

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

RIGHT OF ENTRY PERMIT

33444

THIS RIGHT OF ENTRY PERMIT is made and entered, in duplicate, as of February 21, 2014, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on January 21, 2014, by and between FRANK SAMARO, a sole proprietor, whose address is 1222 Monterey Street, Redlands, CA 92373 ("Permittee"), and the CITY OF LONG BEACH ("City"), a municipal corporation.

WHEREAS, Permittee intends to enter City-owned property at P.D. Pitchford Companion Animal Village, located at 7700 East Spring Street, for the purpose of installing donated improvements consisting of a CAVCO Industries, Inc. manufactured commercial building; and

WHEREAS, because the work is on public property, the City desires to enter this Agreement to allow Permittee or its contractor to perform the desired work;

NOW, THEREFORE, in consideration of the mutual terms and conditions of this Right of Entry Permit, the parties agree as follows:

1. Purpose. Permittee shall install donated improvements as shown on Exhibit "A" attached hereto. "Permittee" shall comply or cause its contractor to comply with all applicable laws and regulations with respect to the installation, including maintaining a safe environment for members of the public in the vicinity of the work.

2. Access. City grants to Permittee, its contractors, agents and employees (collectively, the "Permittee Parties"; individually, a "Permittee Party") a nonexclusive right to enter the City-owned Premises for the purpose of installing donated improvements. City acknowledges that the permission granted by this Permit may include placing, using and leaving equipment and materials, provided the location of equipment and materials shall first be approved by the City Manager or his designee.

3. Time of Use. Permittee Parties shall enter City-owned Property in accordance with this Permit during the normal business hours of City and on forty-eight (48) hours prior notice to the City, which notice may be oral and shall be given to the

1 Manager of Maintenance Operations for the City's Department of Parks, Recreation and
2 Marine.

3 4. Duration of Permit.

4 A. Permission to enter shall begin on March 1, 2014 and, unless
5 expanded in writing, shall end on March 1, 2015, unless sooner terminated as
6 provided in this Permit, unless the services to be performed hereunder or the
7 project is completed sooner.

8 B. Within fifteen (15) days after written notice to Permittee
9 following expiration or revocation of this Permit, Permittee shall cease entry and
10 shall cause all Permittee Parties to cease entry on the City-owned Property, shall
11 remove all equipment, supplies, and personal property and shall leave the City-
12 owned Property in a clean, neat and safe condition. Any supplies, equipment, and
13 personal property which are not removed with the fifteen (15) day period shall
14 become the property of the City without payment by or liability of any kind on the
15 part of the City.

16 5. Insurance.

17 As a condition precedent to the effectiveness of this Permit, Permittee shall
18 procure and maintain at Permittee's expense for the duration of the Permit from an
19 insurance company that is admitted to write insurance in California or from authorized
20 non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M.
21 Best Company:

22 (a) Commercial general liability insurance equivalent in scope to ISO
23 form CG 00 01 11 85 or CG 00 01 10 93 in an amount not less than One Million
24 Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00)
25 general aggregate. Such coverage shall include but not be limited to broad form
26 contractual liability, cross liability, independent contractors liability, and products
27 and completed operations liability. The City, Friends of Long Beach Animals, and
28 their officials, employees and agents shall be named as additional insureds by

1 endorsement on the City's endorsement form or on an endorsement equivalent in
2 scope to ISO form CG 20 26 11 85, and this insurance shall contain no special
3 limitations on the scope of protection given to the City, its officials, employees and
4 commissions.

5 (b) Workers' compensation insurance as required by the California
6 Labor Code and employer's liability insurance in an amount not less than One
7 Million Dollars (\$1,000,000.00) per accident or occupational illness.

8 (c) Commercial automobile liability insurance equivalent in scope to ISO
9 form CA 00 01 06 92 covering Auto Symbol 1 (Any Auto), in an amount not less
10 than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per
11 accident.

