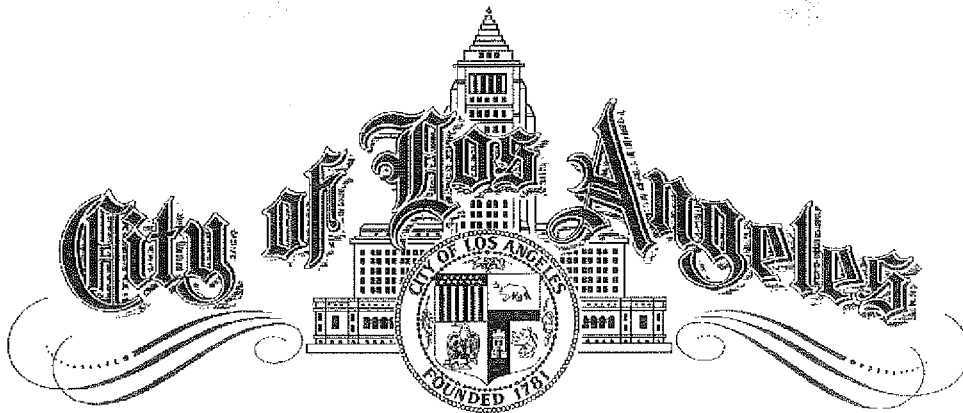


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**CARMEN A. TRUTANICH**  
City Attorney

**REPORT NO.** R 1 2 - 0 1 5 1  
MAY 2 4 2012

**REPORT RE:**

**PORT OF LOS ANGELES LICENSING FEE AGREEMENT  
AND LICENSING FEE SCHEDULE  
FOR COMMERCIAL USE OF PHOTOGRAPHS**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Honorable Members:

This Office has prepared and now transmits for your consideration the attached draft ordinance, approved as to form and legality. This draft ordinance approves a form of Licensing Agreement and establishes a licensing fee schedule for commercial use of Harbor Department photographs.

Charter Findings

On March 1, 2012, the Los Angeles Board of Harbor Commissioners (the Board) adopted Resolution No. 12-7268, and on May 17, 2012, the Board approved Order No. 12-7105, approving a licensing fee schedule and form of Licensing Agreement for commercial use of Harbor Department photographs pursuant to Los Angeles City Charter Sections 605(a), 652(e), and 653(b). Under Charter Section 606, the City Council must review the Harbor Department's order or resolution approving a license agreement if for a term greater than five years and approve by ordinance. Under Charter Section 653(a), the City Council must approve the Harbor Department's rates and charges by ordinance.

### Background

The Harbor Department has been engaged in an effort to digitize the Harbor Department's historical photograph collection and make it available to the public online. Public requests for personal, non-commercial use of Harbor Department photographs shall be processed in accordance with the California Public Records Act. The Harbor Department 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.) and would require additional licensing and fees for repeat or additional use.

The City Attorney's Office has drafted 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. The Licensing Agreement is based upon the similar forms used by other agencies within the City of Los Angeles, such as the Los Angeles Department of Water and Power (LADWP). The term of the Licensing Agreement is unspecified and may exceed five years, as a copyright term will vary with the creation date of the work. The proposed licensing fee schedule and Licensing Agreement for commercial use of Harbor Department photographs does not modify the guidelines for processing of California Public Records Act requests for personal, non-commercial use of photographs.

The Harbor Department 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, in order to determine a fair and appropriate fee schedule for commercial use. Based upon its benchmark review, the Harbor Department adapted the fee schedule used by the LADWP as fair and appropriate for the Los Angeles Harbor Department Licensing Fees Schedule. Licensing fees will range from \$25 to \$300 per image, per use, for up to 20 images, and collected fees will be deposited into the Harbor Revenue Fund. Licensing fees will help offset the cost of nonrevenue generating operations of maintaining and operating the Archives. The Executive Director of the Harbor Department may waive the licensing fee if the request is deemed to be in the best interest of the Harbor Department, or for public benefit.

### Summary of Ordinance Provisions

The ordinance approves Order No. 12-7105, (i) approving the Licensing Agreement template form, (ii) authorizing the Executive Director (or his or her designee) to execute the Licensing Agreement with individual licensees in accordance with a Licensing Fee Schedule, and (iii) establishing the licensing fee schedule for licensing the commercial use of Harbor Department photographs.

