



3. Venue of these chapter 11 cases in this District is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 327(a) and 328(a) of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, the “Bankruptcy Code”).

### **Background**

5. On February 22, 2009 (the “Petition Date”), the Debtors, other than Debtor Philadelphia Media Holdings LLC (“PMH”), commenced these voluntary cases (the “Chapter 11 Cases”) by the filing of petitions for relief under chapter 11 of the Bankruptcy Code. PMH filed its petition for relief under chapter 11 of the Bankruptcy Code on June 10, 2009 and its chapter 11 case has been procedurally consolidated with the Chapter 11 Cases. The Debtors continue in possession of their properties and continue to operate their respective businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On March 2, 2009, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Committee”) in the Chapter 11 Cases.

6. The factual background relating to the Debtors’ commencement of these Chapter 11 Cases is set forth in detail in the *Declaration of Richard R. Thayer, the Debtors’ Executive Vice President, Finance, in Support of First Day Motions* [Docket No. 23] filed on February 23, 2009 and incorporated herein by reference.

7. On June 29, 2010, the Court entered an *Order Confirming the Fourth Amended Joint Chapter 11 Plan Dated as of June 28, 2010* (the “Plan”) [Docket No. 2253], proposed by the Debtors and PN Purchaser Co, LLC (the “Purchaser”). The Debtors and the Purchaser are working to cause the effective date of the Plan (the “Effective Date”) to occur.

**SMART's Retention in These Chapter 11 Cases**

8. On March 13, 2009, the Debtors filed the *Application for Entry of an Order Authorizing Nunc Pro Tunc to the Petition Date the Retention and Employment of SMART Business Advisory and Consulting Services, LLC, as Tax Preparer and Ordinary Course Consultant, and SMART and Associates, LLP, as Auditor, for the Debtors and Debtors in Possession* [Docket No. 180] (the "SMART Retention Application").

9. On March 31, 2009, this Court entered the *Order Authorizing Nunc Pro Tunc to the Petition Date the Retention and Employment of SMART Business Advisory and Consulting Services, LLC, as Tax Preparer and Ordinary Course Consultant, and SMART and Associates, LLP, as Auditor, for the Debtors and Debtors in Possession* [Docket No. 279] (the "SMART Retention Order").

10. Pursuant to the SMART Retention Application, the Debtors sought to retain SMART, "subject to the oversight and orders of the Court, to advise the Debtors and their management with respect to . . . (a) [p]reparation and review of the federal and state income tax returns for Debtors for the year ended December 31, 2008, (b) assistance with completion of tax information schedules for use in tax return preparation, (c) research and analysis with respect to unanticipated issues identified during return preparation, (d) review of inquiries/notices on returns, (e) amended return preparation, (f) preparation of extensions and estimates, as needed, (g) special accounting and tax services required, including representation before the Internal Revenue Service ("IRS"), special research and/or opinion letter preparation, (h) assistance with preparation of monthly operating reports required by the Office of the United State Trustee, (i) transaction advisory services, (j) compilation of the fiscal year-end balance sheets and related statements of income and cash flows of the Debtors and (k) issuance of an accountant's report

based upon the financial compilation. SMART Retention Application ¶¶ 11-12. The SMART Retention Order granted the SMART Retention Application “for the purposes set forth in the [SMART Retention] Application and in the [Declaration of Vincent Burke (the “Burke Declaration”)] attached to the [SMART Retention] Application.” SMART Retention Order ¶ 2.

11. On February 3, 2010, the Debtors filed the *Supplemental Application for Entry of an Order Authorizing the Retention and Employment of SMART and Associates, LLP, as Auditor for the Debtors and Debtors in Possession* [Docket No. 1674] (the “First Supplemental SMART Retention Application”), seeking an order authorizing and approving the expanded scope of employment and retention of SMART and Associates, as auditor for the Debtors, to include the preparation of audited financial statements for 2008 and 2009. On February 9, 2010, the Court approved the First Supplemental SMART Retention Application and entered the *Supplemental Order Authorizing the Retention and Employment of SMART and Associates, LLP, as Auditor for the Debtors and Debtors in Possession* [Docket No. 1705] (the “First SMART Supplemental Retention Order”).

