Meeting Date: 06/28/2011

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☐ Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	■ Other Council Business

Prepared By: Daniel Martinez DM Agenda Item No. N-1

Reviewed By: City Manager MH City Attorney NA Finance JC Other *(Specify)* N/A

DATE: June 20, 2011

TO: City Council

FROM: Daniel Martinez, City Clerk
City Clerk Office

SUBJECT: **Agreements for Publication of Legal Notices and Legal Advertisements and for Publication of Display Advertisements and Classified Advertisements**

RECOMMENDATION

That City Council:

1. Approve and authorize the Mayor to execute an agreement (A-7422) with Vida Newspaper (Vida) for the publication of legal notices and legal advertisements for fiscal year (FY) 2011-12.

2. Authorize the City Manager or designee to execute an agreement (A-7423) with Vida for display advertisements and classified advertisements for FY 2011-12.

3. Authorize the City Manager or designee to negotiate and execute agreements with other newspapers to allow for the publication of legal advertisements, display advertisements and classified advertisements for FY 2011-12.

DISCUSSION

1. Background

Each year, the City Council must select a newspaper of general circulation in which the public can find all legal advertisements. A Request for Proposals (RFP) was mailed to local newspapers of general circulation for the purpose of soliciting bids for the publication of legal notices and legal advertisements. These newspapers included the Ventura County Star, Ventura County Reporter, Tri-County Sentry and Vida.

The City Clerk's Office coordinated a selection committee consisting of representatives from the City Clerk's Office, Finance Department, Community Development Department, Public Information Division (City Manager's Office) and Planning and Environmental Services Division. After reviewing the responses to the RFP, the selection committee recommends that the City Council award the agreement for publication of legal notices and legal advertisement to Vida Newspaper.

2. Analysis of Proposal

This year the Ventura County Star and Vida responded to the RFP in which both met or exceeded the minimum criteria set forth in the RFPs which are:

1) Compliance with State Requirements. State law requires publication of legal notices in a "newspaper of general circulation." Vida met this requirement.

2) Circulation and Area Coverage. Vida is a free weekly newspaper distributed in all of Ventura County with an estimated readership of over 50,000 weekly readers for the City of Oxnard. Vida has an estimated readership of over 70,000 for the Ventura County.

3) Frequency of Publication. The Vida is a weekly newspaper available starting on Thursdays.

4) Flexibility of Submittal and Publication Timelines. The Vida normally requires advertisement submission one day prior to publication.

5) Cost. The Vida proposes a cost of $11.75 per column inch for legal notices and $11.75 per column inch legal (display) advertisements. Vida is a free weekly newspaper.

6) Availability on the Internet. Vida does post legal notices and legal advertisements on the Internet.

3. Findings

Staff recommends that the City Council select Vida for the publication of legal notices and legal advertisements. Staff recommends that the City Council select Vida for the publication of display advertisements and classified advertisements. Staff also recommends that City Council authorize the City Manager or designee to negotiate and execute contracts with other newspapers to allow for the publication of legal, display and classified advertisements for FY 2011-12. This would result in a publication rate less than the open public rate to all City departments and would provide a fixed rate for the whole year.

Staff recommends not mandating publishing all legal advertisements in more than one newspaper due to increased legal publication costs. Finally, staff recommends the continuing practice of a department or division placing legal notices or legal advertisements in more than one newspaper if there is a legal requirement or great public interest regarding the item.

FINANCIAL IMPACT

The proposed contract rate of $ 11.75 per column inch for legal notices and $ 11.75 per column inch for legal (display) advertisements. The Vida also proposes $11.75 for classified and $11.75 for display advertisements. Each department is responsible for its advertisement costs, which should be included in the FY 2011-12 budget.

Attachment #1 - Agreement For Legal Notice and Legal Advertisements.
Attachment #2 - Agreement For Display and Classified Advertisements.

