



**CITY OF BEVERLY HILLS  
STAFF REPORT**

**Meeting Date:** October 6, 2009

**To:** City Council

**From:** Alison Maxwell, Director Economic Development and Marketing

**Subject:** Review of City/Chamber License Agreement for Use of the Shield Design; and, Review of Official Use of Shield Design and City Seal.

**Attachments:**

1. Chamber License Agreement
2. Copies of the City Shield Design and the City Official Seal

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**INTRODUCTION**

This item will review the License Agreement with the Chamber of Commerce that allows the Chamber to use the City Shield Design (Shield Design) for certain purposes. This item will also provide the Council Committee for Licensing and Branding an opportunity to discuss with the full Council the City's own use of the City Shield Design and the City official seal.

**DISCUSSION**

*City/Chamber License Agreement:* In 2003, the City entered into a License Agreement with the Chamber of Commerce to allow the Chamber certain uses of the Shield Design. The overarching goal of the agreement was to enable the Chamber to use the Shield Design as part of its promotional and business development programs on behalf of the City; and, to allow it to use the Shield Design as part of its own corporate identification and communication. This agreement has expired and is due for renewal. The City Attorney drafted a new agreement that was reviewed by the Council Committee for Licensing and Branding (Mayor Krasne and Council Member Mirisch) on August 11, 2009.

A copy of the License Agreement is attached to this staff report and is also presented for approval on the Formal Council Meeting Agenda, also October 6, 2009.

The Agreement allows for two principals uses of the Shield Design:

First, it allows the Shield Design to be used by the Chamber of Commerce for its own business uses such as business cards, letter head, and other literature. In this instance the Shield Design is used alongside the words "Beverly Hills Chamber of Commerce,

and in certain iterations the words: "Expertise. Presence. Relationship." Together the Shield Design and these words make up the Chamber's logo. A copy of the Chamber logo is attached to the Agreement.

Second, the Agreement allows the Chamber to use the Shield Design in its original form for the purposes of promoting the City and the City's business community. The Chamber under agreement with the City undertakes a range of business attraction and retention programs and represents the City in a number of arenas. As such, it is of benefit to the City as a whole to allow the Chamber use of the City Shield Design in furtherance of this work.

The Committee reviewed the License Agreement at its meeting on August 11, 2009 and expressed its support for renewing the Agreement with the Chamber.

As part of the Committee review of the Chamber License Agreement, the Committee also discussed issues relating to the City's own usage of the Shield Design and the City official seal. In particular, the Committee discussed expanding the use of the City official seal for a variety of City official purposes.

The Committee requested that this discussion be placed on a Council Study Session agenda in connection with approval of the Chamber of Commerce License Agreement.

*City Use of the Shield Design Verses the City Seal:* In 2007, the City completed an extensive rebranding initiative that led to the re-design of the Shield Design and its adoption as the official City logo for all general City business, marketing and other promotions. Use of the traditional City seal was continued for certain City business such as public records requests, business tax forms and a variety of permits. One of the goals of the branding program was to present a cohesive brand image throughout the City's many functions and activities, and those of its marketing partners.

The City spent approximately \$160,000 to make the transition from the City seal to the new Shield Design, consistent with previous Council direction.

On April 7, 2009, the City Council again gave consideration to the uses of the Shield Design, and the City seal. At that meeting, Council agreed that the City seal could be reintroduced for Mayoral stationery.

As indicated above, the Committee requested that the City reconsider its uses of the City Shield Design versus the official City seal.

### **FISCAL IMPACT**

Approval of the Chamber License Agreement has no fiscal impact for the City.

Depending on the direction of the City Council with respect to reintroducing usage of the City seal, there may be cost implications for reprinting stationery and business cards etc.

If so directed, staff would compile the cost estimates necessary to provide Council with a complete understanding of the fiscal impact to implement any Council directed changes to return to the use of the seal from the Shield Design.

