of any equipment, materials, and supplies necessary to provide the Services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). CITY shall pay VENDOR said Consideration in accordance with the schedule of payment set forth in Exhibit B-2, attached hereto and incorporated herein.

Section 4. Independent Contractor. VENDOR is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of VENDOR or any of VENDOR's employees, except as herein set forth. VENDOR shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 5. Assignment. This Agreement may not be assigned in whole or in part by either party, without the prior written consent of CITY.

Section 6. Responsible Principal.

(a) VENDOR's Responsible Principal set forth above shall be principally responsible for VENDOR's obligations under this Agreement and shall serve as principal liaison between CITY and VENDOR. Designation of another Responsible by VENDOR shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 7. Personnel. VENDOR represents that it has, or will secure at its own expense, all personnel required to perform the Services under this Agreement. All personnel engaged in the work shall be qualified to perform such Services.

Section 8. Insurance.

(a) VENDOR 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 General Liability Insurance, with minimum limits of Two Million Dollars ($2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by VENDOR.

(b) VENDOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Media Liability Coverage that includes errors and omissions coverage for public notices, with minimum limits of One Million Dollars ($1,000,000) for each occurrence.

(c) VENDOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect Business Automobile Liability Insurance at least as broad as Insurance Services office form CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 "any auto" and endorsement CA 0029 (Ed. 12/88) with a limit not less than One Million Dollars ($1,000,000) per accident.

(d) VENDOR agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation and employer's liability insurance as required by law.

(e) VENDOR shall require each of its sub-consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(f) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(g) VENDOR agrees that if it does not keep the aforesaid insurance in full force and effect CITY may immediately terminate this Agreement or, if insurance is available at

a reasonable cost, CITY may take out the necessary insurance and pay, at VENDOR's expense, the premium thereon.

(h) At all times during the term of this Agreement, VENDOR shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. VENDOR shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(i) The insurance provided by VENDOR shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(j) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, VENDOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or VENDOR shall procure a bond guaranteeing payment of losses and expenses.

Section 9. Indemnification. VENDOR 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) arising from any claim of intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of VENDOR or any person employed by VENDOR in the performance of this Agreement.

Section 10. Termination.

(a) CITY may cancel this Agreement at any time upon five (5) days written notice to VENDOR. VENDOR 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 under paragraph (a), due to no fault or failure of performance by VENDOR, VENDOR shall be paid full compensation for all Services performed by VENDOR prior to termination

Section 11. Notice. Any notice required to be given to VENDOR shall be deemed duly and properly given upon delivery, if sent to VENDOR postage prepaid to the VENDOR's address set forth above or personally delivered to VENDOR at such address or other address specified to CITY in writing by VENDOR.

Any notice required to be given to CITY shall be deemed duly and properly given upon delivery, if sent to CITY postage prepaid to CITY's address set forth above or personally delivered to CITY at such address or other address specified to VENDOR in writing by CITY.

Section 12. Records Audit. VENDOR shall keep and maintain full and accurate records with respect to all matters governed by this Agreement, including but not limited to (1) the rates paid by CITY under this Agreement, and (2) the distribution, delivery and circulation of The Beverly Hills Weekly newspaper. CITY or its representative, including a third party auditor, shall be entitled to full access, without charge, during normal business hours to all records of VENDOR as deemed appropriate by CITY to determine compliance with this Agreement and shall have the right to examine, inspect and audit the same and to make transcripts or copies therefrom. If CITY or its representative determines that the rates paid by the CITY for advertising exceed the rates paid by any other advertiser of VENDOR for the same advertising other than special introductory rates or special rates offered to advertisers who contract to purchase at least one half page in every edition of the newspaper for at least ninety (90) days, VENDOR shall promptly reimburse CITY for all fees paid in excess of those required by this Agreement. In addition, VENDOR shall reimburse CITY for all costs and expenses incurred by CITY in connection with such audit.

