

ORDER NO. 12-_____

An Order of the Board of Harbor Commissioners of the City of Los Angeles, approving the form of Licensing Agreement for use by the Harbor Department in licensing the commercial use of Harbor Department photographs, and setting a photograph licensing fee schedule.

WHEREAS, the Harbor Department has an extensive historical photograph collection and provides access to the public to copies for personal, non-commercial use in accordance with the California Public Records Act;

WHEREAS, the Harbor Department occasionally receives requests for commercial use of Harbor Department photographs and proposes to license commercial use of Harbor Department photographs under guidelines that include licensing and fees for a one-time commercial publication or use (e.g. books, magazines, film, exhibits, seminars, advertising, etc.);

WHEREAS, the Harbor Department has developed Los Angeles Harbor Department Photograph Order Form/Licensing Agreement for use by the Harbor Department in licensing of the commercial use of its photograph collection, based upon the similar forms used by other agencies within the City of Los Angeles; and

WHEREAS, on March 1, 2012 the Board of Harbor Commissioners approved Resolution No. 12-7268 and Agreement No. 12-3050, the template form of Los Angeles Harbor Department Photograph Order Form/Licensing Agreement to be used for licensing commercial use of Harbor Department photographs, which agreement may have a term in excess of five (5) years depending on the copyright license; and

WHEREAS, the Harbor Department has developed a Los Angeles Harbor Department photograph licensing fee schedule to be used with the Licensing Agreement for licensing commercial use of Harbor Department photographs, which was developed based upon benchmarked data on fees being charged by other public and private research institutions, universities, libraries and government agencies, including other City of Los Angeles agencies.

NOW, THEREFORE, THE BOARD OF HARBOR COMMISSIONERS OF THE CITY OF LOS ANGELES DOES HEREBY ORDER AS FOLLOWS:

Section 1. The Los Angeles Harbor Department hereby approves the form of Los Angeles Harbor Department Photograph Order Form/Licensing Agreement as set forth in Exhibit "A", attached hereto and incorporated herein by reference ("Licensing Agreement"), for use by the Harbor Department in licensing of the commercial use of Harbor Department photographs, and authorizes the Executive Director or his or her designee to execute the Licensing Agreement with individual licensees in accordance with the Licensing Fee Schedule as defined in Section 2 below.

Section 2. The Los Angeles Harbor Department hereby establishes the Los Angeles Harbor Department photograph licensing fee schedule as set forth in Exhibit "B", attached hereto and incorporated herein by reference ("Licensing Fee Schedule") setting forth the fees to be charged under the Licensing Agreement.

Section 3. The Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f) of the Los Angeles City CEQA guidelines.

Section 4. The Board Secretary shall cause the Order to be presented to the City Council for consideration of its adoption by Ordinance pursuant to City Charter Sections 606 and 653(a).

Section 5. Pursuant to Charter Sections 606 and 653(a), this Order, the Licensing Fee Schedule and the Licensing Agreement shall become effective when the Order is approved by the City Council by Ordinance.

Section 6. Following City Council approval of this Order by Ordinance, the Board Secretary shall execute and transmit the Order and Ordinance to Harbor Department staff to post the Licensing Fee Schedule on the Port's website.

I HEREBY CERTIFY THAT the foregoing Order was adopted by the Board of Harbor Commissioners of the City of Los Angeles at its meeting held on _____.

KORLA TONDREAULT
Board Secretary

Approved as to Form and Legality
_____, 2012
CARMEN A. TRUTANICH, City Attorney
Thomas A. Russell, General Counsel

By _____
JOY M. CROSE, Assistant General Counsel

EXHIBIT A

LOS ANGELES HARBOR DEPARTMENT

INVOICE NO _____

PHOTOGRAPH ORDER FORM / LICENSING AGREEMENT

DATE _____

REQUESTOR INFORMATION

NAME	
ADDRESS	
PURPOSE OF USE	

The requestor and their appointed agents are granted one-time reproduction rights to use the photograph(s) listed for the stated purpose. Any subsequent or different use must be applied for in writing and is subject to additional use fees.

