



STAFF REPORT

Meeting Date: September 2, 2014
To: Honorable Mayor & City Council
From: Megan Roach, Marketing & Economic Sustainability Manager 
Subject: License Agreement with Phil Savenick's Company, TV is OK Productions, Inc., for the "Beverly Hills: 100 Years, 100 Stories" Video Project
Attachments: 1. License Agreement

INTRODUCTION

This item is the proposed license agreement between TV is OK Productions, Inc. (Mr. Savenick's company), and the City of Beverly Hills for the "Beverly Hills: 100 Years, 100 Stories" video project. Staff is requesting City Council direction on the funding amount for the license agreement and once that direction is given, that the City Council authorize the City Manager to execute the agreement.

DISCUSSION

On October 3, 2013, the City Council appropriated \$75,000 in Centennial funding contingent upon a fully executed work for hire agreement between Mr. Phil Savenick and the City for the "Beverly Hills: 100 Years, 100 Stories" video project produced by his production company TV is OK Productions, Inc. Founded by Mr. Savenick in 1986, TV is OK Productions, Inc. creates television programming and DVD documentaries. Mr. Savenick is also a resident of Beverly Hills and is familiar with the City's history.

Over the course of the next several months, City staff and the City Attorney's Office worked with Mr. Savenick to obtain a final signed work for hire agreement to present to the City Council for review. The main obstacle for reaching an agreement was the concern over the intellectual property liability releases needed in order for the City to acquire ownership of the video project. At the beginning of April, Mr. Savenick and his attorney suggested a license agreement in which Mr. Savenick would own the videos (as opposed to a work for hire in which the City would own the videos).

At the May 6, 2014 study session meeting, Mr. Savenick presented the City Council with a new proposal for a license agreement for the "Beverly Hills: 100 Years, 100 Stories" program. At that meeting, the Council stated they would be open to a license agreement as long as the City's interests were protected, but did not indicate the amount the Council would be willing to pay for a license.

The proposed license agreement with TV is OK Productions, Inc. is included as Attachment No. 1 to the staff report. The agreement grants the City a non-exclusive, irrevocable, perpetual license under copyright to reproduce, display, perform, publish, exhibit, and broadcast Mr. Savenick's "Beverly Hills: 100 Years, 100 Stories" program at City public events; in City schools, parks, and libraries; through BHTV; and on the City's social media sites and official web site.

The license agreement also provides that, except for the License granted therein to the City, TV is OK Productions, Inc. retains all rights of any nature now or later recognized, in and to the Programs and Interviews, including the copyrights therein and including, without limitation, the right to exhibit, broadcast, distribute and exploit the Programs in any and all media, now known or hereafter devised, throughout the world in perpetuity.

Mr. Savenick has requested use of a select number of photographs and videos from the City Library archival historical collection for the program. Library staff has agreed to waive the fees for the use of these materials for the program contingent upon City Council approval. In addition, Mr. Savenick has requested free use of the City cable studios. The license agreement provides that Mr. Savenick may use City studios through December 31, 2014 for conducting additional interviews for only the "Beverly Hills: 100 Years, 100 Stories" programs, at no charge, provided however, that such use must be scheduled in advance with City staff. Any use beyond that date will require the appropriate facility rental process.

The agreement provides that Mr. Savenick shall be responsible for performing all clearance with respect to potential copyrighted and trademarked materials incorporated into the programs and that he shall obtain all necessary permissions from third parties who may hold copyright or other proprietary interests to materials incorporated into the programs. The agreement also contains a provision regarding the Beverly Hills Shield Logo and Mr. Savenick will not incorporate the Shield Logo into the programs without a separate, written license agreement from the City. Mr. Savenick has agreed not to use the Shield in the videos.

Staff is seeking direction from Council as to the funding amount for the license agreement. The City has allocated \$75,000 to another company for a Centennial vignettes project in which that producer is giving the City ownership of the vignettes.

FISCAL IMPACT

The Centennial Budget in the Tourism and Marketing Budget includes \$75,000 for the "Beverly Hills: 100 Years, 100 Stories" video project.

RECOMMENDATION

Staff recommends that the City Council:

- 1) Provide direction on the funding amount for the license agreement with TV is OK Productions, Inc.; and
- 2.) Authorize and direct the City Manager to execute the agreement once the funding amount is determined.


Cheryl Friedling
Approved By

Attachment 1

LICENSE AGREEMENT

This agreement ("Agreement") is made as of this ___ day of _____, 2014 between TV is OK Productions, Inc. ("TVISOK") and the City of Beverly Hills (the "CITY").