12. From and after the Petition Date, SMART has performed the foregoing services for the Debtors and has been paid by the Debtors on account of such services pursuant to the procedures set forth in Local Bankruptcy Rules 2016-3 and 2016-5.

### **Relief Requested**

13. By this Second Supplemental Application, the Debtors respectfully request entry of a second supplemental retention order pursuant to sections 327(a) and 328(a) of the Bankruptcy Code authorizing and approving the expanded scope of employment and retention of SMART and Associates to prepare and file a final audit of the Debtors’ 401(k) retirement plan (the “401(k) Plan”) for the year ended December 31, 2009, including an audit of the Statement of Net Assets Available for Benefits of the 401(k) Plan as of December 31, 2009 and the related

Statement of Changes in Net Assets Available for the Benefits of the year then ended (the “401(k) Plan Audit”). A copy of the Debtors’ engagement letter with SMART and Associates dated August 11, 2010 is attached hereto as **Exhibit B** (the “Engagement Letter”). The cost of the 401(k) Plan Audit is a flat fee of \$22,500, plus SMART and Associates’ actual out-of-pocket expenses. The Debtors request authority to pay SMART and Associates’ fee, as an administrative expense of the Debtors’ estates, on or before the Effective Date.

**Basis for Relief**

14. As set forth in the SMART Retention Application, prior to the Petition Date, SMART provided tax preparation, consulting, financial compilation and audit services (attest services) to the Debtors. From and after the Petition Date, SMART has continued to provide the Debtors with these services, including the audit services authorized by this Court under the terms of the First SMART Supplemental Retention Order.

15. As a consequence, SMART and Associates is intimately familiar with the financial and reporting issues relating to the Debtors’ 401(k) Plan. SMART and Associates has extensive experience and expertise in providing audit services relating to such plans. As such, the Debtors submit that SMART and Associates is well qualified and uniquely able to undertake the 401(k) Plan Audit. The Debtors submit that SMART and Associates’ expanded scope of employment and retention is in the best interest of the Debtors and their estates.

**Services to be Provided by SMART and Associates**

16. The Debtors seek to expand the scope of their engagement of SMART and Associates, subject to the terms of the SMART Retention Order and the Engagement Letter, to perform the 401(k) Plan Audit. Upon the Effective Date of the Plan, the Debtors will no longer have any employees and the 401(k) Plan will be assumed by the Purchaser. The fees to be paid

to SMART and Associates for services relating to the 401(k) Plan Audit constitute necessary and reasonable fees to be incurred in connection with services to be provided to the Debtors' estates.

17. In accordance with the Court's *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 194] (the "Case Management Order"), this Motion has been served upon: (a) the Core Group; and (b) the 2002 List (each as defined in the Case Management Order).

18. The Debtors submit that good and sufficient notice of this Motion has been provided and no other or further notice need be provided.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that this Court: (a) enter an order substantially in the form attached hereto as Exhibit A, granting the relief sought herein; and (b) grant to the Debtors such other and further relief as the Court may deem proper.

Dated: August 19, 2010  
Philadelphia, Pennsylvania

/s/ Anne M. Aaronson

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**DILWORTH PAXSON LLP**

Lawrence G. McMichael  
Anne M. Aaronson  
1500 Market St., Suite 3500E  
Philadelphia, PA 19102  
Telephone: (215) 575-7000  
Facsimile: (215) 575-7200

– and –

**PROSKAUER ROSE LLP**

Mark K. Thomas (admitted *pro hac vice*)  
Paul V. Possinger (admitted *pro hac vice*)  
Peter J. Young (admitted *pro hac vice*)  
Three First National Plaza  
70 West Madison, Suite 3800  
Chicago, Illinois 60602-4342  
Telephone: (312) 962-3550  
Facsimile: (312) 962-3551