PHOTOGRAPHS (20 MAX) PLEASE ATTACH AN ADDITIONAL FORM IF NEEDED

TITLE	REPRODUCTION TYPE (AND COMMERCIAL USE IF APPLICABLE)	PHOTOGRAPHIC REPRODUCTION FEES	COMMERCIAL USE FEES
TOTAL			
COMBINED TOTAL (IF COMMERCIAL USE FEES APPLY)			

The Copyright Law of the United States (U.S. Code, Title 17) governs the making of photocopies or other reproductions of copyrighted material. The user or publisher must secure permission to publish from the copyright owner.

All photographs are furnished with the understanding that the City of Los Angeles and the Los Angeles Harbor Department have no authority to waive the privacy rights of individuals shown in the photographs. Proper and full credit must be given. When provided, photographers' names must also be included in the credit.

The proper credit line is: **Los Angeles Harbor Department.**
 For website use, the credit line is: **Los Angeles Harbor Department -Reuse restrictions apply.**

With printed matter, it is preferred that the credit line appear on the same or facing page as the illustration. With films, filmstrips, multi-media slide presentations and other electronic media, include the credit with a "Sources of Illustrations" section. With exhibitions, credit within the exhibition area, preferably near the image.

The terms and conditions of this Agreement including the terms and conditions on Exhibits A and B are agreed to and accepted. I certify I am over the age of 13.

ACCEPTED AND AGREED TO BY LICENSEE:

 Signature of Licensee Print Name and Title Date

Permission is hereby granted for one-time use of the images listed on this contract, subject to the foregoing conditions and all terms and conditions on attached Exhibits A and B. The Los Angeles Harbor Department gives no exclusive rights to publish material from its collections and assumes no responsibility for duplication of subjects or of claims by third parties.

LICENSOR:
CITY OF LOS ANGELES HARBOR DEPARTMENT

APPROVED AS TO FORM AND LEGALITY:
 _____, 20____
 CARMEN A. TRUTANICH, CITY ATTORNEY
 Thomas A. Russell, General Counsel

By: _____
 Print Name: _____
 Title: _____
 Division: _____
 Date: _____

By: Deputy/Assistant City Attorney

EXHIBIT A

EXHIBIT "A"
LOS ANGELES HARBOR DEPARTMENT
TERMS AND CONDITIONS TO
PHOTOGRAPH USE LICENSING AGREEMENT

1. **Licensed Property.** The Licensed Property consists of the photographs listed on page 1 and any attached pages to this Agreement, and does not exceed 20 photographs. [Do not use this form when the number of photographs exceeds 20 or the project is primarily a compilation of City-owned photographs. Contact the Los Angeles City Attorney's Office Intellectual Property counsel at 213-978-8138 for such compilation requests.]
2. **City Trademarks Contained in Photographs.** The Licensed Property contains the following City Trademarks (for example, City of Los Angeles Seal, Port of Los Angeles logo, Port Police badge, City or Port department or program name or logo, insignia, motto, etc.):

3. **Licensed Uses.** The Licensed Property may only be used for one-time publication or use in one project in the following manner:
 - a. Type of User/Purpose of Use: (Check One):
 - _____ Individual or student for private or educational purposes
 - _____ Print publication
 - _____ Television or Home Video/DVD
 - _____ Feature Film
 - _____ Exhibit
 - _____ Internet/Website (list URL): _____
 - _____ Seminar or event slide show
 - _____ Advertising
 - _____ Other (describe) _____
 - b. Title of Publication or Project: _____
 - c. Producer of Publication or Project: _____
 - d. Producer's Address: _____
 - e. Manner in which Licensed Property will be used _____
 - f. Tentative Publication/Release Date: _____
 - g. Electronic Copies Permitted: _____ Yes _____ No
4. **Territory.** _____ (e.g. United States, North America, EU, Worldwide)
5. **Licensed Use is Non-Exclusive.** Licensee has A non-exclusive right to commercial use as limited by this Agreement and has ***NO authority to grant exclusive licenses to others on behalf of the City of Los Angeles.***
6. **Payment to Licensor.** \$ _____ (Combined Total from page 1 of this Agreement). Licensee shall make payment check payable to "***City of Los Angeles Harbor Department***" and payment is due upon signing of this Agreement. Payment must be received before processing of your order will begin.
7. **Intellectual Property Notices for Licensed Property.** When City's trademarks (as listed in paragraph 2) appear in the Project or Publication, corresponding trademark notices (for example, "LAPD TM is a trademark of the City of Los Angeles" for the trademark LAPD) shall be included in a proper location therein. Similarly, photographs licensed shall be identified with the proper copyright notice of "© City of Los Angeles" in the Publication or Project.