12 Any self-insurance program shall protect the City, Friends of Long Beach
13 Animals, and their officials, employees and agents in the same manner and to the same
14 extent as they would have been protected had the policy or policies not contained
15 retention provisions. Each insurance policy shall be endorsed to state that coverage
16 shall not be suspended, voided or canceled by either party except after thirty (30) days
17 prior written notice to City, and shall be primary and not contributing to any other
18 insurance or self-insurance maintained by City, its officials, employees and agents.

19 Permittee shall require that all contractors and subcontractors which
20 Permittee uses in connection with this Permit maintain insurance in compliance with this
21 Section unless otherwise agreed in writing by City's Risk Manager or designee.

22 Prior to the start of the term of this Permit, Permittee shall deliver to City
23 certificates of insurance and required endorsements, including any insurance required of
24 Permittee's contractors and subcontractors, for approval as to sufficiency and form. The
25 certificates and endorsements shall contain the original signature of a person authorized
26 by that insurer to bind coverage on its behalf. In addition, Permittee shall, at least thirty
27 (30) days prior to expiration of the insurance required hereunder, furnish to the City
28 certificates of insurance and endorsements evidencing renewal of such insurance. City

1 reserves the right to require complete certified copies of all policies of Permittee or
2 Permittee's contractors or subcontractors, at any time. Permittee shall make available to
3 the City all books, records and other information relating to the insurance coverage
4 required herein during normal business hours.

5 Any modification or waiver of the insurance requirements herein shall only
6 be made with the written approval of the City's Risk Manager or designee.

7 This section shall not be construed or deemed as a limitation on liability
8 relating to Permittee hereunder or as full performance of or compliance with the
9 indemnification provisions herein.

10 6. Non-Responsibility of City. City, its officers and employees shall not
11 be responsible or liable for loss or damage by theft, fire, flood, burglary, vandalism or any
12 other cause to the supplies, equipment or other personal property of Permittee Parties in
13 or on the City-owned Property, except to the extent caused by the gross negligence of
14 the City, its officers or employees. By executing this Permit and in consideration for
15 being allowed entry to the City-owned Property, Permittee waives all claims against the
16 City, its officers or employees for such loss or damage.

17 7. Indemnification. Permittee shall indemnify and hold harmless the
18 City, Friends of Long Beach Animals, and their boards, commissions officials, and
19 employees from and against any and all liability, claims, demands, damage, causes of
20 action, loss, proceedings, penalties, costs and expenses (including but not limited to
21 attorney's fees, court costs, and expert and witness fees) (collectively "Claims" or
22 individually "Claim"), except for those arising out of the City's sole negligence or
23 intentional acts. Claims include by way of example but are not limited to: Claims for
24 property damage, personal injury or death arising, in whole or in part, from any negligent
25 act or omission of Permittee, its officers, employees, agents, invitees, contractors,
26 subcontractors, or anyone under Permittee's control (collectively "Indemnitor");
27 Permittee's breach of this Permit; misrepresentation; willful misconduct; and Claims by
28 any employee of Indemnitor relating in any way to worker's compensation. Independent

1 of the indemnification duty and as a free-standing duty on the part of Permittee, Permittee
2 shall defend City and shall continue such defense until the Claim is resolved, whether by
3 settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach,
4 or the like on the part of Indemnitor shall be required for the duty to defend to arise. For
5 purposes of the duty to defend, Claim shall include allegations. Permittee shall give to
6 the City notice of any Claim within ten (10) calendar days. Likewise, the City shall notify
7 Permittee of any Claim, shall tender the defense of such Claim to Permittee, and shall
8 assist Permittee, as may be reasonably requested, in such defense.

9 8. No Title. Permittee and City acknowledge and agree that, by this
10 Permit, Permittee does not acquire any right, title or interest of any kind in the City-owned
11 Property, including but not limited to any leasehold interest. Permittee shall not allow the
12 City-owned Property to be used by anyone other than a Permittee Party or for any other
13 purpose than stated in this Permit.

14 9. No Assignment. Permittee shall not assign this Permit or the
15 permission granted by this Permit. Neither this Permit nor any interest in it shall be
16 subject to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or
17 receivership. Any attempted assignment or other transfer that is not approved by the City
18 Manager shall be void and confer no right of entry on the purported assignee or
19 transferee.