AGREEMENT FOR PUBLICATION OF LEGAL NOTICES AND LEGAL ADVERTISEMENTS

This Agreement for Publication of Legal Notices and Legal Advertisements ("Agreement") is made and entered into this first day of July, 2011, by and between the City of Oxnard, a municipal corporation of the State of California ("City"), and Vida ("Newspaper"), a newspaper of general circulation within Oxnard, pursuant to Public Contract Code section 20169.

Whereas, Public Contract Code section 20169 requires that annually City contract for the publication of legal notices with a newspaper of general circulation within Oxnard; and

Whereas, Newspaper is a newspaper of general circulation within Oxnard; and

Whereas, City has advertised for bids for the publication of legal notices and legal advertisements and Newspaper has submitted a bid and been awarded the right to enter into this Agreement.

Now, therefore, City and Newspaper agree:

1. Scope of Services

   a. Newspaper shall publish legal notices and legal advertisements for and on request of City and shall provide City with written proof of publication of each item within one week of the last publication of the item. Written proof of publication shall be in a form acceptable to the City Clerk ("Clerk"). Such services shall be referred to herein as "the services."

   b. The term "legal notices" refers to legal notices that the law requires to be published and that are identified as legal notices on the form sent by City to Newspaper, requesting publication. Legal notices will be published in the legal notice section of the newspaper. Newspaper shall publish legal notices using a standard 7-point type for the body and 8-point type for the heading in the Spartan Classified style. City may require modification of the type size or style. Newspaper may also change the type size and/or style with permission of the City employee requesting the publication. Newspaper shall use the least amount of space possible to present a readable notice.

   c. The term "legal advertisements" refers to legal notices that the law requires to be published and that are identified as legal advertisements on the form sent by City to Newspaper, requesting publication. Legal advertisements are legal notices published with a border and City logo in the legal notice section of the newspaper. Newspaper may print in other sections of the newspaper with the permission of the City employee requesting the publication. Newspaper shall publish legal advertisements using a standard 8-point type for the body and 12-point type for the heading in the Helvetica style. City may require modification of the type size or style. Newspaper may also change the type size and/or style with permission of the City employee requesting the publication. Newspaper shall use the least amount of space possible to present a readable advertisement.

Attachment #1
Page 1 of 5

2. Standard of Performance Newspaper shall undertake and complete the services with care, skill and diligence, according to the standards prevailing in the newspaper publishing business and shall use Newspaper's best efforts to meet all publication deadlines and to assure accuracy of publication.

3. Correction of Errors Newspaper shall promptly correct, at its expense, all errors in the services that are caused by Newspaper. Newspaper shall promptly correct, at City's expense, all errors in publication that are caused by City.

4. Principal in Charge Newspaper designates Manuel Munoz as principal in charge and person responsible for necessary coordination with Clerk.

5. Time for Performance Newspaper shall publish legal notices and legal advertisements at the times requested by City, provided that City has given Newspaper a copy of the material to be published at least one day prior or two days prior to a holiday to the first date of publication.

6. Term of Agreement This Agreement shall begin on July 1, 2011, and shall expire on June 30, 2012.

7. Termination. City may terminate this Agreement at any time, for any cause or without cause, upon 15 calendar days' written notice to Newspaper. If City terminates this Agreement for reasons other than Newspaper's failure to perform its obligations, City shall pay Newspaper for the services satisfactorily completed and accepted by City prior to the effective date of termination. Such payment shall be Newspaper's exclusive remedy for termination without cause.

8. Compensation

   a. City shall pay Newspaper for the services of publishing legal notices at the rate of $ 11.75 per column inch for a publication in the Classified Section.

   b. City shall pay Newspaper for the services of publishing legal advertisements at the rate of $ 11.75 per column inch for publication in Display Section.

   c. Nothing in this Agreement shall prevent City from placing legal notices, legal advertisements and other material in other newspapers, and such acts shall not constitute a breach of this Agreement.

   d. City does not guarantee that City will request Newspaper to publish any minimum amount of legal notices or legal advertisements or other material.

   e. The acceptance by Newspaper of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Newspaper for anything completed, finished or relating to Newspaper's services.

   f. Newspaper shall provide City with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service.