### **RECOMMENDATIONS**

City Council is requested to consider two recommendations:

- 1) Approve the Chamber License Agreement on the Consent Calendar at the Formal Meeting on October 6, 2009.
- 2) Provide direction on future usage of the City Shield Design and the City official seal.

Approved by:



Alison Maxwell  
Alison Maxwell, Director Economic  
Development and Marketing

## LICENSE AGREEMENT

This permission agreement (the "Agreement"), is between City of Beverly Hills ("Licensor") and Beverly Hills Chamber of Commerce and Civic Association, a non-profit corporation ("Licensee").

### RECITALS

WHEREAS, Licensor is the sole and exclusive owner of the BEVERLY HILLS SHIELD DESIGN trademark (the "Property") as set forth in Exhibit A;

WHEREAS, Licensee desires to obtain from Licensor a non-exclusive license to use the Property in the manner set forth herein in connection with the marketing, promotion and advertising of the Licensee.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises and undertakings contained herein and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties, each intending to be legally bound hereby, hereby promise and mutually agree as follows:

1. License.

a. Licensor hereby grants to Licensee for the term of this Agreement the non-exclusive, limited, non-transferable right and limited license to use the Property solely as follows:

i. For use by the Licensee for its business purposes as follows: display, publish or otherwise use the Property on stationary, business cards, note cards, press releases, postcards, marketing materials, advertisements, welcome signs, media banners, publications (i.e. Beverly Hills Business Directory, etc.) and other similar written material and for use on electronic media uses such as Licensee's website, videos, CDs and DVDs for use solely in connection with the marketing, promotion and advertising of the Licensee, its programs (i.e. Economic Development Council, Government Affairs, etc.).

ii. For use by the Licensee for promotion of the City and City's business community as follows: display, publish or otherwise use the Property on brochures published solely by and for use by the Licensee in connection with the marketing and promoting of the City and its business community. Licensee shall not provide the Property for use on brochures published by other entities not in conjunction with Licensee nor shall Licensee provide the Property to third parties for their own use on brochures or other written material published or displayed by those third parties.

b. Licensee represents and warrants that it will not harm or misuse the Property or bring the Property into disrepute

c. This license shall pertain only to the use of the Property as described in Section 1a above and does not extend to any other trademark, product or service. Licensee shall not use the Property in any other manner or for any other purpose.

d. Licensee shall not modify or change the property without the prior written consent of City.

e. License shall not use any colorable imitation of the Property, or any variant for of the Property.

f. License shall not be entitled to sublicense any of its rights under this Agreement, including the sublicense of the Property to anyone else for any purpose, except as permitted pursuant to the terms of Agreement No. 86-07, or any successor agreement, between the Licensor and Licensee.

g. Upon termination of this Agreement, Licensee shall discontinue all use of the Property and shall not use it again in any manner whatsoever.

h. Licensee shall not file applications or seek registration with the PTO or anywhere in the world for or use of the Property (or any variant, colorable imitation, translation and/or simulation) in connection with any goods and/or services which are not the subject of a license agreement with the City. This shall be evidenced by a written agreement between the Chamber and City in a form provided by the City.

2. Term. This Agreement shall be in full force and effect commencing on the effective date of this Agreement and shall extend for a period of one year ("initial term) unless extended or terminated as provided herein. Thirty days prior to the end of the initial term licensee may request that this Agreement be renewed for a successive one-year period. The City Manager or his desingee, with prior approval of the Council Committee for Branding and Licensing, shall have the authority to renew this Agreement in one-year increments for up to an additional four years if no revisions are made to the Agreement.

