

TERMS AND CONDITIONS
FOR
TAXI AND LIMOUSINE COMMISSION AUTHORIZATION

between

New York City Taxi and Limousine Commission (“TLC”)

and

The Center for American Studies and Culture and Its Portraits of Hope Program

TERMS AND CONDITONS FOR TLC AUTHORIZATION (the “Terms and Conditions”) effective as of this 20th day of June, 2006 between the City of New York (the “City”), acting by and through the Taxi and Limousine Commission, located at 40 Rector Street, New York, New York 10006 (the “TLC” or “Commission”), and The Center for American Studies and Culture, a not-for-profit corporation located at 2118 Wilshire Blvd., Suite 527, Santa Monica, CA 90403, by its Portraits of Hope Program (together “Portraits of Hope”).

Whereas, the Commission is authorized by the New York City Charter to license and regulate medallion taxicabs in the City;

Whereas, section 1-35 (b) of the Commission’s rules (Title 35, Rules of the City of New York) prohibits the display of “any lettering, emblem, or advertising of any kind on the exterior of a taxicab, its windows or an exterior accessory, by means of paint, stencil, decal, sticker, or otherwise, unless authorized by the Commission...;”

Whereas, Portraits of Hope is a program dedicated to providing educational, artistic and creative therapy projects for children in need;

Whereas, Portraits of Hope is devoted to brightening the lives of children grappling with serious issues through participation in creative, high-profile, one-of-a-kind projects that unify the healing arts with education and public art to benefit children and adults coping with adversity, trauma, disability and/or serious illness;

Whereas, Portraits of Hope has requested the Commission’s authorization for a “Garden in Transit” project (“Project”) which would consist of the application to taxicabs of self-adhesive panels (“Decals”), painted in the floral patterns of Portraits of Hope and signed by children facing medical, physical and socio-economic challenges, among other youngsters;

Whereas, the Project is developed by Portraits of Hope in collaboration with the funding of various individuals, foundations and corporations;

Whereas, the Commission desires to authorize Portraits of Hope to carry out the Project as part of the observation during 2007 of the centennial anniversary of motorized taxicabs known as Taxi ’07;

Whereas, the Commission hereby grants approval to Portraits of Hope to apply Decals to taxicabs in connection with the Project in accordance with these Terms and Conditions; and

Whereas, the Commission shall use its best efforts to ensure that the scope of the Project is not compromised once formally authorized by the Commission;

NOW THEREFORE, the TLC and Portraits of Hope hereby agree as follows:

Section 1. **Approval of the Project.**

The Commission hereby grants approval to Portraits of Hope to apply Decals to licensed New York City medallion taxicabs (“Taxicabs”), in accordance with these Terms and Conditions and for the limited time period set forth herein. This approval is for the limited purpose of participation in the observation of the Taxi ’07 centennial.

Section 2. **Duration of the Project and the Terms and Conditions.**

The Project shall commence upon a date to be fixed by the Chairperson of the TLC in his or her sole discretion, and shall expire four months after that date unless sooner terminated pursuant to these Terms and Conditions. These Terms and Conditions shall commence upon the date of the commencement of the Project and shall have a duration of one year.

Section 3. **Decals.**

- (a) Decals shall be strictly decorative, and shall contain no “message” or “content.” Decals shall not contain any form of advertising, corporate or otherwise. The decals may be signed by the artists.
- (b) Representative prototypes of the Decals must be approved by the Commission before any Decals may be applied to any Taxicabs, and only Decals produced in accordance with such Commission approval may be applied to Taxicabs as part of the Project.
- (c) Decals may be affixed on up to three panels of a Taxicab: the hood of a Taxicab, the trunk of a Taxicab, and the roof of a Taxicab that is not equipped with a rooftop advertising unit.
- (d) A Decal or Decals may be applied to a Taxicab only pursuant to voluntary written agreement (“Participation Agreement”) entered into between Portraits of Hope and the Taxicab’s medallion owner, the Taxicab’s vehicle owner, or the Taxicab’s agent licensed by the Commission and retained by the Taxicab’s medallion owner to manage the medallion. The form of the Participation Agreement shall be approved by the Commission.
- (e) Nothing in these Terms and Conditions shall constitute approval by the Commission for any exterior marking on any Taxicab other than Decals in compliance with these Terms and Conditions, or for any interior marking on any Taxicab, or for any equipment to be installed in or on any Taxicab.