9. Method of Payment

a. City shall pay Newspaper monthly on satisfactory completion of services and on submittal by Newspaper of a billing statement delineating the services performed, in a form satisfactory to Clerk, including purchase order number, notice/advertisement name/title, size of notice/advertisement and date of publication.

b. Newspaper shall maintain current monthly records pertaining to services performed for City and forward invoices to the employee who requested the services.

10. Business License Newspaper shall obtain and maintain during the term of this Agreement a City business license.

11. Insurance

a. Newspaper shall obtain and maintain during the performance of any services under this Agreement the insurance coverages as specified in Exhibit INS-B, attached hereto and incorporated herein by this reference, issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Newspaper obtain and maintain such insurance coverages.

b. Newspaper shall, prior to performance of any services, file with the Risk Manager evidence of insurance coverage as specified in Exhibit INS-B. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in Exhibit INS-B.

c. Maintenance of proper insurance coverages by Newspaper is a material element of this Agreement. Newspaper's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

12. Independent Contractor

a. In the performance of the services, Newspaper shall be, and is, an independent contractor, and Newspaper and its employees are not employees of City. Newspaper has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting Newspaper.

b. Newspaper shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Newspaper's employees, agents, subcontractors and consultants, including compliance with Social Security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

c. Newspaper acknowledges that Newspaper and Newspaper's employees are not entitled to any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, annual leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and workers' compensation insurance benefits.

13. Assignability of Agreement This Agreement contemplates performance by Newspaper and is based upon a determination of Newspaper's standing as a newspaper of general circulation, printed, published and circulated in Oxnard. Assignment of any or all rights, duties, or obligations of Newspaper under this Agreement will be permitted only with the express written consent of Clerk, which consent may be withheld for any reason.

14. Successors and Assigns This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Newspaper and City.

15. Fair Employment Practices

    a. Newspaper agrees that all persons employed by Newspaper shall be treated equally by Newspaper without regard to or because of race, color, religion, ancestry, national origin, disability, sex, marital status, age, sexual orientation, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of California, and City.

    b. Newspaper agrees that during the performance of this Agreement, Newspaper and any other parties with whom Newspaper may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, disability, sex, marital status, age, sexual orientation, or any other status protected by law.

    c. Newspaper agrees to state in all of its solicitations or advertisements for applicants for employment that all qualified applicants shall receive consideration for employment without regard to their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

    d. Newspaper shall provide City staff with access to and, upon request by Clerk, provide copies to Clerk of all of Newspaper's records pertaining or relating to Newspaper's employment practices, to the extent such records are not confidential or privileged under State or federal law.

16. Force Majeure Neither City nor Newspaper shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include, but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after this Agreement was executed, fire, communication line failures, earthquakes, or other disasters.

17. Time of Essence Time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

18. Compliance with Laws Newspaper agrees to comply with all City, State, and federal laws, rules, and regulations, now or hereafter in force, pertaining to the services performed by Newspaper pursuant to this Agreement.

Sttachment #1
Page 4 of 5

19. Notices

a. Any notices to Newspaper may be delivered personally or by mail addressed Attention:

_____

b. Any notices to City may be delivered personally or by mail addressed to Daniel Martinez, City Clerk, 305 West Third Street, Oxnard, California 93030.

20. Amendment The terms and conditions of the Agreement may be reviewed or modified at any time. Any modifications to this Agreement, however, shall be effective only when agreed to in writing by both Clerk and Newspaper.