EXHIBIT "B"
STANDARD TERMS AND CONDITIONS
To
INDIVIDUAL PHOTOGRAPH USE AGREEMENT

1. LICENSE. LICENSOR hereby grants to LICENSEE in the TERRITORY a limited license to use the LICENSED PROPERTY for the LICENSED USES only. All rights not expressly granted to LICENSEE are retained by LICENSOR.

2. LICENSEE ACKNOWLEDGMENT OF LICENSOR'S EXCLUSIVE RIGHTS AND INTELLECTUAL PROPERTY RIGHTS. LICENSEE acknowledges LICENSOR'S exclusive rights in the LICENSED PROPERTY. LICENSEE shall not, at any time directly or indirectly challenge or interfere with LICENSOR'S exclusive rights in the LICENSED PROPERTY. LICENSOR, however, makes no representation or warranty with respect to the validity of legal rights in any LICENSED PROPERTY. LICENSEE agrees that its use of the LICENSED PROPERTY inures exclusively to the benefit of LICENSOR and that LICENSEE shall not acquire any rights in the LICENSED PROPERTY as a result of this license.

3. LIMITATIONS ON USE OF CITY TRADEMARKS (IF ANY). Unless otherwise expressly provided in Exhibit "A" to this Agreement, the use of any City Trademark under this Agreement is limited to its display in the LICENSED PROPERTY. Any of the City trademarks may not be severed from or used independent of the LICENSED PROPERTY.

4. QUALITY CONTROL. Through and by use of LICENSED PROPERTY, LICENSEE shall not demean, disparage, disgrace, or cast in an unfavorable light, the City of Los Angeles or any of its employees, departments or boards, and all uses of the LICENSED PROPERTY shall be of high quality. LICENSOR retains the right to review, approve, and reject all proposed uses of the LICENSED PROPERTY at least thirty (30) days before LICENSED PROPERTY or the materials embodying them are distributed, displayed, or placed in the stream of commerce in any manner. Any materials rejected by LICENSOR shall not be distributed, displayed, or placed in the stream of commerce in any manner by LICENSEE. LICENSEE hereby stipulates that its breach of this paragraph constitutes irreparable harm to LICENSOR for which any award of money damages is inadequate, and that LICENSEE will not oppose LICENSOR'S

enforcement of this paragraph, including by means of injunctive relief actions.

5. VERIFICATION OF USE. LICENSOR reserves the right to verify the actual scope of use of the LICENSED PROPERTY and payment of full compensation through various means including auditing. Upon such demand to verify, LICENSEE shall cooperate in a timely manner with the LICENSOR and its employees, officials, agents and consultants. LICENSEE is hereby on notice of the legal liabilities resulting from falsifying records to avoid or decrease payments to a governmental entity such as the LICENSOR City of Los Angeles, under the California False Claims Act (California Government Code §§ 12650 et seq.), including treble damages, costs of legal actions to recover payments and civil penalties of up to \$10,000 per false claim (Cal. Gov. Code § 12651(a)(7)).

6. TERMINATION WITH CAUSE. LICENSOR may immediately terminate this Agreement for cause on 24 hours' notice. Upon such termination with cause of this Agreement, all rights granted to LICENSEE under this Agreement shall forthwith terminate and immediately revert to LICENSOR. LICENSEE shall immediately on termination (a) cease all uses of the LICENSED PROPERTY (b) cease distribution of all materials incorporating the LICENSED PROPERTY, (c) return to LICENSOR within three (3) business days following such termination all copies of the LICENSED PROPERTY and all materials embodying same, and (d) destroy all electronic copies of the LICENSED PROPERTY and all materials embodying same.