Section 4. **Application and Removal of Decals.**

- (a) Decals shall be applied only to Taxicabs that have been hacked-up, as that term is defined in section 3-01 of the Commission's rules, and only to Taxicabs that are operating with medallions that have not been suspended or revoked.
- (b) Upon expiration of the Project in accordance with its four-month term, the Commission's approval of the Decals pursuant to section 1-35 (b) of the Commission's rules shall expire. If the Commission terminates the Project earlier than the end of the four-month term, the Commission's approval of the Decals pursuant to section 1-35(b) of the Commission's rules shall expire five (5) days after the termination date. Within a reasonable time before expiration of the Project, or within three business days after earlier termination of the Project by the Commission, Portraits of Hope shall notify the Taxicab medallion owners, Taxicab vehicle owners, and/or Taxicab agents to whose Taxicabs Decals have been applied of such expiration or earlier termination. Portraits of Hope shall work with the Taxicab medallion owners, Taxicab vehicle owners, and/or Taxicab agents to arrange for the removal of Decals; provided, however, that nothing in these Terms and Conditions limits the obligation of the medallion owner, vehicle owner, or agent to remove the Decals upon expiration of the Commission's approval of the Decals. The Commission shall not be responsible for the removal of the Decals.
- (c) In the event that a medallion to which a Taxicab participating in the Project is hacked-up shall be suspended or revoked, participation in the Project by such Taxicab shall be immediately terminated by Portraits of Hope, and Decals shall be removed from the Taxicab within three business days of such suspension or revocation.
- (d) In the event that a Taxicab is withdrawn from the Project by its medallion owner, vehicle owner, or agent, the Decals shall be removed from the Taxicab within three business days of such withdrawal.
- (e) A Decal that begins to lose its shape, color, form or adhesiveness shall be promptly removed or replaced.

Section 5. **Other Provisions Relating to the Project.**

- (a) The City and the TLC shall not incur any costs for the Project or for the Decals, including the application and removal of the Decals from taxicabs.
- (b) These Terms and Conditions authorize only the application of Decals as provided herein, and do not authorize any exterior marking on any Taxicab other than Decals, or any interior marking on any Taxicab, or any equipment to be installed in or on any Taxicab.
- (c) The Chairperson may terminate the Project and these Terms and Conditions prior to the expiration date of the Project and these Terms and Conditions if: (1) the Chairperson determines that these Terms and Conditions have not been substantially complied with, or (2) the Chairperson, in his or her sole discretion, determines that continuation of the Project and

these Terms and Conditions is not in the best interest of the City, the TLC or the public for any reason.

- (d) Neither any provision of these Terms and Conditions, nor the participation of any taxicab in the Project, shall exempt any person, including any medallion owner, vehicle owner, or agent, from any of the obligations, requirements, or responsibilities set forth in any of the Commission's rules as they are now in effect, or as they may be amended.
- (e) The City and the TLC acknowledge that Portraits of Hope intends to solicit sponsors to assist with the funding of the Project.

Section 6. Participation in the Project.

- (a) With the aid of the Commission, Portraits of Hope shall furnish a copy of these Terms and Conditions to each medallion owner, vehicle owner, and agent participating in this Project, and their Participation Agreement shall include a term expressly accepting both these Terms and Conditions and acknowledging the terms and conditions of the Commission's authorization for the application of Decals to Taxicabs. The Participation Agreement shall also provide for the removal of the Decals.
- (b) The Participation Agreement shall be fully executed and submitted to the Chairperson before Decals may be applied to the participating Taxicab.

Section 7. Insurance; Indemnification, and Liability.

- (a) Portraits of Hope agrees to maintain its General Liability Insurance policy in the amount of \$1,000,000 per occurrence to protect the named insured and the additional insureds against any and all claims, loss or damage, whether in contract or tort, including claims for injuries to, or death of persons, or damage to property, whether such injuries, death or damages be attributable to the negligence or any other acts of Portraits of Hope, its employees or agents. Portraits of Hope shall provide the Commission with certificates of insurance reflecting such coverage and naming the Commission and the City as additional insureds under such policy. Portraits of Hope shall provide to the Commission or cause to be provided at least 30 days prior written notice of any material modification, cancellation, termination or expiration of such policy.
- (b) The City and TLC shall not be responsible to Portraits of Hope, any medallion owner, vehicle owner, or agent, or any of their respective agents, employees, contractors, or to any other party, in the event of any injuries, damages, losses or liabilities arising out of the Project or these Terms and Conditions, including but not limited to any personal injury or property damage.
- (c) (1) Portraits of Hope shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person or damages to any property sustained during its work on the Project under these Terms and Conditions resulting from any act of omission or commission or error in judgment of any of its officers, trustees, employees,

agents, servants, or independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any neglect, fault or default of Portraits of Hope, its officers, trustees, employees, agents, servants, or independent contractors. Portraits of Hope shall be solely responsible for the safety and protection of all of its employees whether due to the negligence, fault or default of Portraits of Hope or not.