WHEREAS, TVISOK has produced and continues to produce various documentary programs and short subjects about the history of the City of Beverly Hills tentatively titled "Beverly Hills: 100 Years, 100 Stories" (individually referred to as a "Program" and collectively the "Programs") as more particularly described in the attached Schedule A;

WHEREAS, with CITY's knowledge and consent, TVISOK has recorded on digital video at CITY facilities, various unedited interviews with individuals concerning their memories of and association with the City of Beverly Hills (the "Interviews") as more particularly described in the attached Schedule A, and portions of which are contained in the Programs;

WHEREAS, CITY desires to license from TVISOK certain rights in the Programs and the Interviews;

WHEREAS, TVISOK desires to exhibit the Programs in connection with CITY events and to continue to use CITY facilities to conduct further Interviews and produce additional Programs;

NOW THEREFORE, TVISOK and CITY agree as follows:

1. TVISOK License of Programs to CITY: TVISOK hereby grants to CITY a non-exclusive, irrevocable, perpetual license under copyright to reproduce, display, perform, publish, exhibit, and broadcast the Programs at CITY's public events; in CITY's schools, parks, and libraries; through BHTV; and on CITY's social media sites and official web site.
2. TVISOK License of Interviews to CITY. TVISOK hereby grants to CITY a non-exclusive, irrevocable, perpetual license to use, modify, reproduce, display, perform, publish, prepare derivative works of, and otherwise utilize and exploit the Interviews.
3. Term: The term of CITY's licenses hereunder shall commence on full signature of this Agreement and continue in perpetuity.
4. Territory: With respect to reproducing, displaying, performing, publishing, exhibiting, and broadcasting the Programs and Interviews at public events, in schools, parks, and libraries, and through BHTV, the Territory shall be the United States, its territories and possessions. With respect to reproducing, displaying, performing, publishing, exhibiting, and broadcasting the Programs and Interviews over the Internet, the Territory shall be worldwide.
5. License Fee/Payment Terms: CITY shall pay TVISOK a license fee of \$ _____ ("License Fee") for the licensed rights in the Programs and Interviews set forth in the attached Schedule A. One-half of the License Fee will be paid on full signature of this Agreement and the balance upon final delivery of the Programs and Interviews to CITY, including all releases and clearances obtained by TVISOK in its name and/or CITY's name in connection therewith.

6. Access to CITY Facilities. CITY agrees that TVISOK may use CITY facilities through December 31, 2014 for conducting additional Interviews for the Programs at no charge to TVISOK, provided however, that such use must be scheduled in advance with City staff.

7. Use of CITY Trademarks. TVISOK agrees and acknowledges that the CITY is the owner of all rights in the Beverly Hills Shield Logo, including the variations shown below, and that TVISOK will not incorporate the Beverly Hills Shield Logo into the Programs or otherwise the Beverly Hills Shield Logo without a separate, written license agreement from the CITY:



8. Editing: CITY shall have the right to edit, add graphics and music to the Programs, at CITY'S sole cost and expense.

9. Third-Party Rights and Clearance.

9.1 TVISOK shall be responsible for performing all clearance with respect to potential third-party rights in materials incorporated into the Programs and for obtaining all necessary permissions from third parties who may hold copyright or other proprietary interests in or to materials incorporated into the Programs.

9.2 At the time of delivery of each Program to CITY, TVISOK shall deliver a written statement consisting of the following: (a) an inventory of all previously existing works not created by TVISOK that have been incorporated into the Program, including all photographs, works of visual art, audio-visual works, and musical recordings; and (b) for each previously existing work, the name and contact information for any holder of copyright interests in or to the previously existing work or a statement that the work has fallen into the public domain.

9.3 TVISOK shall provide further evidence of the permissions described in Section 9.2 of this Agreement upon request by CITY.

9.4 TVISOK shall remove any third-party materials from any Program upon request by the CITY based on the CITY's determination, in its sole discretion, that inclusion of the third-party material carries a risk of liability for infringement of the rights of others by virtue of its use in the Program.

10. Reserved Rights: As between CITY and TVISOK, except for the License granted hereby, TVISOK retains all rights of any nature now or later recognized, in and to the Programs and Interviews, including the copyrights therein and including, without limitation, the right to exhibit, broadcast, distribute and exploit the Programs in any and all media, now known or

hereafter devised, throughout the world in perpetuity; provided, however, that if any of the Programs contain the City Shield logo or any other City owned material, the rights and limitations with respect to such Programs shall be governed by a separate, written license agreement from the City.

