

RIGHT OF ENTRY PERMIT

P - 00065

THIS RIGHT OF ENTRY PERMIT is issued and granted as of December 17, 2015 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on December 15, 2015, by and between the CITY OF LONG BEACH, a municipal corporation ("City") and NAPLES ISLANDS GARDEN CLUB, a nonprofit organization ("Permittee"), for the removal of certain trees and plants, and the installation of drought tolerant plants and mulch to the parkway, planter and roundabout at the end of Appian Way, in the City of Long Beach.

1. ACCESS. City grants to Permittee, its contractors, agents, and employees (collectively, the "Permittee Parties"; individually, a "Permittee Party") the non-exclusive right to enter City-owned property described in Exhibit "A" attached to this Permit and incorporated by reference ("City-owned Property") solely for the purpose of removing certain trees and plants, and installing drought tolerant plants and mulch to the parkway, planter and roundabout at the end of Appian Way.

2. TIME OF USE. Permittee Parties shall enter City-owned Property in accordance with this Permit solely during normal business hours and City-approved weekends.

3. DURATION OF PERMIT.

A. Permission to enter shall begin on December 9, 2015, and continue through December 8, 2018.

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

1           4.     INSURANCE. As a condition precedent to the effectiveness of this  
2 Permit, Permittee shall provide evidence of insurance equal to the following insurance  
3 coverage:

4                     A.     Commercial general liability insurance equivalent in scope to  
5 ISO form CG 00 01 10 93 in an amount not less than \$1,000,000 per occurrence or  
6 \$2,000,000 general aggregate. The coverage shall include but not be limited to  
7 broad form contractual liability, explosion, collapse, and underground perils (XCU),  
8 cross liability, independent contractors liability, and products and completed  
9 operations liability. The City, its officers, employees and agents shall be named as  
10 additional insureds by endorsement on the City's endorsement form or on an  
11 endorsement equivalent in scope to ISO form CG 20 26 11 85, and this insurance  
12 shall contain no special limitations on the scope of protection given to the City, its  
13 officers, employees and agents.

14                     B.     Workers' compensation insurance as required by the California  
15 Labor Code and employer's liability insurance in an amount not less than  
16 \$1,000,000 per accident.

17                     C.     Commercial automobile liability insurance (equivalent in scope  
18 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not  
19 less than \$1,000,000 combined single limit per accident.

20                     D.     Any self-insurance program, self-insured retention, or  
21 deductible must be separately approved in writing by City's Risk Manager or  
22 designee and shall protect the City, its officials, employees and agents in the same  
23 manner and to the same extent as they would have been protected had the policy  
24 or policies not contained retention or deductible provisions. Each insurance policy  
25 shall be endorsed to state that coverage shall not be reduced, non-renewed, or  
26 canceled except after thirty (30) days prior written notice to City, and shall be primary  
27 and not contributing to any other insurance or self-insurance maintained by the City.  
28 Permittee shall notify the City within five (5) days after any insurance required in this

1 Permit has been voided by the insurer or canceled by Permittee.

2 E. Permittee shall require that all Permittee Parties maintain  
3 insurance in compliance with this Section unless otherwise agreed in writing by  
4 City's Risk Manager or designee.

5 F. Prior to entry on City-owned Property, Permittee shall deliver to  
6 City certificates of insurance or self-insurance and required endorsements, including  
7 any insurance required by Permittee Parties, for approval as to sufficiency and form.  
8 The certificates and endorsements shall contain the original signature of a person  
9 authorized by that insurer to bind coverage on its behalf. In addition, Permittee shall  
10 at least thirty (30) days prior to expiration of this insurance furnish to the City  
11 evidence of renewal of the insurance. City reserves the right to require complete  
12 certified copies of all policies of insurance at any time. Permittee and Permittee  
13 Parties shall make available to the City, during normal business hours, all books,  
14 records and other information relating to the insurance required in this Permit.

15 G. Any modification or waiver of these insurance requirements  
16 shall only be made by the City's Risk Manager or designee, in writing. The procuring  
17 or existence of insurance shall not be construed or deemed as a limitation on liability  
18 or as full performance with the indemnification provisions of this Permit.

19 H. Notwithstanding any other provision of this Permit, if Permittee  
20 or a Permittee Party fails to comply with this Section, the City may immediately  
21 revoke this Permit and the permission granted by this Permit.

22 5. PERMITTEE'S INDEMNIFICATION OF CITY. Permittee shall  
23 indemnify, defend and hold the City, its Commissions and Boards, or their officials,  
24 employees, or agents harmless from all liability, loss, damage, claims, demands, penalties,  
25 fines, proceedings, causes of action, taxes, assessments, costs, and expenses (including  
26 attorney's fees and experts' fees) arising from the right to enter granted by this Permit and  
27 the activities of Permittee Parties on the City-owned Property under this Permit. This  
28 indemnity shall survive the expiration or revocation of this Permit. The foregoing shall not

1 apply to claims or causes of action caused by the sole negligence or willful misconduct of  
2 the City, its Commissions and Boards, or their officials, employees, or agents.

3           6.     NON-RESPONSIBILITY OF CITY. City, its officers and employees  
4 shall not be responsible or liable for loss or damage by theft, fire, flood, burglary, vandalism  
5 or any other cause to the supplies, equipment or other personal property of Permittee  
6 Parties in or on the City-owned Property, except to the extent caused by the gross  
7 negligence of the City, its officers or employees. By executing this Permit and in  
8 consideration for being allowed entry to the City-owned Property, Permittee waives all  
9 claims against the City, its officers or employees for such loss or damage.