21. Entire Agreement This Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

CITY OF OXNARD

_____

Dr. Thomas E. Holden
Mayor

NEWSPAPER

_____

APPROVED AS TO FORM:

_____

Alan Holmberg, City Attorney

APPROVED AS TO INSURANCE:

_____

James Cameron, Risk Manager

APPROVED AS TO CONTENT:

_____

Daniel Martinez, City Clerk

Attachment #1
Page 5 of 5

2011Legalagr.doc

AGREEMENT FOR PUBLICATION OF DISPLAY AND CLASSIFIED ADVERTISEMENTS

This Agreement for Publication of Display Advertisements and Classified Advertisements ("Agreement") is made and entered into this first day of July 2011, by and between the City of Oxnard, a municipal corporation of the State of California ("City"), and Vida ("Newspaper"), a newspaper of general circulation within Oxnard.

Whereas, City has advertised for the publication of display advertisements and classified advertisements, and Newspaper has submitted a bid and been awarded the right to enter into this Agreement; and

Whereas, this Agreement is not entered into pursuant to Public Contract Code section 20169.

Now, therefore, City and Newspaper agree:

1. Scope of Services

   a. Newspaper shall publish display advertisements and classified advertisements for and on request of City and shall provide City with written proof of publication of each item within one week of the last publication of the item. Written proof of publication shall be in a form acceptable to the City Clerk ("Clerk"). Such services shall be referred to herein as "the services."

   b. The term "display advertisements" refers to notices and advertisements that are published in the front sections of the newspaper (section A or B of the newspaper). Newspaper may print in other sections of the newspaper with the permission of the City.

   c. The term "classified advertisements" refers to notices and advertisements that are published in the classified section of the newspaper.

   d. Newspaper shall publish display advertisements using a standard 8 point type for the body and 12 point type for heading in the Helvetica style. City may require modification of the type size or style. Newspaper may also change the type size and/or style with permission of the City employee requesting the publication. Newspaper shall use the least amount of space possible to present a readable notice or advertisement.

2. Standard of Performance Newspaper shall undertake and complete the services with care, skill and diligence, according to the standards prevailing in the newspaper publishing business and shall use Newspaper's best efforts to meet all publication deadlines and to assure accuracy of publication.

3. Correction of Errors Newspaper shall promptly correct, at its expense, all errors in the services that are caused by Newspaper. Newspaper shall promptly correct, at City's expense, all errors in publication that are caused by City.

4. Principal in Charge Newspaper designates Manuel Munoz as principal in charge and person responsible for necessary coordination with Clerk.

5. Time for Performance Newspaper shall publish display advertisements and classified advertisements at the times requested by City, provided that City has given Newspaper a copy of the material to be published at least one day prior to the first date of publication or two days prior to a holiday.

6. Term of Agreement This Agreement shall begin on July 1, 2011, and shall expire on June 30, 2012.

7. Termination City may terminate this Agreement at any time, for any cause or without cause, upon 15 calendar days' written notice to Newspaper. If City terminates this Agreement for reasons other than Newspaper's failure to perform its obligations, City shall pay Newspaper for the services satisfactorily completed and accepted by City prior to the effective date of termination. Such payment shall be Newspaper's exclusive remedy for termination without cause.

8. Compensation

   a. City shall pay Newspaper for the services of publishing display advertisements at the rate of $ 11.75 per column inch for city-wide publication and $ _N/A____ per column inch for a county-wide publication.

   b. City shall pay Newspaper for the services of posting a display advertisement on its web site, when requested by City, at $ __Free _____ per day per advertisement.

   c. City shall pay Newspaper for the services of publishing classified advertisements at the rate of $ 11.75 per column inch for city-wide publication and $ _N/A ___ per column inch for a county-wide publication.

   d. City shall pay Newspaper for the services of posting a classified advertisement on its web site, when requested by City, at $ __Free _____ per day per advertisement.

   e. City shall request Newspaper to publish City's display advertisements, but nothing in this Agreement shall prevent City from placing display advertisements, and other material in other newspapers, and such acts shall not constitute a breach of this Agreement.

   f. City does not guarantee that City will request Newspaper to publish any minimum amount of display advertisements, classified advertisements or other material.

   g. The acceptance by Newspaper of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Newspaper for anything completed, finished or relating to Newspaper's services.

   h. Newspaper shall provide City with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service.