Fee Notice Requirement

Authority to charge and enforce Port-related rates and charges is given to the Board of Harbor Commissioners under Los Angeles City Charter Sections 652(e) and 653(a). Pursuant to Charter Section 653(a), the proper procedure for establishing rates and charges assessed by the Board is for City Council to approve them by ordinance. The Board held public board meetings on March 1, 2012 and May 17, 2012, at which meeting the fee schedule was presented and discussed by the Board and the public prior to its approval by the Board.

CEQA Findings

The draft ordinance approves a Resolution of the Board of Harbor Commissioners, which establishes a fee schedule for commercial use of Harbor Department photographs. As such, 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.

Council Rule 38 Referral

The Harbor Department through staff responsible for administration and implementation of the fee schedule is the proposing department; and the fee schedule was discussed before the Board of Harbor Commissioners with Harbor Department management and staff present in full public hearings of the Board of Harbor Commissioners on March 1, 2012 and May 17, 2012.

If you have any questions regarding this matter, please contact Assistant City Attorney Joy Crose at (310) 732-3750. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA  
Chief Assistant City Attorney

PBE:JMC  
Transmittal

**ORDINANCE NO. \_\_\_\_\_**

An Ordinance approving Order No. 12-7105 of the Board of Harbor Commissioners of the City of Los Angeles, setting a Los Angeles Harbor Department photograph licensing fee schedule.

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

Section 1. That Order No. 12-7105, passed and adopted by the Board of Harbor Commissioners of the City of Los Angeles on the 17<sup>th</sup> day of May, 2012, be and the same is hereby ratified, confirmed, and approved, which Order is in words and figures as follows, to wit:

**"ORDER NO. 12-7105**

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 May 17, 2012.

  
KORLA TONDREAULT  
Board Secretary"

Sec. 2. The City Clerk shall certify to the passage of this Ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to City Hall; one copy on the bulletin board located at the Main Street entrance to City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of \_\_\_\_\_.

JUNE LAGMAY, City Clerk

By \_\_\_\_\_ Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney  
Thomas A. Russell, General Counsel

By  \_\_\_\_\_  
JOY M. CROSE  
Assistant General Counsel

Date: May 24, 2012

File No. \_\_\_\_\_

**ORDER NO. 12-7105**

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  
May 24, 2012  
CARMEN A. TRUTANICH, City Attorney  
Thomas A. Russell, General Counsel

By Joy M. Crose  
JOY M. CROSE  
Assistant General Counsel



RECOMMENDATION APPROVED;  
RESOLUTION NO. 12-7268 ADOPTED; AND  
AGREEMENT NO. 12-3050 APPROVED  
BY THE BOARD OF HARBOR COMMISSIONERS



Executive Director's  
Report to the

Board of Harbor Commissioners

March 1, 2012

*Karla H. Tondreau*  
SECRETARY

DATE: FEBRUARY 22, 2012

FROM: HISTORIC SITE OFFICE (ARCHIVES)

SUBJECT: RESOLUTION NO. 12-7268 APPROVE LICENSING AGREEMENT AND LICENSING FEE SCHEDULE FOR COMMERCIAL USE OF CITY OF LOS ANGELES HARBOR DEPARTMENT PHOTOGRAPHS

**SUMMARY:**

The City of Los Angeles Harbor Department (Harbor Department) asks the Board of Harbor Commissioners (Board) to approve the template form of the Licensing Agreement and Licensing Fee Schedule to allow the Harbor Department to license and charge licensing fees for commercial use of Harbor Department owned photographs. The Licensing Agreement contains terms and conditions of commercial use of Harbor Department photographs, and charges clients reasonable licensing fees according to the Licensing Fee Schedule, which was developed based upon benchmarking fee schedules of the City of Los Angeles and other public agencies.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

1. Approve the proposed template form of Licensing Agreement and Licensing Fee Schedule;
2. Direct the Board Secretary to transmit the proposed template form of Licensing Agreement and Licensing Fee Schedule to the City Council for its approval pursuant to Section 606 of the City Charter;
3. Upon approval by the City Council, authorize the Executive Director or her Designee to execute the Licensing Agreement with individual licensees in accordance with Harbor Department policy; and
4. Adopt Resolution No. 12-7268.