3. Termination. Licensor shall have the right to terminate this Agreement within 30 days with or without cause upon written notice. In addition, Licensor shall have the right to terminate this Agreement immediately effective upon the telefaxing of written notice to Licensee at the telefax number set forth below, without prejudice to any rights it may have, whether pursuant to the provisions of this Agreement, in law, in equity, or otherwise, upon the occurrence of any one or more of the following events:

a. Licensee fails to perform any of its material obligations provided for in this Agreement and fails to cure any such material breach within ten (10) days of its receipt of written notice regarding said breach from Licensor, provided, however, that once Licensor has provided Licensee with three (3) such notices, it may terminate this Agreement without providing such opportunity to cure; or

b. Licensee is unable to pay its debts when due, or makes any assignment for the benefit of creditors, or files any petition under the bankruptcy or insolvency laws of any jurisdiction, county or place, or has a receiver or trustee appointed for its business or property, or

is adjudicated bankrupt or insolvent, or has substantially all of its assets seized or attached or is liquidated or dissolved.

4. Trademark Notice. Licensee warrants that it will provide a legally sufficient trademark notice in connection with each use of the Property authorized by this Agreement by causing the letters <sup>TM</sup> to be imprinted prominently, indelibly, and legibly, directly after the Property each time the Property is used as authorized in Section 1a above together with the following statement: "The BEVERLY HILLS SHIELD DESIGN is a trademark of the City of Beverly Hills." Upon written notice of federal registration of the Property by Licensor, the Licensee shall immediately begin to use the ® designation.

5. No Right to Assign. The license hereby granted is and shall be personal to the Licensee. Neither this Agreement nor any interests herein may be sublicensed, transferred, directly or indirectly, or assigned by Licensee, in whole or in part, by law or otherwise, without the prior written consent of Licensor and any attempt to sublicense, assign or otherwise transfer such rights shall be null and void.

6. Ownership Rights. Any and all rights in and to the Property which are not expressly granted to Licensee are hereby reserved by Licensor. Licensee acknowledges Licensor's exclusive rights in the Property and further acknowledges that the Property is famous, unique and original and that Licensor is the owner thereof. Licensee acknowledges the value, goodwill and rights of Licensor in the Property. Licensee agrees that the Property is, and shall remain, the property of Licensor and that Licensee obtains no right, title, or interest in or to the Property except for the limited rights set forth in this Agreement. Licensee waives all claim of and to ownership of any rights in the Property and agrees that it shall not at any time dispute or contest, directly or indirectly, Licensor's ownership of the Property, Licensor's exclusive right and title to the Property and right to use the Property, or the validity of the Property, nor shall Licensee assist others in doing so.

7. Indemnification. Licensee will indemnify, defend and hold harmless Licensor, and each of its officers, employees, elected and appointed officials, attorneys, agents, and representatives from and against any and all claims, losses, damages, causes of action, liabilities, costs and expenses (including, without limitation, reasonable legal expenses and attorneys' fees) resulting from, arising from or out of, or in any way related to the use of the Property as set forth herein (including, but not limited to, any actions based on false or misleading advertising), Licensee's use of the Property in any manner not authorized by this Agreement, and/or any other acts or omissions of Licensee which are not expressly authorized by this Agreement.

8. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all previous negotiations and agreements, oral or written, with respect thereto. No representation, promise, inducement, statement or intention has been made by any parties hereto that is not embodied

herein, and no party shall be bound or liable for any alleged representation, promise, inducement, or statement not set forth herein. There are no representations, warranties, promises, covenants or understandings other than those contained herein.

9. Survival. The provisions of Sections 5 and 6 of this Agreement shall survive any expiration or termination of this Agreement.

10. Modifications. This Agreement may be modified, amended, superseded, or cancelled only by a written instrument signed by both of the parties hereto, and any of the terms, covenants, representations, warranties or conditions hereto may be waived only by a written instrument executed by the party to be bound by any such waiver.

11. Attorneys' Fees. In the event of any dispute between the parties hereto arising out of the subject matter of this Agreement, the out-of-pocket costs, expenses, and reasonable attorneys' fees of the prevailing party incurred in resolving, settling or litigating the dispute shall be paid by the other party in addition to any other relief or damages to which the prevailing party may be entitled.

12. Jurisdiction and Disputes. This Agreement shall be governed by the laws of the State of California. All disputes under this Agreement shall be resolved by the courts of the State of California, including the United States District Court for the Central District of California, and the parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdiction or venue defenses otherwise available to them.

13. Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given (i) if delivered personally or sent by facsimile transmission (confirmed electronically), on the date given, (ii) if delivered by a courier express delivery service, on the date of delivery, or (iii) if by certified or registered mail, postage prepaid, return receipt requested, seven (7) days after mailing, to the parties addressed as follows, or to such other addresses as such party may designate by written notice in the manner provided herein:

If to Licensor:

Alison Maxwell  
Director of Economic Development & Marketing  
City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, California 90210-4817  
FAX: (310) 285-1056

With a copy to:

Larry Wiener, Esq.  
City Attorney  
City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, CA 90210-4817  
FAX: (310) 285-1056

If to Licensee:

Daniel Walsh, Executive Director  
Beverly Hill Chamber of Commerce and Civic Association  
239 South Beverly Drive  
Beverly Hills, California 90212  
FAX: (310) 248-1020

15. Non-Waiver. The waiver, express or implied, by any of the parties hereto of any right hereunder or with respect to any failure to perform or breach hereof by the other party hereto, shall not constitute or be deemed a waiver of any other right hereunder or of any other failure to perform or breach hereof by any such other party hereto, whether of a similar or dissimilar nature thereto.

16. No Agency or Joint Venture. The parties hereto understand and agree that this Agreement does not make them an agent or legal representative of each other for any purpose whatsoever, and that no partnership, franchise or joint venture is intended to be created hereby. No party hereto is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other party hereto, or to bind the other party hereto in any manner whatsoever.

17. Authority. Each party hereto represents and warrants that its execution, delivery and performance of this Agreement has been duly and validly authorized, and that this Agreement is binding upon and enforceable against such party in accordance with the terms hereof.

18. Effective Date. The effective date of this Agreement is October 4, 2008.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused this Agreement to be signed in its name by a duly authorized officer or representative thereof.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009, in the City of Beverly Hills, California.

CITY OF BEVERLY HILLS  
A Municipal Corporation

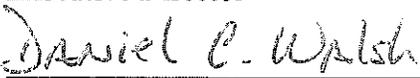
\_\_\_\_\_  
NANCY KRASNE  
Mayor of the City of Beverly Hills

ATTEST:

\_\_\_\_\_  
(SEAL)  
BYRON POPE  
City Clerk

BEVERLY HILLS CHAMBER OF  
COMMERCE AND CIVIC  
ASSOCIATION:

  
\_\_\_\_\_  
DANIEL WALSH  
Executive Director

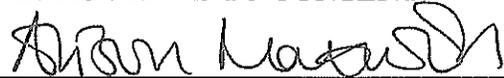
  
\_\_\_\_\_  
Name:  
Title: Pres & CEO

APPROVED AS TO FORM:



\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:



\_\_\_\_\_  
ALISON MAXWELL,  
Director of Economic Development  
& Marketing

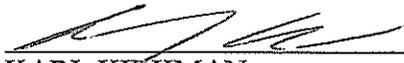
  
\_\_\_\_\_  
KARL KIRKMAN  
Risk Manager

EXHIBIT A

[Depiction of Shield]



BEVERLY HILLS  
CHAMBER OF  
**COMMERCE**

*Expertise • Presence  
Relationships*



City of Beverly Hills Shield Design





City templates

Business cards

Letterhead

Invitations

Quarterly Report

PowerPoint presentations

Website/Bevy

City merchandise

Trolley

Marketing materials:

- ❖ Flyers
- ❖ Ads
- ❖ Brochures
- ❖ Promotional Items
- ❖ Banners

Stop work orders

Parking citations

Public records request

Business tax forms

Police reports

Certificates of occupancy

Document certification stamp

Gold seal for proclamations and certificates

Permits:

- ❖ Building permit
- ❖ Electrical permit
- ❖ Solicitations permit
- ❖ Film & Special Events permit
- ❖ Parade/Assembly permit
- ❖ Garage sale permit