9. Method of Payment

a. City shall pay Newspaper monthly on satisfactory completion of services and on submittal by Newspaper of a billing statement delineating the services performed, in a form satisfactory to Clerk, including purchase order number, advertisement name/title, size of advertisement and date of publication.

b. Newspaper shall maintain current monthly records pertaining to services performed for City and forward invoices to the employee who requested the services.

10. Business License Newspaper shall obtain and maintain during the term of this Agreement a City business license.

11. Insurance

a. Newspaper shall obtain and maintain during the performance of any services under this Agreement the insurance coverages as specified in Exhibit INS-B, attached hereto and incorporated herein by this reference, issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Newspaper obtain and maintain such insurance coverages.

b. Newspaper shall, prior to performance of any services, file with the Risk Manager evidence of insurance coverage as specified in Exhibit INS-B. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in Exhibit INS-B.

c. Maintenance of proper insurance coverages by Newspaper is a material element of this Agreement. Newspaper's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

12. Independent Contractor

a. In the performance of the services, Newspaper shall be, and is, an independent contractor, and Newspaper and its employees are not employees of City. Newspaper has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting Newspaper.

b. Newspaper shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Newspaper's employees, agents, subcontractors and consultants, including compliance with Social Security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

c. Newspaper acknowledges that Newspaper and Newspaper's employees are not entitled to any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, annual leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and workers' compensation insurance benefits.

13. Assignability of Agreement This Agreement contemplates performance by Newspaper and is based upon a determination of Newspaper's standing as a newspaper of general circulation, printed, published and circulated in Oxnard. Assignment of any or all rights, duties, or obligations of Newspaper under this Agreement will be permitted only with the express written consent of Clerk, which consent may be withheld for any reason.

14. Successors and Assigns This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Newspaper and City.

15. Fair Employment Practices

    a. Newspaper agrees that all persons employed by Newspaper shall be treated equally by Newspaper without regard to or because of race, color, religion, ancestry, national origin, disability, sex, marital status, age, sexual orientation, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of California, and City.

    b. Newspaper agrees that during the performance of this Agreement, Newspaper and any other parties with whom Newspaper may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, disability, sex, marital status, age, sexual orientation, or any other status protected by law.

    c. Newspaper agrees to state in all of its solicitations or advertisements for applicants for employment that all qualified applicants shall receive consideration for employment without regard to their race, color, religion, ancestry, national origin, disability, sex, marital status, age, sexual orientation, or any other status protected by law.

    d. Newspaper shall provide City staff with access to and, upon request by Clerk, provide copies to Clerk of all of Newspaper's records pertaining or relating to Newspaper's employment practices, to the extent such records are not confidential or privileged under State or federal law.

16. Force Majeure Neither City nor Newspaper shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include, but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after this Agreement was executed, fire, communication line failures, earthquakes, or other disasters.

17. Time of Essence Time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

18. Compliance with Laws Newspaper agrees to comply with all City, State, and federal laws, rules, and regulations, now or hereafter in force, pertaining to the services performed by Newspaper pursuant to this Agreement.

19. Notices

a. Any notices to Newspaper may be delivered personally or by mail addressed Attention:

Manuel Munoz
130 Palm Dr.
Oxnard, CA 93030

b. Any notices to City may be delivered personally or by mail addressed to

Daniel Martinez, City Clerk
305 West Third Street
Oxnard, California 93030

20. Amendment The terms and conditions of the Agreement may be reviewed or modified at any time. Any modifications to this Agreement, however, shall be effective only when agreed to in writing by both Clerk and Newspaper.

21. Entire Agreement This Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

CITY OF OXNARD

Dr. Thomas E. Holden
Mayor

NEWSPAPER

APPROVED AS TO FORM:

Alan Holmberg, City Attorney

APPROVED AS TO INSURANCE:

James Cameron, Risk Manager

APPROVED AS TO CONTENT:

Daniel Martinez, City Clerk