



AGENDA REPORT

Meeting Date: August 6, 2013
Item Number: F-6
To: Honorable Mayor & City Council
From: Cheryl Friedling, Deputy City Manager
Subject: APPROVAL OF AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND MERCEDES-BENZ OF BEVERLY HILLS FOR SPONSORSHIP OF THE BEVERLY HILLS CENTENNIAL

Attachments: 1. Agreement

RECOMMENDATION

That the City Council approve the agreement between the City and Mercedes-Benz of Beverly Hills for the City's Centennial celebration, and express appreciation to Mr. Bruce Schulman, the General Manager of Mercedes-Benz of Beverly Hills for this generous \$100,000 sponsorship.

INTRODUCTION

The City has selectively sought out luxury sponsors to assist in defraying the costs of the City's Centennial celebration. Most recently, Mercedes-Benz of Beverly Hills has offered to serve as the exclusive automotive sponsor at the \$100,000 sponsorship level.

DISCUSSION

As outlined in the attached contractual document, Mercedes-Benz of Beverly Hills will be entitled to a variety of Centennial-related benefits throughout the Centennial year, including formal recognition at Centennial events, inclusion of Mercedes-Benz logo on Centennial banners and materials, and others.

FISCAL IMPACT

The City will receive \$100,000 (in installments) to assist in funding Centennial programs and initiatives.

Don Rhoads
Finance Approval

Cheryl Friedling
Approved By

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
MERCEDES-BENZ OF BEVERLY HILLS FOR SPONSORSHIP OF THE
BEVERLY HILLS CENTENNIAL

THIS AGREEMENT is made on August 6, 2013 by and between the City of Beverly Hills, a municipal corporation (“Event Operator”) and Mercedes-Benz of Beverly Hills (“Sponsor”).

A. The City is celebrating its 100th Anniversary and will launch a year of signature centennial events during the calendar year 2014 (“Event”).

B. The City has established the Beverly Hills Centennial Celebration Sponsorship Program to attract luxury brands to partner with the City for this once in a lifetime branding opportunity.

C. Sponsor desires to participate in the Beverly Hills Centennial Celebration Sponsorship Program pursuant to the terms and conditions set forth in this Sponsorship Agreement.

NOW, THEREFORE, in consideration of the above recitals, the parties agree as follows:

1. Sponsorship Rights and Obligations.

(a) Consideration. During the Term and for consideration of the Sponsorship payment, Event Operator shall provide to Sponsor the benefits set forth in Exhibit A, which is attached herein and incorporated in full (“Sponsorship Benefits”). Notwithstanding, Sponsor recognizes and agrees that part of the Sponsorship Benefits include brand visibility, participation and admission to certain “Signature Centennial Events” as listed in Exhibit A. Such events are subject to change by the Event Operator and the Event Operator has the right to substitute equivalent similar events in the place of those listed therein. The determination of an equivalent event is in the reasonable discretion of the Event Operator taking into the consideration the size, scale and visibility of the event to be replaced. To the extent possible, the Sponsor shall be consulted in the development of equivalent sponsorship events.

(b) Sponsorship. Event Operator hereby grants to Sponsor marketing exclusivity in the category of automobiles (“Product Category”). Accordingly, Sponsor shall be the exclusive automobile sponsor for the Event (“Sponsorship”). Sponsor and Event Operator agree that certain potential sponsors of luxury brands have a significant presence in the Product Category. Sponsor may use such Sponsorship rights in connection with the advertising and promotion of Sponsor and its products and services in such manner as Sponsor may deem appropriate, subject to Event Operator’s prior approval, which shall not be unreasonably withheld.

(c) Exclusivity. Event Operator warrants that it has not granted and will not grant any Sponsorship rights of any nature to the Event to or on behalf of any manufacturer, distributor, developer, marketer or seller of any goods within the Product Category listed herein.

(d) Advertising Materials. Sponsor shall provide the form of logo and/or Marks, as defined below, to be used by Event Operator for all materials used in advertising and promoting the Event and the Sponsorship.

2. Event Operator Obligations:

(a) Promotion of the Sponsorship. Event Operator shall use its best efforts to promote the Sponsorship, including, without limitation, conducting advertising, promotional and public relations activities in connection with the Event. In the course of planning, developing, promoting, and marketing the Sponsorship, Event Operator shall at all times portray Sponsor in a positive fashion.