*Co-Counsel for the Debtors and Debtors in Possession*

**Exhibit A**

[Proposed Order]

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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In re:	)	
	)	Chapter 11
Philadelphia Newspapers, LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 09-11204 (SR)
	)	
Debtors.	)	Jointly Administered

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**SECOND SUPPLEMENTAL ORDER AUTHORIZING THE  
RETENTION AND EMPLOYMENT OF SMART BUSINESS  
ADVISORY AND CONSULTING, LLC, AS TAX PREPARER AND  
ORDINARY COURSE CONSULTANT, AND SMART AND ASSOCIATES,  
LLP, AS AUDITOR, FOR THE DEBTORS AND DEBTORS IN POSSESSION**

Upon the second supplemental application (the "Second Supplemental Application")<sup>2</sup> of the Debtors for entry of an order authorizing and approving the expanded scope of employment and retention of SMART and Associates, as auditor, for the Debtors, to perform the 401(k) Plan Audit; and it appearing that the terms and conditions of SMART and Associates' employment as described in the Second Supplemental Application are reasonable; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of these proceedings and the Second Supplemental Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and proper notice of the Second Supplemental Application having been given;

IT IS HEREBY ORDERED THAT:

1. The Supplemental Application is granted.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PMH Acquisition, LLC (1299), Broad Street Video, LLC (4665), Philadelphia Newspapers, LLC (3870), Philadelphia Direct, LLC (4439), Philly Online, LLC (5185), PMH Holdings, LLC (1768), Broad Street Publishing, LLC (4574), Philadelphia Media, LLC (0657) and Philadelphia Media Holdings, LLC (4680).

<sup>2</sup> Each capitalized term not otherwise defined herein shall have the meaning ascribed thereto in the Application.

2. The expanded scope of employment and retention of SMART and Associates for the purposes set forth in the Second Supplemental Application is hereby approved.

3. In accordance with the SMART Retention Order, SMART and Associates shall be compensated under sections 330 and 331 of the Bankruptcy Code as well as any further orders of this Court concerning compensation of professionals in these Chapter 11 Cases and in accordance with the terms set forth in the SMART Retention Application and the Burke Declaration attached to the SMART Retention Application.

4. SMART and Associate's fee for performing the 401(k) Plan Audit shall be an administrative expense of the Debtors' estates.

5. Notwithstanding the possible applicability of Fed R. Bankr. P. 6004(h), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: \_\_\_\_\_, 2010  
Philadelphia, Pennsylvania

Entered: \_\_\_\_\_  
United States Bankruptcy Judge

**Exhibit B**

[Engagement Letter]



August 11, 2010

Plan Administrator of the  
Philadelphia Newspaper, LLC 401(k) Retirement Plan  
c/o Philadelphia Media Holdings, LLC  
400 North Broad Street  
Philadelphia, PA 19130

Dear Plan Administrator:

We are pleased to confirm our understanding of the services we are to provide for the Philadelphia Newspaper, LLC 401(k) Retirement Plan (the "Plan") for the year ended December 31, 2009 in connection with its annual reporting obligation under the Employee Retirement Income Security Act of 1974 (ERISA).

Except as described below, we will audit the Statement of Net Assets Available for Benefits of the Plan as of December 31, 2009 and the related Statement of Changes in Net Assets Available for Benefits for the year then ended. Also, the following supplemental schedules accompanying the basic financial statements, as applicable, will be subjected to the auditing procedures applied in our audit of the financial statements:

1. Assets (Held at End of Year) and Assets (Acquired and Disposed of Within Year)
2. Loans or Fixed Income Obligations in Default or Classified as Uncollectible
3. Leases in Default or Classified as Uncollectible
4. Reportable Transactions
5. Nonexempt Transactions
6. Delinquent Participant Contributions

These financial statements and supplemental schedules are required by the Department of Labor's (DOL) Rules and Regulations for Reporting and Disclosure under ERISA to be filed with Form 5500.