7. EXPIRATION AND SURVIVABILITY. This Agreement expires upon full and complete performance of parties' obligations under this Agreement. **However, Paragraphs 1, 2, 3, 4, 5, 6 and 9 shall survive the expiration or termination of this Agreement.**

8. WARRANTIES. LICENSOR DISCLAIMS ALL KINDS OF WARRANTIES, INCLUDING THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. LICENSEE IS SOLELY RESPONSIBLE FOR CLEARING ALL UNDERLYING THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS, INCLUDING

EXHIBIT "B"
STANDARD TERMS AND CONDITIONS
To
INDIVIDUAL PHOTOGRAPH USE AGREEMENT

TRADEMARK RIGHTS AND RIGHT OF PUBLICITY, IF ANY, IN THE LICENSED PROPERTY.

9. INDEMNITY. LICENSEE agrees to defend and indemnify LICENSOR, and its officials, commissioners, directors, agents, and employees, against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against LICENSOR based on the exercise of LICENSEE's rights under this Agreement and against any liability, damages, and expense (including reasonable attorney fees and costs) suffered as a result of LICENSEE'S breach of any provisions of this Agreement. Notwithstanding the foregoing, LICENSEE shall have no obligations to indemnify and defend under this Paragraph for any claim by third parties regarding LICENSOR's intellectual property rights in or of the LICENSED PROPERTY except for uses that have not been authorized by LICENSOR in this Agreement.

10. JURISDICTION AND DISPUTES. This Agreement shall be construed and governed in accordance with the laws of the City of Los Angeles and the State of California. All disputes under this Agreement shall be resolved by the courts seated in the County of Los Angeles of the State of California, including the U.S. District Court for the Central District of California, and the LICENSEE consents to the jurisdiction of such courts, agrees to accept service of process by mail, and hereby waives any jurisdictional or venue defenses otherwise available to it.

11. AGREEMENT BINDING ON SUCCESSORS. The provisions of the Agreement shall be binding on and shall inure to the benefit of the parties hereto, and their heirs, administrators, successors, and assigns.

12. WAIVER. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.

13. ASSIGNABILITY. The license granted hereunder is for limited use in the Publication or Project as stipulated under "Licensed Uses" of this Agreement and this limited license is assignable and survivable of termination (without cause) or expiration of this Agreement. However, any attempted assignment of the rights

under this license beyond those granted constitutes LICENSEE'S bad faith and/or fraudulent entering into this Agreement, and the unauthorized assignment (if any) shall be null and void *ab initio*.

14. RELATIONSHIP OF PARTIES. LICENSEE acknowledges that it is not an agent or representative of LICENSOR and has no authority to assume or create any obligation on behalf of or in the name of, or binding upon, LICENSOR, or to represent LICENSOR in any manner not specifically provided herein. LICENSEE shall be solely responsible for the payment of all taxes and fees related to the LICENSED USES under this Agreement.

15. TIME OF THE ESSENCE. The payment by LICENSEE of all fees, royalties and/or other payments to LICENSOR shall be of the essence, and any late payment or non-payment shall result in the immediate acceleration of all payments under this Agreement and LICENSOR shall have the right to immediately terminate this Agreement under Paragraph 6 of these Terms and Conditions.

16. INTEGRATION. This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior and contemporaneous agreements between the parties, oral or otherwise. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement.

[END OF TERMS AND CONDITIONS]

EXHIBIT B

LOS ANGELES HARBOR DEPARTMENT

PHOTOGRAPH LICENSING FEES

- 1) The fees associated with usage of Los Angeles Harbor Department (LAHD) photographs listed below are:
- per image,
 - subject to one time use only, and
 - any subsequent or different uses must be applied for separately and are subject to additional use fees.

<i>Advertising, Packaging & Product Design (all media)</i>	\$150
<i>Books, Publications (all media)</i>	\$ 75
<i>Brochures and Flyers (all media)</i>	\$ 50
<i>Commercial Decor (all media)</i>	\$150
<i>Commercial media, including film, television, video, CD, DVD and all other electronic media</i>	
<i>Basic fee for one time use, one language distribution rights</i>	\$125
<i>Basic fee for worldwide, all media, in perpetuity</i>	\$150
<i>Educational Media, educational or industrial in-house presentations</i>	\$ 25
<i>Trade publications, including electronic magazines</i>	\$ 75

- 2) The following fee is for multiple usage of Los Angeles Harbor Department (LAHD) photographs, and is:
- per image, and
 - any subsequent or different uses must be applied for and are subject to additional use fees.

<i>Commercial Decor (all media)</i>	\$300
-------------------------------------	-------