(b) Advertising Materials. Event Operator shall provide the form of logo and Marks to be used by Sponsor for all materials used in advertising and promoting the Event and the Sponsorship.

(c) Management of the Event and Third Party Relationships. Event Operator shall be solely responsible for the management of all aspects of the Event and securing and maintaining any third party rights necessary to provide the Sponsorship benefits rights set forth in Exhibit A.

(d) Operations and Permits. Event Operator shall be solely responsible for arranging all operational aspects of the Event and Sponsorship including, but not limited to, the set-up of the Event and managing communications with the media, if any. Event Operator shall be responsible for obtaining all permits, licenses, and other evidences of permission necessary for the planning, developing, marketing, and production of the Event.

3. Sponsorship Fee. In consideration of Sponsorship rights granted hereunder, Sponsor agrees to pay to Event Operator a fee in the amount set forth in Exhibit A attached hereto (the "Sponsorship Fee"). The Sponsorship Fee shall be payable in accordance with the schedule set forth in Exhibit A.

4. Ownership Rights. Licenses and Limitations.

(a) Marks. Each party to this Agreement ("Owner") hereby grants to the other party ("Licensee") a non-exclusive, non-transferable, royalty free license to use and reproduce accurately the Owner's name, logos, service marks and trademarks ("Marks") as shown on Exhibit B, attached hereto and incorporated herein, as such Marks may be altered by the Owner from time to time, as may be necessary for the parties to perform their obligations under this Agreement. Each Licensee agrees that all use of the Owner's Marks shall be of the high standard and of such style, appearance and quality as is consistent with the image of Owner's use of the Marks generally. All use of the Owner's Marks and the goodwill generated thereby shall inure to the benefit of each respective Owner. Each Licensee hereby acknowledges the Owner's rights and interests in the Owner's Marks and agrees not to claim any right, title or interest in or to such Marks or to at any time challenge or attack Owner's rights in or to such Marks for any reason whatsoever. Except as expressly provided herein, no other right or license with respect to any copyrights, trademark rights or other proprietary rights is granted under this Agreement. All rights not expressly granted hereunder by a party are expressly reserved to each respective party.

(b) **Promotional Material.** Licensee must obtain Owners written approval for all publicity, promotional and advertising material bearing Owner's Marks or otherwise marketing the Sponsorship prior to the initial use of such materials. Owner agrees that any material submitted by Licensee shall not be unreasonably disapproved and, if it is disapproved, the Owner shall advise Licensee of the specific grounds of disapproval. Owner will have five (5) business days to approve or disapprove any and all advertising and promotional materials that include Owner's Marks.

5. **Representations and Warranties.** Each party represents and warrants that (i) it has the full right and power to enter into this Agreement and fully perform its obligations hereunder; (ii) it has the full right to grant the license to use the Marks pursuant to the terms and requirements set forth herein; and (iii) the execution and delivery of this Agreement and the performance of its obligations hereunder will not violate or conflict with any other agreement to which it is a party or violate or infringe upon the rights of any third party.

6. **Term and Termination.**

(a) **Term.** The term of this Agreement shall commence on the date first set forth above and continue through completion of the Event, which is scheduled to be on December 31, 2014 (the 'Term'). Upon the expiration of this Agreement, the parties shall immediately discontinue any and all use of the other party's Marks and each party will return to the other party any materials provided under this Agreement.

(b) **Termination.** Either party may terminate this Agreement (i) if the other party fails to comply with any of its material obligations hereunder and provided that the breach can be remedied, does not remedy such failure within ten (10) business days after being called upon to do so by written notice or such longer time if the other party agrees to an extension; or (ii) immediately, if the other party becomes bankrupt or insolvent or enters into a liquidation or enters into any arrangement with its creditors, or has a receiver appointed to run its business. The City may terminate this Agreement upon thirty days written notice if the Event is cancelled or due to Sponsor's breach as described in the prior sentence, subject to the obligations contained in paragraph (c) herein.

(c) **Obligations Upon Termination.** Upon the termination of this Agreement, the parties shall immediately discontinue any and all use of the other party's Marks and each party will return to the other party any materials provided under this Agreement. In the event of termination, the following shall also apply:

1) In the situation where the Event Operator cancels the Event in its discretion and thus terminates the Agreement, the Event Operator will return to Sponsor the Sponsorship Fee less any monies expended by the Event Operator for reasonable and agreed upon services rendered and benefits received hereunder by Sponsor, as determined by the Event Operator in its reasonable discretion, prior to the cancellation of the Event.

