

33380

VEHICLE DISPLAY AGREEMENT

This Vehicle Display Agreement ("Agreement") is made effective as of the date executed below, pursuant to a minute order adopted by the City Council of the City of Long Beach on November 19, 2013, by and between the CITY OF LONG BEACH ("City") and MERCEDES BENZ OF LONG BEACH ("Owner"). This Agreement is executed in connection with a planned event recognizing the 90th Anniversary of the Long Beach Airport (the "Anniversary Event").

The parties agree as follows:

1. **TERM.** This Agreement shall begin on the date of execution and terminate on January 5, 2014, subject to extension at the sole discretion of City.
2. **LICENSE.** This Agreement constitutes a license not a lease. City hereby grants Owner the right to display two (2) of its vehicles at a location determined by the City in its reasonable discretion, and otherwise in accordance with the terms of this Agreement. Owner's rights under this Agreement may not be assigned nor may Owner allow others to utilize all or a portion of its assigned display space.
3. **COMPENSATION.** In lieu of monetary compensation, Owner shall, at its own expense, organize the Anniversary Event. The Anniversary Event shall occur on November 26, 2013. Owner shall reasonably cooperate with City in its organization and promotion of the Anniversary Event. Owner shall directly contract with food, beverage, entertainment and holiday decoration providers, each of which shall be reasonably approved by City. The holiday decorations shall remain in place throughout the term of this Agreement. Owner shall provide reasonable evidence to City that Owner spent not less than \$12,000 in connection with the Anniversary Event and holiday decorations.
4. **SPONSORSHIP AND SIGNAGE.** Owner may display promotional signage in connection with the sale of its vehicles and the Anniversary Event. Owner must not have any other visible signage that conflicts with any other sponsors at the Airport. City will be the sole authority on whether a particular display area or merchandise item is in violation of any other City sponsorship contracts.
5. **INSURANCE.** No later than the date set forth below Owner must provide City with Certificates of Insurance evidencing it currently has in effect a \$2,000,000 (two million dollars) General Aggregate, \$1,000,000 (one million dollars) Comprehensive General Liability Insurance with coverage for Product, Contractual, Property Damage, and Automobile (including hired and non-owned) Liability, and Worker's Compensation coverage, naming the City of Long Beach, its officers and employees as Additional Insureds and waiving all subrogation rights.
6. **INDEMNITY.** Owner agrees to indemnify, defend, and hold harmless City, its departments, officials, employees, and agents, from and against all injuries, death, losses, expenses (including reasonable attorneys' fees and cost of investigation), compensation, damages, claims, demands or causes of action of any kind, including damages arising from personal injury or death and damages to real or personal property, arising in connection with this Agreement or any breach thereof, or from any act or omission of Owner, its employees or agents, whether or not such claim or liability is based on or alleged to be the negligence of an indemnified party (excepting only such claims or liabilities as are ultimately determined by a court to be based on the sole negligence or willful misconduct of an indemnified party). Furthermore, Owner agrees that the above indemnity shall extend to all fines levied and/or penalties incurred as a result of Owner not possessing and displaying current permits and licenses.
7. **GENERAL INFORMATION.** City specifically makes no representation to Owner as to the size of the passengers/audience anticipated to view the display. All Owner areas must be kept neat and orderly at all times and supplies, etc. (excluding the vehicles) must be kept under cover.
8. **RISK OF LOSS OR DAMAGE.** Owner assumes all risk of loss or damage to Owner's vehicles, equipment, fixtures and property from any cause. City expressly disclaims any responsibility for theft, damage or loss of any of Owner's merchandise, equipment, fixtures and property before, during or after the display. City's security services will not protect Owner's property. Owner may make arrangements for security services through City's contracted security service provider and paying City in advance for the number of hours security service is needed. All security services for Owner's space shall be at Owner's sole cost and expense and prepaid.
9. **TERMINATION.** This Agreement may be terminated by City, in its sole discretion, upon written notice to

Owner. Except as otherwise set forth herein, if this Agreement is terminated by City all payments made by Owner to City will be refunded. If City terminates this agreement due to *force majeure*, such as war, strike, public catastrophe, change in law or government regulations, acts of God, City shall not make any refund to Owner. Owner's damages shall be limited to return of the payments (or portion thereof, as the case may be) it made to City pursuant to this Agreement. City shall not be responsible for any incidental or consequential damages, lost profits or punitive damages.

10. **DEFAULT.** The occurrence of any of the following shall constitute default under the Agreement:

- A. The failure by Owner to make a required payment under this Agreement when due;
- B. The violation of any other provision or requirement under this Agreement that is not corrected within three (3) hours after verbal or written notice of the violation is given;
- C. The insolvency or bankruptcy of the Owner;
- D. The subjection of any of the Owner's property to any levy, seizure, assignment, application or sale for or by any creditor or government agency.

11. **RIGHTS ON DEFAULT.** If the Owner is in default under this Agreement, without notice to or demand on the Owner except as set forth in above, City may terminate this Agreement, in which event none of Owner's payment(s) shall be refunded.

12. **NOTICES.** All notices required or permitted under this Agreement shall be deemed delivered when delivered in person; by mail, postage prepaid, addressed to the appropriate party at the address shown for that party on the signature page hereof; or by successful facsimile transmission to the number set forth below. Facsimiles must be followed by delivery of originals.

13. **GOVERNING LAW.** This Agreement shall be construed in accordance with the laws of the State of California.

14. **ENTIRE AGREEMENT AND MODIFICATION.** This Agreement constitutes the entire agreement between the parties and there are no other promises or conditions in any other agreement whether verbal or written. No modification or amendment of this Agreement shall be effective unless in writing and signed by both parties.

15. **SEVERABILITY.** If any portion of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

16. **WAIVER.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

"Owner"

MERCEDES BENZ OF LONG BEACH

Date: 11-22-13

Name: Bob Milner
Signature: [Signature]
Address: 2300 E. Spring St. Signal Hill CA 90755
Telephone: 562-988-8300

"City"

CITY OF LONG BEACH, a municipal corporation

Date: 11/26/13

By: [Signature] **Assistant City Manager**
Name: Patrick H. West
Title: City Manager EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

APPROVED AS TO FORM

11-26-2013
CHARLES PARKIN, City Attorney

By [Signature]
RICHARD ANTHONY
DEPUTY CITY ATTORNEY