DATE: FEBRUARY 22, 2012

PAGE 2 OF 4

SUBJECT: RESOLUTION NO. 12-7268 APPROVE LICENSING AGREEMENT AND LICENSING FEE SCHEDULE FOR COMMERCIAL USE OF PHOTOGRAPHS

DISCUSSION:

Background – The Harbor Department Historic Site Office (Archives) has been engaged in an effort to digitize the Harbor Department's historical photograph collection and make it available to the public online. In early 2011, it was brought to the attention of the Harbor Department senior management team that other City departments (Department of Water and Power and Los Angeles Public Library) employ photo use agreements and charge licensing fees for commercial use of their photograph collections which do not fall under the California Public Records Act Request (CPRA). As directed by senior management, Archives received guidance from the City Attorney's Office to clarify the distinction between requests for personal use of photographs to be processed under the CPRA and requests for commercial use of photographs for which licensing agreements and licensing fees could be required. The Harbor Department's proposed commercial use guidelines include licensing and fees for a one-time commercial publication or use (e.g. books, magazines, film, exhibits, seminars, advertising, etc.) and would require additional licensing and fees for repeat or additional use.

The City Attorney's Office has drafted Los Angeles Harbor Department Photograph Order Form/Licensing Agreement (Transmittal 1) (Licensing Agreement) for use by the Harbor Department in licensing of the commercial use of its photograph collection. The Licensing Agreement is based upon the similar forms used by other agencies within the City of Los Angeles, such as the Los Angeles Department of Water and Power (LADWP). The proposed action to establish a licensing fee schedule and Licensing Agreement for commercial use of Harbor Department photographs does not modify the guidelines for processing of CPRA requests for personal, non-commercial use of photographs.

Fee Schedule Creation - Archives 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, in order to determine a fair and appropriate fee schedule for commercial use. Based upon its benchmark review, Archives determined that the Harbor Department would adapt the fee schedule used by the LADWP as fair and appropriate for the Los Angeles Harbor Department Licensing Fees Schedule (Transmittal 2).

Licensing fees will range from \$25 to \$300 per image, per use, for up to 20 images. Fees will be collected by Harbor Department employees in the division processing the request before licensing agreements and digital images are handed over to the licensee. Checks made payable to Port of Los Angeles or Los Angeles Harbor Department will be delivered to the cashier's office as received and will be deposited into the Harbor Revenue Fund using GL Code 49093. Licensing fees will help offset the

DATE: FEBRUARY 22, 2012

PAGE 3 OF 4

SUBJECT: RESOLUTION NO. 12-2268 APPROVE LICENSING AGREEMENT AND LICENSING FEE SCHEDULE FOR COMMERCIAL USE OF PHOTOGRAPHS

cost of nonrevenue generating operations, such as Archives. The Executive Director of the Harbor Department or Designee may waive the licensing fee if the request is deemed to be in the best interest of the Harbor Department, or for public benefit.

Archives has created a procedure for carrying out a commercial photo request (Transmittal 4). Any commercial photo requests will be processed through the Archives Office.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is to approve a Licensing Fee Schedule and Licensing Agreement. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

**ECONOMIC BENEFITS:**

This Board action will have no employment effect.

**FINANCIAL IMPACT:**

Receipts of licensing fees under the proposed Board action will be deposited into Harbor Department Account 49093 (Photo Licensing & Commercial Use Fees). Based on requests for photos for commercial use in 2011, the estimated revenue is \$2,500 per year. Amount of requests and revenue may significantly increase once the collection is accessible online. Archives is currently budgeting \$2,000 per year for PastPerfect and PastPerfect-Online software, licensing, support and webhosting. PastPerfect database and PastPerfect-Online are currently maintained with staff on loan from Construction Division. To cover this staffing need in Fiscal Year 12/13 Archives has budgeted \$20,000 in outside services. One terabyte (1TB) has been allotted for storage of PastPerfect images on the Archives server. The 3,100 images currently in PastPerfect utilize 14GB of storage. It is estimated that 18,000 images will be added by the end of 2013 utilizing only 98GB of storage. At this rate of increase it should take 10 years to use the allotted 1TB of storage with a total storage capacity of 219,000 images. Although revenue from licensing fees is not expected to cover the cost of Archives digitization projects the proposed licensing fees are based upon what is considered fair by industry standards and not aimed at cost recovery efforts for digitization and preservation efforts.

DATE: FEBRUARY 22, 2012

PAGE 4 OF 4

SUBJECT: RESOLUTION NO. 12-7268 APPROVE LICENSING AGREEMENT AND  
LICENSING FEE SCHEDULE FOR COMMERCIAL USE OF  
PHOTOGRAPHS

CITY ATTORNEY:

The Office of the City Attorney has prepared and approved Licensing Agreement as to form and legality.