11. Representations and Warranties of TVISOK: TVISOK represents and warrants that: (i) it has the right, power and authority to enter into and perform this Agreement; (ii) it owns or controls the rights necessary to grant CITY the licenses granted herein; (iii) there are no contracts with any third party which will interfere with any rights granted under this Agreement to CITY; (iv) to the best of TVISOK's knowledge after due investigation, the Programs do not and will not infringe any copyright or trademark; invade any right of privacy; contain any libelous, obscene, or unlawful material; or infringe or violate any other right of any other person or entity; (v) it has obtained, or will obtain prior to delivery of any particular Program to the CITY, all necessary permissions to use any third-party materials incorporated into the Programs.

12. Representations and Warranties of CITY: CITY represents and warrants that it has full right, power and authority to enter into and perform under this Agreement..

13. Indemnities: TVISOK agrees to indemnify and hold harmless CITY, City Council and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, reasonable attorneys fees and costs) arising from any of the Programs, including from any claims by third parties that any of the Programs infringes or otherwise violates the third party's copyright or other intellectual property rights, or from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of TVISOK or any person employed by TVISOK in the performance of this Agreement.

14. Assignment: This Agreement shall not be assigned in whole or in part, by TVISOK without 30 days prior written notice to the CITY; provided, however, that the right to use City facilities pursuant to paragraph 6 hereof shall not be assignable. CITY may not assign this Agreement in whole or in part, without the prior written consent of TVISOK (which consent shall not be unreasonably withheld, conditioned, or delayed). No assignment pursuant to this paragraph shall relieve the assigning party of its obligations under this Agreement, unless the parties otherwise agree in writing.

15. Protection of Copyright: TVISOK shall take all reasonable steps to protect all copyrights pertaining to the Programs from infringement and TVISOK will institute such action and proceedings as may be reasonable to prevent any unauthorized use, reproduction, exhibition or exploitation by third parties of the Programs, or any part thereof, which may be in contravention of the rights granted to CITY hereunder.

16. Additional Provisions: Any waiver by either party of any breach of any term or condition of this Agreement in one instance shall not be deemed to be a waiver of any rights and remedies resulting from that breach in the future, nor shall such waiver constitute a waiver of any other term or condition of this Agreement.

16.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter covered and supersedes any prior agreements and representations between the parties.

16.2 This Agreement cannot be modified except by written instruments signed by each of the parties and shall in all respects be governed and construed by the laws of the State of California applicable to contracts made and performed therein.

16.3 Nothing contained herein shall be deemed to create a joint venture or partnership between the parties hereto and neither party shall hold itself out to the contrary.

16.4 No provision of this Agreement shall be interpreted against any party because such party or its legal representative drafted such provision.

16.5 The invalidity under applicable law of any provision of this Agreement shall not affect the validity of any other provision of this Agreement, and in the event that any provision hereof is deemed to be invalid or otherwise illegal or unenforceable, this Agreement shall remain effective and shall be construed in accordance with its terms as if the invalid, illegal or unenforceable provision were not contained herein. Any purported or actual breach by either party shall extend only to the affected Program(s) and not to the entire Agreement.

IN WITNESS WHEREOF, each of the parties hereto have duly executed and delivered this Agreement as of the date first written above.

CITY OF BEVERLY HILLS
A Municipal Corporation

JEFFREY C. KOLIN
City Manager

TV IS OK PRODUCTIONS, INC.

PHIL SAVENICK
Title:

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

CHERYL FRIEDLING
Deputy City Manager

KARL KIRKMAN
Risk Manager

SCHEDULE A

HISTORY OF BEVERLY HILLS PROJECT

Programs, as defined in this Agreement and referred to as “Beverly Hills; 100 Years, 100 Stories”, mean the audio-visual works listed below. TVISOK may subsequently amend the list of audio-visual works that constitute the Programs by notifying the City in writing. In no event, however, will the total running time of the combined Programs be less than two hours.