20 10. Condition After Entry. After the entry of any Permittee Party on the
21 City-owned Property, Permittee shall return the City-owned Property in as good condition
22 or better condition as the City-owned Property was in prior to such entry, reasonable
23 wear and tear excepted.

24 11. Notice. Any notice or approval given under this Permit shall be in
25 writing and personally delivered or deposited in the U.S. Postal Service, registered or
26 certified, return receipt, to the City of Long Beach, Department of Parks, Recreation and
27 Marine at 2760 Studebaker Road, Long Beach, CA 90815 Attn: Contract Management
28 Division and to Frank Samaro at the address listed above. Notice shall be deemed given

1 on the date personal delivery is made or on the date shown on the return receipt,
2 whichever first occurs.

3 12. Consideration. This Permit is granted in consideration of the Friends
4 of Long Beach Animal Shelter making non-monetary donations of labor, materials, and
5 equipment to City for the contemplated improvement.

6 13. Improvements. Permittee Parties shall not install, construct, erect or
7 maintain any structure or improvements on the City-owned Property except as described
8 herein.

9 14. No Limitations on City. The Permit shall not limit the City's right or
10 power to construct, erect, build, demolish, move or otherwise modify any structures,
11 buildings, landscaping or any other type of improvement on, over, in, or under the City-
12 owned Property.

13 15. No Release. The expiration or revocation of this Permit shall not
14 release either party from any liability or obligation which accrued prior to such expiration
15 or revocation.

16 16. Utilities and Security. Permittee shall not use any City utilities at any
17 time during this Permit without prior written authorization from the City Manager or his
18 designee. The City shall not have any obligation to Permittee to provide utilities, clean-up,
19 or security on the City-owned Property with respect to the right of entry granted by this
20 Permit. Permittee shall be responsible for removing all trash and debris from the site.

21 17. Compliance with Laws. Permittee Parties shall comply with all
22 applicable laws, rules, regulations and ordinances with respect to their activities on the
23 City-owned Property.

24 18. Miscellaneous.

25 A. This Permit shall be governed by and construed in
26 accordance with the laws of the State of California.

27 B. If any part of this Permit shall be held by a court of competent
28 jurisdiction to be invalid, void or unenforceable, then the remainder of the Permit

1 shall remain in full force and effect and shall not be affected, impaired or
2 invalidated.

3 C. This Permit may only be amended by a written agreement,
4 signed by the City and Permittee after authorization by City's City Council.

5 D. This Permit contains the entire understanding of the City and
6 Permittee and supersedes all other agreements, oral or written, with respect to the
7 subject matter of this Permit.

8 E. On the expiration or revocation of this Permit, Permittee
9 agrees to and shall execute such documents, in recordable form if so requested,
10 as the City deems reasonably necessary to end the Permit and remove the Permit
11 as an encumbrance on the City-owned Property.

12 F. The failure or delay of the City to insist on strict compliance
13 with the provisions of this Permit shall not be deemed a waiver of any right or
14 remedy that City may have and shall not be deemed a waiver of any subsequent
15 or other failure to comply with any provision of this Permit.

16 G. This Permit is not intended or entered for the purpose of
17 creating any benefit or right for any person or entity that is not a signatory or a
18 Permittee Party.

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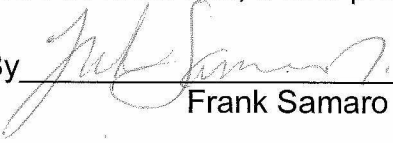
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Each party warrants and represents that the person signing on behalf of that party are duly authorized to bind that party to the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement with all formalities required by law as of the date first stated above.