TRANSMITTALS:

1. Los Angeles Harbor Department Photograph Order Form/Licensing Agreement
2. Los Angeles Harbor Department Licensing Fee Schedule
3. Los Angeles Harbor Department Historical Archives Research Request Form
4. Procedure for Carrying Out Commercial Photo Request

FIS Approval: ef (initials)

CA Approval: me (initials)

APPROVED:

  
GERALDINE KNATZ, Ph.D.  
Executive Director

GK/tf



**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 ™ 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]



## 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 &amp; Product Design (all media)</i>	<i>\$150</i>
<i>Books, Publications (all media)</i>	<i>\$ 75</i>
<i>Brochures and Flyers (all media)</i>	<i>\$ 50</i>
<i>Commercial Decor (all media)</i>	<i>\$150</i>
<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>	<i>\$125</i>
<i>Basic fee for worldwide, all media, in perpetuity</i>	<i>\$150</i>
<i>Educational Media, educational or industrial in-house presentations</i>	<i>\$ 25</i>
<i>Trade publications, including electronic magazines</i>	<i>\$ 75</i>

- 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>	<i>\$300</i>
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# Photograph Request Form

The photographs requested are to be used as indicated herein, and in no other way;

Research:  Private  POIA  Other \_\_\_\_\_

Display:  Museum  School  Office  Other \_\_\_\_\_

Publication:  Book  Periodical  Textbook  Dissertation

Title of Publication: \_\_\_\_\_

Publisher: \_\_\_\_\_ Expected Publication Date: \_\_\_\_\_

Address: \_\_\_\_\_

Accession # (Identification)	Description	Order Information		
		Jpeg	Tiff	Size
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Applicant's Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone/Email: \_\_\_\_\_

Procedure For Carrying Out Commercial Photo Request

1. When a photo use request is received Harbor Department personnel in the lead processing division (e.g. Director of Archives & Collections/Archives, Graphics Supervisor/Public Relations or Legislative Representative/Government Affairs) will determine if it is for commercial use or for personal use, which falls under the umbrella of CPRA with assistance from the City Attorney's office and/or Government Affairs Division as necessary.
2. If the request is determined to be for personal use under the CPRA it will be routed to the Government Affairs Division and normal procedures for CPRA requests will be followed.
3. If the request is determined to be for commercial use it will be routed to the Archives, and Archives staff will provide the requestor/licensee with the Licensing Fee Schedule and ask the requestor/licensee to fill out the Research Request Form for internal use. If request is for more than 20 photos City Attorney's Office will be contacted before request is processed. For orders of more than 20 images, the City Attorney's Office will not use Licensing Agreement, but will review the request and draw up special forms, which may include a different pricing depending on volume and specific circumstances.
4. If request is less than 20 photos, Archives staff will inform the requestor/licensee the estimated time required to fulfill the request, which is typically 5 to 15 business days, but depends on the volume of requested images and staff's workload at the time, etc.
5. Archives staff will carry out the research request and route the Licensing Agreement to the City Attorney's Office for review.
6. Upon approval by the City Attorney's Office, Archives staff will mail or email two (2) copies of the Licensing Agreement, which will also serve as an invoice, stating the amount due for the order.
7. Requestor/licensee will fill out and sign both sets of forms and return them to the Archives with their check for the amount stated on the Licensing Agreement.
8. Archives staff will forward check and supporting documents to the Cashier at the 4<sup>th</sup> Floor Administration, by the next business day, to be deposited in the Harbor Revenue Fund GL Code 49093.
9. Signed originals of the Licensing Agreement will be routed to the City Attorney's Office to be signed as to form and legality, and to the Executive Director or Designee for signature.
10. Signed Licensing Agreements will be routed back to the Archives. Archives staff will keep one signed original Licensing Agreement and return the other signed original to requestor/licensee with DVD of ordered images.
11. Signed original of the Licensing Agreement and a copy of the check will be kept on file in the Archives Office for three years, after which they will be forwarded to Records Management Division and kept on file according to the City of Los Angeles Records Retention Schedule.
12. If Archives or any Harbor Department division becomes aware that the requestor/licensee has violated the terms of the License Agreement they will inform the City Attorney's Office.

13. The Executive Director of the Harbor Department or Designee may waive the Commercial Use Fee if it is in the best interest of the Harbor Department or for the public benefit, however steps 1-10 must be followed and a Licensing Agreement form must be signed and kept on file.