Section 13. Circulation. VENDOR shall, at all times during the term of this Agreement publish The Beverly Hills Weekly newspaper and circulate such publication, free of charge, weekly on its regular date of publication to the areas described in its bid proposal and shown in Exhibit D. Failure to comply with this section shall be a material breach of this Agreement.

Section 14. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and VENDOR, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and VENDOR.

Section 15. Attorney's Fees. In the event that CITY or VENDOR commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees.

Section 16. Governing Law. The interpretation and implementation of this Agreement shall be governed by the law of the State of California.

Section 17. 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.

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

CITY OF BEVERLY HILLS
A Municipal Corporation

_____
LILI BOSSE
Mayor of the City of
Beverly Hills, California

ATTEST:

_____
BYRON POPE
City Clerk

VENDOR: BEVERLY HILLS WEEKLY

_____
JOSH E. GROSS
Chief Executive Officer

APPROVED AS TO FORM:

_____
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

_____
JEFFREY C. KOLIN
City Manager

_____
BYRON POPE
City Clerk

_____
KARL KIRKMAN
Risk Manager

EXHIBIT A

Scope of Services

VENDOR shall, at CITY's written request, perform the following Services to the satisfaction of CITY:

Print and publish, on a non-exclusive basis, correctly and in a first-class manner in The Beverly Hills Weekly, a newspaper that has been adjudicated as a newspaper of general circulation as defined in Section 6008 of the Government Code, for CITY, all legal advertising and notices of whatever kind or nature that may be requested in writing by an officer, board, commission or department of CITY, to be published, and furnish proof of such publication.

All advertisements to be published under this Agreement shall be inserted in every edition of The Beverly Hills Weekly issued upon the day of publication, and not in any supplement thereof, and shall be published for the number of days directed in writing by the officer or employee requesting such publication and no more. If specified by CITY in writing, certain Public Notices, which together may contain up to one page of text, shall be inserted on pages 2 through 5 of the front section of The Beverly Hills Weekly (up front ads) except that a public notice may be placed on page 6 or 7 with the written permission of the officer or employee requesting the publication. If CITY requests more than one page of up front ads in any single edition of The Beverly Hills Weekly, up to one page of up front ads shall be placed on pages two through five of the first section of that edition and any up front ads in excess of one page shall be inserted within the first seven pages of the first section of that edition.

Unless CITY approves a different font style and font size, VENDOR shall publish CITY's legal notices and advertising in the following font style and size:

serif=Times New Roman eight point font
san serif=Arial seven point font

VENDOR shall be required during the term of the Agreement to deliver free of charge fifty (50) copies of each issue of The Beverly Hills Weekly to the City Clerk's office.

Written copy furnished by CITY for publication shall not be photocopied and published in "as is" condition unless expressly authorized by CITY. All such written copy shall be typeset as required by CITY. CITY may also provide VENDOR with camera-ready copy.

In the event VENDOR fails to publish an advertisement or notice, or publishes improperly, VENDOR shall, at the election of CITY, republish the advertisement or notice on the next available publication date at no charge to CITY or shall not charge CITY for the improperly published advertisement.

Prior to the commencement of Services under this Agreement and again on request by CITY, VENDOR shall submit evidence satisfactory to CITY of its newspaper delivery area

within the CITY and its certificate of adjudication. Evidence of its newspaper delivery area shall indicate where newspapers are delivered without charge in the CITY and where newspapers are only delivered pursuant to a paid subscription and where newspapers are not delivered in the CITY, and the number of residences in the CITY to which the newspaper is delivered.

VENDOR's deadline for publication of notices/advertising shall be 5 p.m. (Pacific Time) for receipt of copy every Tuesday for publishing on the Thursday of the same week.

VENDOR shall provide an affidavit of publication within two weeks of each publication.

VENDOR shall pick up the notice/advertising copy from CITY or accept fax or digital transmission of the copy from CITY.