(2) Portraits of Hope shall defend, indemnify and hold the City harmless from and against any and all claims, suits, damages, judgments, liabilities, cost and expenses, including reasonable attorneys' fees, to which it may be subject because of or related to any claim that the Decals, media materials or other informational materials developed by Portraits of Hope in connection with the Project infringe or violate the copyright, trademark, or any other proprietary or personal right of any third party.

(3) This indemnification provision shall not be limited in any way by Portraits of Hope's obligations to maintain insurance as provided in these Terms and Conditions.

(d) The parties expressly understand the risks and liabilities attendant to the Project. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS IN SUBSECTION C ABOVE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INCIDENTAL, SPECIAL, PUNITIVE, RELIANCE, CONSEQUENTIAL, OR INDIRECT LOSSES OR DAMAGES, WHETHER FORESEEABLE OR NOT, OR FOR ANY LOSS OF PROFITS OR LOSS OF REVENUE SUSTAINED BY THE PARTIES, A CONTRACTOR, OR ANY THIRD PARTIES HOWSOEVER ARISING UNDER THESE TERMS AND CONDITIONS AND WHETHER UNDER CONTRACT, TORT OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, THIRD PARTY CLAIMS, LOSS OF PROFITS, LOSS OF DATA, LOSS OF CUSTOMERS, OR DAMAGE TO REPUTATION OR GOODWILL).

Section 8. Reporting Requirements.

- (a) Portraits of Hope shall notify the TLC within three business days of any equipment malfunctions or service interruptions caused by the Project or by the participation of any Taxicab in the Project.
- (b) The Chairperson may impose any additional or different recordkeeping or reporting requirements upon Portraits of Hope for the duration of these Terms and Conditions.

Section 9. Press Releases

The parties agree that each party can issue press releases, photo releases, video news releases, bylined articles and other media announcements regarding the Project and these Terms and Conditions. Portraits of Hope agrees to assist the Commission in distributing such media materials and announcements through various media channels. Portraits of Hope shall reference the Project by name when conducting media interviews about the Taxi '07

Project. Portraits of Hope shall distribute NYC Taxi '07 media and informational materials at all program-related events and activities that Portraits of Hope hosts or attends.

Section 10. Confidential Information

- (a) Portraits of Hope and the Commission each acknowledges that during the term of these Terms and Conditions each may have access to and/or be in possession of confidential information of the other. "Confidential Information" shall mean information identified in writing by Portraits of Hope or the Commission and shall include but not be limited to Project or business information, technical information, ideas and other information that is proprietary to a party. Portraits of Hope, the Commission, and their respective employees, subcontractors and agents shall hold in confidence all Confidential Information of the other to which it may have access. Each party agrees to use at least the same degree of care to avoid disclosure or dissemination of the other party's Confidential Information as it uses to protect its own confidential materials, but in any event, at least a reasonable degree of care. Access to Confidential Information shall be restricted to those persons to whom disclosure is reasonably necessary for the performance of the Taxi '07 Project or a party's performance under these Terms and Conditions.
- (b) Confidential Information shall not include information which: (i) is or becomes a part of the public domain through no act or omission of the receiving party; or (ii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure.
- (c) Neither party shall be liable for disclosure of information regarded as Confidential Information by the other party if disclosure is required by virtue of court order, subpoena, or other validly issued administrative or judicial notice or order or as a matter of applicable law, rule, or regulation, provided that the party so required to disclose such Confidential Information has given the other party prompt notice of its receipt of the court order, subpoena or other validly issued administrative or judicial notice or order or other request for disclosure.
- (d) If each party decides not to proceed with the Project, and/or if asked by the other party, said party shall promptly return all Confidential Information belonging to the requesting party, and all copies, extracts and other objects or items in which such information may be contained or embodied. Additionally, each party shall promptly notify the other party of any unauthorized release of the other party's Confidential Information of which said party may become aware.

Section 11. Intellectual Property Rights

- (a) Portraits of Hope and/or its representatives shall have all right, title and interest in any intellectual property rights (whether trademark, copyright or other) in any work developed by or for Portraits of Hope for use in connection with the Project. Portraits of Hope and/or its representatives may seek to obtain a copyright registration from the United States Copyright Office in the name of Portraits of Hope and/or its representatives as the owner. Portraits of

Hope agrees to provide the Commission with a copy of this registration if the Commission so requests.