1. HAPPY 100TH BIRTHDAY - completed
2. BECOMING A CITY – completed
3. RANCHO DAYS: COWGIRLS AND INDIANS - completed
4. HOMETOWN KIDS - completed
5. VICKI REYNOLDS: OUR POST OFFICE BECOMES THE WALLIS - completed
6. FRED CUNNINGHAM: HOW THE CITY WORKS - completed
7. THE ROARING 20’S IN BEVERLY HILLS - completed
8. WHERE ARE YOU FROM? - completed
9. BEVERLY HILLS DURING WORLD WAR 2 - completed
10. JOEL PRESSMAN TRIBUTE - completed
11. NEIGHBORS ON STAMPS - completed
12. BEVERLY HILLS OR NOT? QUIZ SHOW#1 - completed
13. BEVERLY HILLS OR NOT? QUIZ SHOW#2- completed
14. CLOSE ENCOUNTERS WITH GREATNESS - completed
15. BEVERLY HILLS PUBLIC LIBRARY HISTORICAL COLLECTION- completed
16. SCENTS OF THE CITY - completed
17. THE BEVERLY HILLS SCHOOLS – completed
Segments in progress
18. PEOPLE WE SHOULD NEVER FORGET - in progress
19. THEN AND NOW – in progress
20. Landmark - ROBINSON GARDENS - in progress
21. Landmark - THE ACADEMY LIBRARY AND THE WATERWORKS - in progress
22. Landmark–THE WITCH’S HOUSE/ HOLIDAYS IN BEVERLY HILLS - in progress
23. Landmark - CITY HALL AND THE CIVIC CENTER – in progress

Upon request, TVISOK will deliver to the CITY four ½-hour compilations of the audio-visual works listed above, including some additional material. These four compilations will also constitute Programs as defined in this Agreement.

SCHEDULE B

Interviewee Releases - Status

All of the individuals interviewed by TVISOK in connection with the Programs are listed below, together with an indication of whether the individual signed release forms in substantially the form set forth below after the list of names.

111 interviewees signed releases for both TVISOK and the CITY. There are no restrictions on the CITY's use of the audio-visual recordings of these interviews. Interviewees who did not sign the city's release but who signed the TV IS OK release will allow the Interviews to be used in the Programs, including as exhibited by the city, but for no other use by the City without further consent.

INTERVIEWEES	TV IS OK Signed Releases	City of BH Signed Releases
Laurie Ackerman	Yes	Yes
Tanaz Akhlaghi	Yes	Yes
Allan Alexander	Pending approval	NO
Robert Anderson	Yes	NO
Cynthia Baseman	Yes	Yes
Maralee Beck	Yes	Yes
Ellen Bloom	Yes	Yes
Thomas J.Blumenthal	Yes	NO
Gloria Boraz	Yes	Yes
Lili Bosse	Yes	Yes
Willie Brien	Yes	NO (left before signing)
Linda J. Briskman	Yes	Yes
Les Bronte	Yes	NO
Edward Brown	Yes	Yes
Linda Brown	Yes	Yes
M. Allan Bunnage	Yes	Yes
Jacqueline Burdorf	Yes	Yes
Jack Carter	NO	NO
Roxanne Carter	NO	NO

INTERVIEWEES	TV IS OK Signed Releases	City of BH Signed Releases
Andrea Kune Clark	Yes	Yes
Woody Clark	Pending approval	NO
Lisa Coburn	Yes	NO
Jill Collins	Yes	NO
Nan M. Corman	Yes	NO
Rich Correll	Yes	NO
Karin Costa	Yes	Yes
Fred Cunningham	Yes	Yes
Jimmy Delshad	Yes	Yes
Paul Diamond	Yes	Yes
Melody Doff	Yes	Yes
Joel Druckman	Yes	Yes
Alison Clay-Duboff	Yes	Yes
Fredde Duke	Yes	NO
Jeff Dunas	Yes	NO
Jennifer Rogers Etcheverry	Yes	NO
Steven Fenton	Yes	Yes
R.Michael Fenton	Yes	Yes
Robert Fox	Yes	Yes
Donavan S. Freberg	Yes	Yes
Donna Freberg	Yes	Yes
Dave Friedman	Yes	Yes
Bobbie Fromberg	Yes	Yes
Noah Furie	Yes	Yes
Mary Frances Gage	Yes	Yes
Marilyn Gallup	Yes	Yes
Donna Ellman Garber	Yes	Yes
Ann Gautier	Yes	Yes
Martin Geimer	Yes	Yes