EXHIBIT B-1

Schedule of Rates

| ITEM | ARTICLE | PRICE PER LEGAL SQUARE INCH |
|---|---|---|
| 1. | For the typesetting as necessary, printing and publishing of Public Notices up to Page 5 of the first section of the newspaper (up front ads),using a bold face title. Such notice shall be two columns in width with heavy border | $7.86 (with or without digitally transmitted text ) |
| 2. | For the typesetting as necessary, printing and publishing of official advertising on pages dedicated to legal and classified advertising (legal/classified ads). | $6.44 (with digitally transmitted text)<br>$8.39 (without digitally transmitted text) |
| 3. | For the printing and publishing of display advertising on Pages 1 through 5 (up front ads) **as typeset by City** | $7.86 (with digitally transmitted text)<br>$9.82 (without digitally transmitted text) |
| 4. | For the printing and publishing of display advertising on pages dedicated to legal and classified advertising **as typeset by City** (legal/classified ads) | $6.44 (with digitally transmitted text)<br>$8.39 (without digitally transmitted text) |

Column size equals 2.5 inches

Notwithstanding the above, if in the opinion of the City's Chief Financial Officer, VENDOR increases circulation within the City of Beverly Hills to more than 65% of the circulation of the Beverly Hills Courier ("Courier") then the rates set forth in items 1 through 4 above shall be adjusted so that the percentage of rate differential between VENDOR and the Courier equals the percentage of circulation differential.

Display Advertising in modular form shall be provided at the following rates on request by CITY:

TIER 2 (Intended to reach the entire City of Beverly Hills)

| | |
|---|---|
| 1/8 page: | $211.25 |
| 1/4 page: | $354.90 |
| 1/2 page: | $689.00 |
| Full page: | $1,227.20 |

TIER 3 (Intended to reach beyond City of Beverly Hills)

| | |
|---|---|
| 1/8 page: | $162.50 |
| 1/4 page: | $273.00 |
| 1/2 page: | $530.00 |
| Full page: | $944.00 |

VENDOR's rates shall not exceed the rates VENDOR charges any other advertiser for the same size advertising in the same location, other than special introductory rates or special rates charged to advertisers who contract to purchase at least one half page of advertising in every edition of the newspaper for a duration of at least ninety (90) days. For those advertisements that require typesetting, VENDOR's rates shall not exceed the rates VENDOR charges any other advertiser for the same size advertising, in the same location, and typeset by the VENDOR, other than special introductory rates or special rates charged to advertisers who contract to purchase at least one half page of advertising in every edition of the newspaper for a duration of at least ninety (90) days. VENDOR shall submit quarterly to CITY a certified rate sheet which sets forth the rates it charges for advertising. CITY shall have the right to audit VENDOR's business records as provided in Section 12 of the Agreement.

EXHIBIT B-2

Schedule of Payment

Within 30 days after the end of each month, VENDOR shall submit to CITY an itemized statement which shall set forth in detail a description of the Services performed during that month. VENDOR shall also submit an affidavit of publication for each advertisement placed in The Beverly Hills Weekly. CITY shall pay VENDOR the amount of such billing within thirty (30) days of receipt of the itemized statement and affidavits of publication.

# EXHIBIT C

## CERTIFICATE OF INSURANCE

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

**NAMED INSURED**

**ADDRESS**

**COMPANIES AFFORDING COVERAGE**
**A.**
**B.**
**C.**

| COMPANY (A. B. C.) | COVERAGE | POLICY NUMBER | EXPIRATION DATE | LIMITS B.I. | LIMITS P.D. | LIMITS AGGREGATE |
|---|---|---|---|---|---|---|
| | ☐ **AUTOMOBILE LIABILITY** | | | | | |
| | ☐ **GENERAL LIABILITY** | | | | | |
| | ☐ PRODUCTS/COMPLETED OPERATIONS | | | | | |
| | ☐ BLANKET CONTRACTUAL | | | | | |
| | ☐ CONTRACTOR'S PROTECTIVE | | | | | |
| | ☐ PERSONAL INJURY | | | | | |
| | ☐ EXCESS LIABILITY | | | | | |
| | ☐ **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.