FRANK SAMARO, a sole proprietor


3-10-14, 2014

By 
Frank Samaro

"Permittee"

CITY OF LONG BEACH, a municipal corporation

5-13, 2014

By 
Assistant City Manager
City Manager

"City"

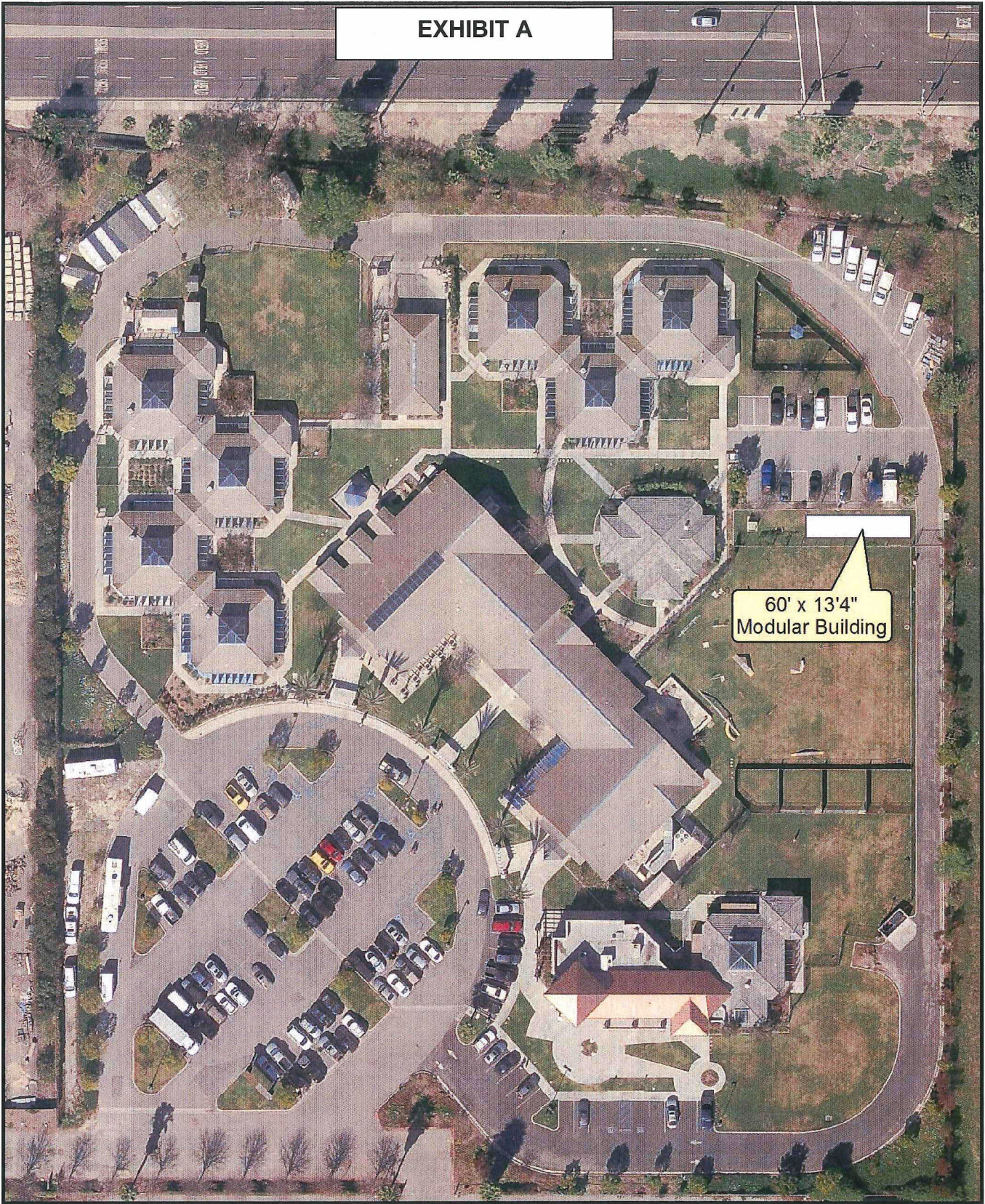
EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Right of Entry Permit is approved as to form on April 24, 2014.

CHARLES PARKIN, City Attorney

By 
Deputy

EXHIBIT A



60' x 13'4"
Modular Building



Premises