#### **Audit Objectives**

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America except that, as permitted by Regulation 2520.103-8 of the DOL's Rules and Regulations for Reporting and Disclosure under ERISA and as instructed by you, we will not perform any auditing procedures with respect to information prepared and certified to by Vanguard Fiduciary Trust Company, the trustee, in accordance with DOI. Regulation 2520.103-5, other than comparing the information with the related information included in the financial statements and supplemental schedules. Because of the significance of the information that we will not audit, we will not express an opinion on the financial statements and schedules taken as a whole. The form and content of the information included in the financial statements and schedules, other than that derived from the information certified to by the trustee, will be audited by us in accordance with auditing standards generally accepted in the United States of America, and will be subjected to tests of your accounting records and other procedures we consider necessary to enable us to express an opinion that they are presented in compliance with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA. If for any reason we are unable to complete the engagement, we will not issue a report on this engagement.

SMART and Associates, LLP  
Certified Public Accountants  
80 Lancaster Avenue | Devon, PA 19333 | 610.254.0700 | Fax 610.254.5293 | [www.smartandassociates.com](http://www.smartandassociates.com)

*Philadelphia Newspaper, LLC 401(k) Plan*  
*August 11, 2010*  
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### **Audit Procedures – General**

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts and direct confirmation of investments except those certified to by the custodian, and certain other assets and liabilities by correspondence with financial institutions, and other third parties. We will also request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested, except that assets and related transactions certified to by the custodian will not be tested. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations, including prohibited transactions with parties in interest or other violations of ERISA rules and regulations, that are attributable to the Plan or to acts by management or employees acting on behalf of the Plan.

Because an audit is designed to provide reasonable, but not absolute, assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform you of any material errors that come to our attention, and we will inform you of any fraudulent financial reporting or misappropriation of assets that comes to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential and will include prohibited transactions in the supplemental schedule of nonexempt transactions as required by the instructions to Form 5500. Our responsibility as auditors are limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

### **Audit Procedures – Internal Control**

Except as described in the second paragraph, our audit will include obtaining an understanding of the Plan and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. However, during the audit, we will communicate to you and those charged with governance internal control related matters that are required to be communicated under professional standards.

In addition, we will perform certain procedures directed at considering the Plan's compliance with applicable Internal Revenue Service (IRS) requirements for tax exempt status and ERISA plan qualification requirements. However, you should understand that our audit is not specifically designed for and should not be relied upon to disclose matters affecting Plan qualifications or compliance with the ERISA and IRS requirements. If during the audit we become aware of any instances of any such matters or ways in which management practices can be improved, we will communicate them to you.

### **Management Responsibilities**

Management is responsible for establishing and maintaining internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; for establishing an accounting and financial reporting process for determining fair value measurements; and for the fair presentation in the financial statements

*Philadelphia Newspaper, LLC 401(k) Plan*  
*August 11, 2010*  
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of the net assets available for benefits and changes in net assets available for benefits of the Plan in conformity with U.S. generally accepted accounting principles. Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information, including the completeness and accuracy of the certification to be by the custodian. Management's responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Plan involving (1) plan management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Management's responsibilities include informing us of their knowledge of any allegations of fraud or suspected fraud affecting the Plan received in communications from employees, former employees, regulators, or others. In addition, management is also responsible for identifying and ensuring that the Plan complies with applicable laws and regulations.

We understand that management personnel will prepare schedules and analyses and type all confirmations we request and will locate any personnel, plan records or other documents selected by us for testing.

#### **Audit Documentation**

The audit documentation for this engagement is the property of Smart and Associates, LLP and constitutes confidential information. However, we may be requested to make certain audit documentation available to the U.S. Department of Labor pursuant to authority given to it by law. If requested, access to such audit documentation will be provided under the supervision of Smart and Associates, LLP personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the U.S. Department of Labor. The U.S. Department of Labor may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies.

Our firm, as well as other accounting firms, participates in the AICPA's peer review program covering our audit and accounting practices. Under this program, our system of quality control is subjected to a peer review by the team of certified public accountants approved by the state administering entity. As part of this peer review, the team will review a sample of our work. It is possible that the work we perform for you may be selected for their review. If it is, the team is bound by professional standards to keep all information confidential.