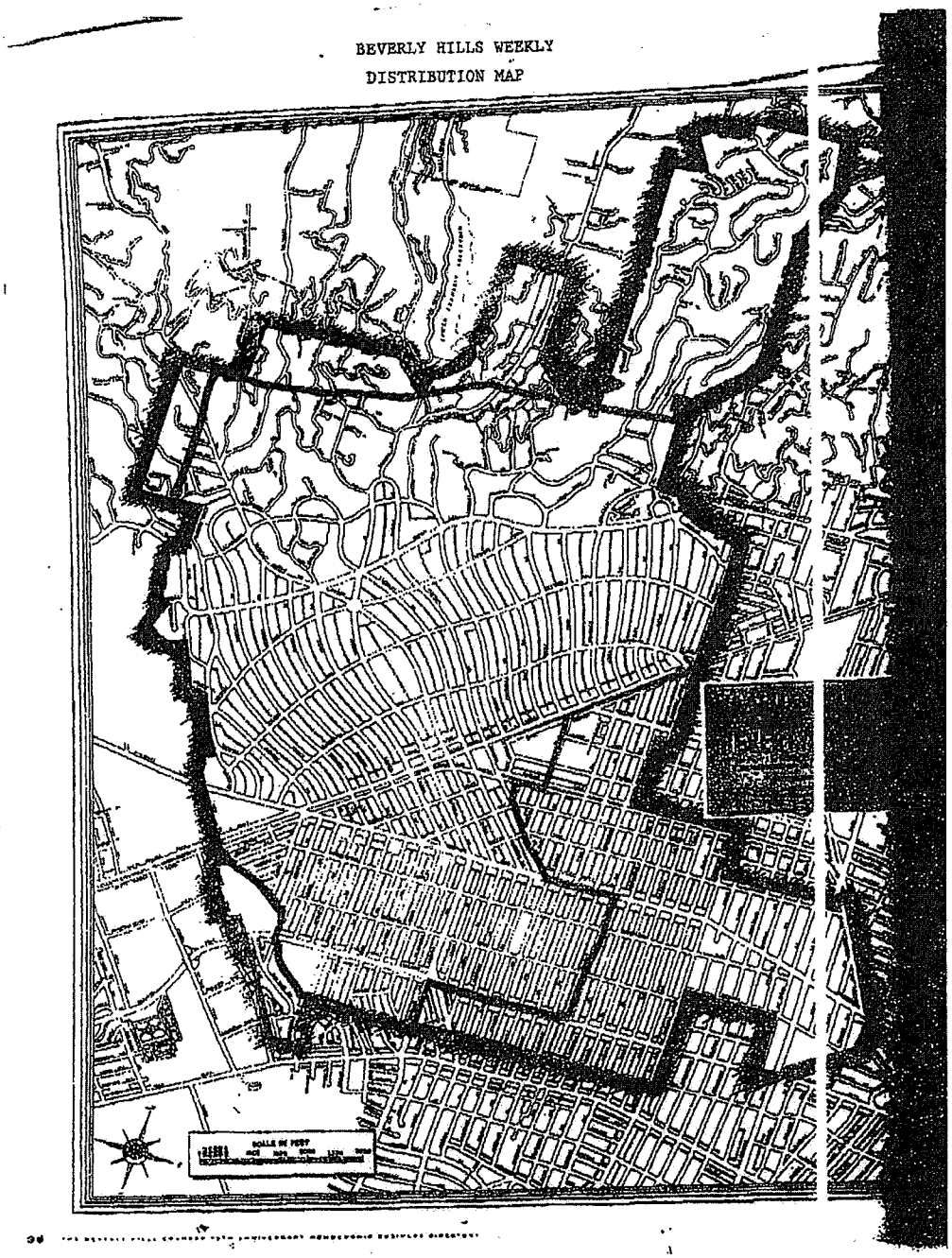
DATE: _____ BY: _____
Authorized Insurance Representative

TITLE: _____

AGENCY: _____ ADDRESS: _____

_____ _____

**RM02.DOC REVISED 10/14/96.**

# EXHIBIT D

# CIRCULATION MAP