2) In the situation where the Agreement is terminated by the Event Operator, as a result of Sponsor's breach, no refund shall be provided to the Sponsor and Sponsor agrees

that the Event Operator may seek another sponsor in the Product Category notwithstanding the provisions herein.

The above constitutes the sole remedy of Sponsor in the case of termination.

7. **Indemnification.** Each party will defend, indemnify and hold each other harmless from and against any and all third party claims, liabilities, judgments, damages, costs and expenses, including reasonable attorneys fees, with respect to, arising out of, or in connection with (i) any breach of any provision of this Agreement or any agreement, representation or warranty made by the other party (ii) any negligent act or omission by the other party, its employees, servants, agents, and the like arising out of its performance of its obligations hereunder ; (iii) any third party claims concerning products or merchandise distributed or sold by the other party; and (iv) for any events and promotional materials produced and distributed by the other party related to the Event. The parties shall provide notice to the other party of any claim, action, or threat of which it learns. Each party shall name the other as an additional insured on their general liability policy.

8. **Miscellaneous.**

(a) **Independent Parties.** Nothing in this Agreement is intended to create, nor shall anything herein be construed or interpreted as creating, an agency, a partnership, a joint venture or any other relationship between Event Operator and Sponsor except as expressly set forth herein, and both parties understand that, except as otherwise expressly agreed to herein, each shall be responsible for its own separate debts, obligations and other liabilities. Sponsor 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 Event Operator.

(b) **Notices.** Any notice sent pursuant to this Agreement will be in writing and either (i) hand delivered; (ii) transmitted by facsimile or its equivalent; or (iii) mailed by certified or registered mail, return receipt requested, postage, or (iv) dispatched by expedited delivery service, to the following:

Event Sponsor: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, California 90210
Attention: City Manager

Sponsor: Mercedes-Benz of Beverly Hills
9250 Beverly Boulevard
Beverly Hills, California 90210
Attention: Bruce Schulman, General Manager

or such other person or address as either party may designate in writing pursuant to the provisions of this section. Any notice mailed will be deemed to have been received two (2) days after it is mailed; any notice dispatched by expedited delivery service will be deemed to have been received one day after it is dispatched; and any notice sent by facsimile will be deemed to have been received on the date it is faxed.

(c) Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the parties regarding the subject matter discussed herein and supersede all prior or contemporaneous discussions, representations, correspondence and agreements, whether oral or written, pertaining thereto. This Agreement may be amended or modified only by a writing duly executed by the parties.

(d) City Representative. The City Manager or his designee shall represent the City in the implementation of this Agreement.

(e) Responsible Principal. Bruce Schulman, General Manager, shall be principally responsible for Sponsor's obligations under this Agreement and shall serve as principal liaison between Event Operator and Sponsor.

(f) Waiver. The failure of either party at any time or times to demand strict performance by the other of any of the terms, covenants or conditions set forth herein will not be construed as a continuing waiver or relinquishment thereof and each may at any time demand strict and complete performance by the other of said terms, covenants and conditions.

(g) Successors and Assigns. Except as otherwise provided herein, Sponsor shall not have the right to assign, sell, lease, license or sublicense, in whole or in part, any of its rights or obligations hereunder.

(h) No Warranties. Except as otherwise provided in this Agreement, no representations, warranties or guarantees of either party not contained in this Agreement shall be binding on the parties.

(i) Governing Law. The domestic law of the State of California shall govern the interpretation and implementation of this Agreement. Jurisdiction shall be in state or federal court located in the County of Los Angeles.

(j) Damages. Under no circumstances shall either party be liable for indirect, incidental, consequential, special or exemplary damages (even if it has been advised of the possibility of such damages) arising under any provision of this Agreement, such as, but not limited to, loss of revenue or anticipated profits or lost business.

(k) Attorney's Fees. In the event that any party 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.

(l) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

(m) Survival of Representations. The representations, warranties, indemnification, and confidentiality provisions set forth in this Agreement shall be continuing and shall survive the termination of this Agreement.