#### **Form 5500**

Joseph Colgan is the engagement partner and is responsible for supervising the engagement and signing the report. We expect to begin our audit on approximately August 30, 2010 and to issue our report no later than October 12, 2010. As you have instructed, our engagement does not include preparation of the Plan's Form 5500.

The AICPA's Audit and Accounting Guide, Employee Benefit Plans, requires that, before an auditor's report on the Plan's financial statements can be included with a filed Form 5500 (including any related schedules), the auditor must review the Form 5500 and consider whether there are any material inconsistencies between the other information in the form and the audited financial statements (including the required supplemental schedules) or any material misstatement of fact. We will, therefore, not issue our auditor's report until the completed Form 5500 has been provided for our review.

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*August 11, 2010*  
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### **Fees for Services and Billing Provisions**

Our fees for the audit services described above will be \$22,500. You will also be billed for travel and other out-of-pocket costs. The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 60 days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures through the date of termination.

The suspension or termination of our work may result in adverse consequences to you including your failure to meet deadlines imposed by governments, leaders, or other third parties. You agree that we will not be responsible for your failure to meet such deadlines or for penalties and interest that may be assessed against you resulting from such failure.

### **Other Terms and Conditions**

If you intend to publish or otherwise reproduce the financial statements and our report thereon, you agree to furnish us with printer's proofs for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before you distribute it.

Potential errors can occur in your financial statements that can result in damages that may be many times the amount of our fees for this engagement. In order to induce us to accept this engagement, you therefore agree that our liability for any negligent errors or omissions committed by us in the performance of the engagement will be limited to the aggregate fees received during the period in which the error occurred. In no event shall Smart and Associates, LLP be liable for consequential, general, special, incidental or punitive loss, damage or expense including without limitation lost profits or opportunity costs even if we have been advised of their possible existence.

Our engagement will be highly detailed in nature and there are inherent difficulties in accurately recalling such details over a long period of time. You therefore agree that notwithstanding the statutes of limitations established by the laws of the Commonwealth of Pennsylvania any suit or counterclaim based on this engagement must be instituted within twenty-four months after the performance of our services, unless you have previously provided us written notice specifically calling our attention to the defects of our services which form the basis of such claim.

Parties to this engagement agree that any dispute that may arise regarding the meaning, performance, or enforcement of this engagement will, prior to resorting to litigation, be submitted to mediation upon the written request of any party to the engagement. The party requesting mediation shall select the mediation provider from the list of mediation training providers approved by the American Arbitration Association. The mediation shall be conducted in accordance with Commercial Mediation Rules of the American Arbitration Association or such other rules as may be agreed upon by the parties. Costs of any mediation proceeding shall be shared equally by both parties.

As a result of our prior or future services to you, we might be requested to provide information or documents to you or a third party in a legal, administrative, or arbitration or similar proceeding in which we are not a party. If

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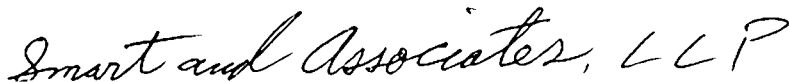
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this occurs, our efforts in complying with such requests will be deemed billable to you as a separate engagement. We shall be entitled to compensation for our time and reasonable reimbursement for our expenses (including legal fees) in complying with the request. For all requests we will observe confidentiality requirements of our profession and will notify you promptly of the request.

This letter comprises the complete and exclusive statement of the agreement between the parties, superseding all proposals, oral or written, and all other communications between the parties. If any provisions of this letter are determined to be unenforceable, all other provisions shall remain in force.

We appreciate the opportunity to be of service to Philadelphia Newspaper, LLC 401(k) Retirement Plan and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please contact Joseph Colgan at 610-254-2219. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,



Smart and Associates, LLP

**RESPONSE:**

This letter correctly sets forth the understanding of **Philadelphia Newspaper, LLC 401(k) Retirement Plan**.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_