Section 12. Miscellaneous Provisions

- (a) **Modifications.** All modifications to these Terms and Conditions must be in writing signed by both parties.
- (b) **Merger.** These Terms and Conditions shall constitute the entire agreement between the parties and any prior understanding or representation, oral or written, relating to the subject matter hereof preceding the date of these Terms and Conditions shall not be binding upon either party and is superseded hereby.
- (c) **Counterparts.** These Terms and Conditions may be executed in as many counterparts as may be required, each of which when delivered is an original but all of which taken together constitute one and the same instrument.
- (d) **Further Assurances.** The parties will execute and deliver all such further endorsements, instruments, agreements, and other documents and take all such further actions as the other party may reasonably request from time to time in order to effectuate the terms, purposes, and intent of these Terms and Conditions.
- (e) **Interpretation.** Whenever the context requires, the singular includes the plural and vice versa and each gender includes the other gender. The headings of the sections of these Terms and Conditions are for convenience only and do not limit their provisions.
- (f) **Assignment.** Neither party may assign these Terms and Conditions or any of the rights hereunder or delegate any of its obligations hereunder, without the prior written consent of the other party, and any such attempted assignment shall be void. Except as expressly set forth in these Terms and Conditions, the parties do not intend the benefits of these Terms and Conditions to inure to any third party, and nothing contained herein shall be construed as creating any right, claim or cause of action in favor of any such third party, against either of the parties hereto.
- (g) **Severability.** In the event that any covenant, provision or restriction contained in these Terms and Conditions is found to be void or unenforceable (in whole or in part) by a court of competent jurisdiction, it shall not affect or impair the validity of any other covenant, provisions or restrictions contained herein, nor shall it affect the validity or enforceability of such provisions in any other jurisdiction or in regard to other circumstances. Any covenants, provisions or restrictions found to be void or unenforceable are declared to be separate and distinct, and the remaining covenants, provisions and restrictions shall remain in full force and effect.
- (h) **Waiver.** The failure of either party to insist upon strict compliance with any of the terms, covenants or conditions of these Terms and Conditions shall not be deemed a waiver by that

party of that term, covenant or condition or of any other term, covenant or condition of these Terms and Conditions.

(i) **Governing Law.** These Terms and Conditions shall be governed by the laws of the State of New York without reference to its principles of conflict of laws. Portraits of Hope and the Commission irrevocably consent and submit to personal jurisdiction in the courts of the State of New York located in the City and County of New York for all matters arising under these Terms and Conditions.

(j) **Notices.** Any notice provided for or concerning these Terms and Conditions shall be in writing and deemed received when sent by overnight delivery service or certified or registered mail, return receipt requested, if sent to the address below:

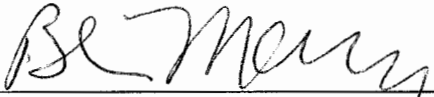
For Portraits of Hope:

Center for American Studies and Culture
2118 Wilshire Blvd., Suite 527
Santa Monica, CA 90403
310-273-2352
c/o Ed Massey and/or Bernie Massey

For the New York City Taxi and Limousine Commission:

40 Rector Street, 5th Floor
New York, NY 10006
212-676-1003
c/o Matthew Daus, Chairperson/Commissioner

IN WITNESS WHEREOF, the parties hereto have executed these Terms and Conditions and consent to the provisions contained herein on the date indicated.



Center for American Studies and Culture
By: *BERNIE MASSEY*
Title: *PRESIDENT*

6/16/06

Date



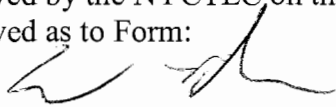
Matthew W. Daus
Commissioner/Chairperson

6/20/06

Date

New York City Taxi & Limousine Commission

By: *Charles R. Fraser, General Counsel*
Approved by the NYCTLC on the _____ this day of _____.
Approved as to Form:



Acting Corporation Counsel
AL
JUN 20 2006

State of California
County of Los Angeles

Center for American Studies and Culture

ACKNOWLEDGMENT

On the 16th day of June in the year 2006 before me, the undersigned, personally appeared Bernie Massey, ~~personally known to me~~ or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (~~are~~) subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: 6/16/06

Jay Kim
Notary Public



City of New York

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 20th day of June in the year 2006 before me, the undersigned, personally appeared Charles R. Fraser, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: 6/20/06

Sherryl A. Eluto

Notary Public

SHERRYL A. ELUTO
Notary Public, State of New York
No. 02EL5072220
Qualified in Kings County
Commission Expires 01/27/2007