(n) Force Majeure. If Event Operator is unable, after making a continued good faith effort to do so, to fulfill its obligations pursuant to this Agreement due to conditions beyond its control (including without limitation) a strike, boycott, war, act of terror, act of God, labor troubles, riot, delay of commercial carriers, restraint of public authority or for any other reason, the Sponsor is not entitled to a refund of any Sponsorship Fees. In such case, the Event Operator may substitute an event with an equivalent event as determined in the reasonable discretion of Event Operator. No party, however, shall be responsible for events beyond its reasonable control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of this day and date as first appears above.

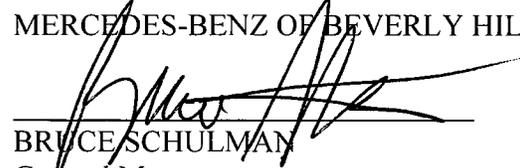
CITY OF BEVERLY HILLS
A Municipal Corporation

JOHN A. MIRISCH
Mayor of the City of Beverly Hills,
California

ATTEST:

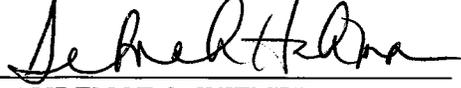
_____ (SEAL)
BYRON POPE
City Clerk

MERCEDES-BENZ OF BEVERLY HILLS



BRUCE SCHULMAN
General Manager

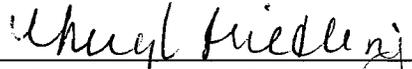
APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager



CHERYL FRIEDLING
Deputy City Manager/Public Affairs



KARL KIRKMAN
Risk Manager

EXHIBIT A

SPONSORSHIP BENEFITS AND SPONSORSHIP FEE

The following sets forth the Sponsorship Benefits of the Partner Package for the Beverly Hills Centennial Event to be held throughout the calendar year of 2014 (January 1, 2014 through and including December 31, 2014). The Sponsorship Fee to be paid to Event Operator shall be \$100,000 to be paid in 4 quarterly installments with the first payment due no later than December 31, 2013. Subsequent payments are due by March 31, 2014; June 30, 2014; and September 30, 2014. The Event Operator through the City Manager and Sponsor may agree in writing to alternative installment dates. However, in the event Sponsor fails to make a timely payment, City shall notify Sponsor that is has 10 business days to make the installment payment or Sponsor shall reimburse City for all the costs incurred by City from the date of the last payment made by Sponsor. Sponsor shall not be included in additional collateral material until the Sponsorship Fee payment(s) are up to date.

Event Operator hereby grants to Sponsor the following Sponsorship Benefits subject to the terms and conditions of the Sponsorship Agreement:

1. The Inclusion of Sponsor in the title of the Event as a Sponsor.
2. Inclusion of Sponsor's brand throughout the Event, subject to Sponsor's prior approval. Event Operator is solely responsible for the cost and development of all creative materials for the Event that incorporate Sponsor's logo. Sponsor will provide Event Operator with Sponsor's logo(s) in Sponsor's desired format. The exact size and placement of Mark and logo shall be agreed upon by the parties.
3. Sponsor has the right to use the Event name and details in all advertising and promotion of Sponsor's products and services. Sponsor may use provided photographs in press materials, subject to Event Operator prior approval as set forth in the Agreement.
4. Inclusion of Sponsor's logo and identification as Sponsor on all Centennial marketing collateral.
5. Inclusion of Sponsor's Mark or logo on signage at press events.
6. Invitation to Centennial events including Mark or logo recognition on signage at press events.
7. Inclusion of Sponsor's logo on Event web site, if applicable.
8. 10 tickets to a Centennial Event VIP Reception.
9. Inclusion of Sponsor Mark or logo on 100 Centennial Street Banners for a minimum of 50 days of exposure in City's key commercial areas. Mark or logo placement/size;

location of banners; and dates of exposure are determined by Event Operator in its sole discretion after consultation with Sponsor.

10. On-site presence, product placement and gift bag inclusion (if Sponsor so desires) at Signature Centennial Events. Any product to be distributed or included in gift bags shall be provided by the Sponsor and meet the guidelines established by the Event Operator to ensure consistency with the branding of the Event.
11. Event Operator shall provide Sponsor with a list of Event sponsors upon execution of this Agreement and shall update this list periodically as sponsors are either added or removed.

EXHIBIT B