INTERVIEWEES	TV IS OK Signed Releases	City of BH Signed Releases
Steve Glick	Yes	Yes
Michael S. Glick	Yes	Yes
Julian Gould	Yes	Yes
Brian David Goldberg	Yes	Yes
Wendy H. Goldberg	Yes	NO
Ira Goldberg	Yes	Yes
MeraLee Goldman	Yes	NO
Jim Goldwasser	Yes	Yes
Lori Greene Gordon	Yes	Yes
Richard Greenberg	Yes	Yes
JoAnn Greenberg	Yes	Yes
Gary S. Greene	Yes	Yes
Josh Gross	Yes	Yes
Elliot H. Haimoff	Yes	Yes
Marilyn Hall	Yes	NO
Monty Hall	Yes	NO
Arlene Harris	Yes	Yes
Billie Heller	Yes	NO
Billy Hinsche	Yes	NO
Nile Hight	Yes	Yes
Rosemary Hilb	Yes	Yes
George Vreeland Hill	Yes	Yes
Nora Holtz	Yes	Yes
Jeff Hyland	Yes	NO
Beverly Hyman	Yes	Yes
Susan Janneck	Yes	Yes
Gail Johnson	Yes	Yes
Spike Jones, Jr.	Yes	NO
Jerome Katzman	Yes	Yes

INTERVIEWEES	TV IS OK Signed Releases	City of BH Signed Releases
Carol Katzman	Yes	Yes
Steve Kessler	Yes	Yes
Stan King	Yes	Yes
Nancy Krasne	Yes	Yes
Gregory Laemmle	Yes	Yes
Gloria Lanfeld	Yes	Yes
Stephanie Lehrer	Yes	NO
Phyllis Lerner	Yes	Yes
Liza Lerner	Yes	NO
Ursula Levi	Yes	Yes
Timothy Lindsay	Yes	NO
Michael Lloyd	Yes	NO
Mike Lloyd	Yes	NO
Suzanne Lloyd	Yes	NO
Myra B. Lurie	Yes	Yes
Francis Maas	Yes	Yes
Stephen Macht	Yes	NO
Ron Magnin	Yes	Yes
Karen Berg Marks	Yes	Yes
Sandy Marks	Yes	Yes
Judi Martino	Yes	NO
Alison Martino	Yes	NO
Roger Matlin	Yes	Yes
Linda Harris Mehr	Yes	Yes
Martin Roy Mervel	Yes	Yes
Bruce Meyer	Yes	NO
Anthony Mohr	Yes	Yes
James Murphy	Yes	NO
Sonya Murphy	Yes	Yes

INTERVIEWEES	TV IS OK Signed Releases	City of BH Signed Releases
Sharona Nazarian	Yes	Yes
Jason Newman	Yes	NO
Marty Nislick	Yes	Yes
Cynthia Norian	Yes	Yes
Rose Norton	Yes	NO
Carter Paysinger	Pending approval	NO
Thomas Pease	Yes	Yes
Chris Pina	Yes	NO
Ben Platt	Yes	Yes
Roy R. Platt	Yes	Yes
Ricky Powell	Yes	Yes
Joel Pressman	Yes	Yes
Steven Price	Yes	NO
Jonathan Prince	Yes	NO
Joan Quinn	Yes	yes
Christine Redlin	Yes	Yes
Kimberly Reiss	Yes	Yes
Vicki Reynolds	Yes	NO
Jennifer Rose	Yes	Yes
Quincy Rose	Yes	Yes
Mark Rosen	Yes	Yes
Chuck Rosin	Yes	NO
Brenda Rubins	Yes	Yes
Peter Rutenberg	Yes	Yes
Annette Saleh	Yes	Yes
Marc Saleh	Yes	Yes
Janet Salter	Yes	Yes
James Savenick	Yes	NO
Eleanor Schapa	Yes	NO

INTERVIEWEES**TV IS OK Signed Releases****City of BH Signed Releases**

George Schlatter	Pending approval	NO
Jolene Schlatter	Yes	NO
Jennifer Terrell Schwartz	Yes	Yes
Farshid Joe Shooshani	Yes	Yes
Gail Stein	Yes	Yes
David Stiles	Yes	Yes
David Streets	Yes	Yes
Jerry Sweet	Yes	Yes
Robert J. Switzer	Yes	Yes
Sharmagne Leland St. John-Sylbert	Yes	Yes
Carla Thomas	Yes	Yes
Terre Thomas	Yes	NO
Joe Tilem	Yes	NO
Katherine Hyman Timme	Yes	NO
Mitch Waldow	Yes	Yes
Marc Wanamaker	Yes	NO
Steve Webb	Yes	Yes
Joseph Weiss	Yes	Yes
Jeff Wolfe	Yes	Yes
Elliot S. Wolfe	Yes	Yes
Alfred Woodill	Yes	Yes
Kathryn Young	Yes	Yes
Matthew Zarider	Yes	Yes
Barbara Zarider	Yes	Yes
Marlene Zimmerman	Yes	Yes

[INSERT TEXT OF BOTH TVISOK AND CITY VERSIONS OF RELEASE FORMS]