10           7.     NO TITLE. Permittee and City acknowledge and agree that, by this  
11 Permit, Permittee does not acquire any right, title or interest of any kind in the City-owned  
12 Property, including but not limited to any leasehold interest. Permittee shall not allow the  
13 City-owned Property to be used by anyone other than a Permittee Party or for any other  
14 purpose than stated in this Permit. Notwithstanding any language to the contrary in this  
15 Permit, if a court of competent jurisdiction deems this Permit to be a lease, then Permittee  
16 waives any right of redemption under any existing or future law in the event that the City  
17 removes it from the City-owned Property and agrees that, if the manner or method used  
18 by the City in ending any right held by Permittee under this Permit gives to Permittee a  
19 cause of action similar to or based on damages that would otherwise arise in connection  
20 with unlawful detainer, then the total amount of damages to which Permittee would be  
21 entitled in such action shall be One Dollar. Permittee agrees that this Section may be filed  
22 in such action and that, when so filed, it shall be a stipulation by Permittee fixing the total  
23 damages to which Permittee is entitled in such action.

24           8.     NO ASSIGNMENT. Permittee shall not assign this Permit or the  
25 permission granted by this Permit. Neither this Permit nor any interest in it shall be subject  
26 to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or  
27 receivership. Any attempted assignment or other transfer that is not approved by the  
28 Director shall be void and confer no right of entry on the purported assignee or transferee.

1           9.     PREVAILING WAGES.   Permittee Parties shall cause all work  
2 performed in connection with this Permit to be performed in compliance with all applicable  
3 federal and state labor standards, including the prevailing wage provisions of sections 1770  
4 et seq. of the California Labor Code. Permittee shall indemnify, defend and hold the City,  
5 its Boards, Commissions, and their officials, employees and agents (“Indemnified Parties”)  
6 harmless from any and all claims, causes of action or liabilities that may be asserted  
7 against or incurred by Indemnified Parties with respect to or in any way arising from the  
8 work’s compliance with or failure to comply with applicable federal and state labor  
9 requirements including, without limitation, the requirements of California Labor Code  
10 section 1770 et seq.

11           10.    CONDITIONS OF PERMIT. Prior to removal of certain trees and  
12 plants, and the installation of drought tolerant plants and mulch to the parkway, planter and  
13 roundabout at the end of Appian Way, Permittee shall:

- 14                   A.     obtain all necessary certificates, permits and approvals as  
15                   required by federal, state, and local authority, and pay any and all related fees;
- 16                   B.     submit plans and specifications to the Superintendent of Marine  
17                   Maintenance for review and approval; and
- 18                   C.     comply with National Electrical Code standards.

19           11.    NOTICE. Any notice or approval given under this Permit shall be in  
20 writing and personally delivered or deposited in the U.S. Postal Service, registered or  
21 certified, return receipt, to the City of Long Beach, Department of Park, Recreation &  
22 Marine at 333 W. Ocean Blvd., Long Beach, CA 90802, and to the Permittee at P.O. Box  
23 14688, Long Beach, CA 90803 Attn: President. Notice shall be deemed given on the date  
24 personal delivery is made or on the date shown on the return receipt, whichever first occurs.

25           12.    CONSIDERATION. This Permit is granted in consideration of  
26 Permittee’s donation of time and materials for the improvement of the City-owned Property.

27           13.    FUNDING. All necessary funding to complete the removal of certain  
28 trees and plants, and the installation of drought tolerant plants and mulch to the parkway,

1 planter and roundabout at the end of Appian Way shall be the responsibility of the  
2 Permittee.

3 14. UTILITIES. Any and all utility costs shall be the responsibility of the  
4 City.

5 15. IMPROVEMENTS.

6 A. Permittee shall remove certain dead trees and existing plants,  
7 and install drought tolerant plants and mulch to the parkway, planter and roundabout  
8 at the end of Appian Way.

9 B. Permittee shall not install, construct, erect or maintain any  
10 structure or improvements on the City-owned Property except as described in this  
11 Permit. Upon the completion of the removal of certain trees and plants, and the  
12 installation of drought tolerant plants and mulch to the parkway, planter and  
13 roundabout at the end of Appian Way and all other improvements to City-owned  
14 Property made pursuant to this Permit, they shall become the sole property of the  
15 City, at no charge.

16 16. MAINTENANCE. Permittee may provide ongoing maintenance to the  
17 proposed improvement area in an acceptable manner, as approved in advance by the  
18 Director of the Department of Parks, Recreation and Marine, or his/her designee.

19 17. NO LIMITATIONS ON CITY. The Permit shall not limit the City's right  
20 or power to construct, erect, build, demolish, move or otherwise modify any structures,  
21 buildings, landscaping or any other type of improvement on, over, in, or under the City-  
22 owned Property.

23 18. NO RELEASE. The expiration or revocation of this Permit shall not  
24 release either party from any liability or obligation, which accrued prior to such expiration  
25 or revocation.

26 19. NONDISCRIMINATION. In exercising its right of entry and use of the  
27 City-owned Property, Permittee shall not discriminate on the basis of race, religion, national  
28 origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or

1 disability.

2           20.    COMPLIANCE WITH LAWS. Permittee Parties shall comply with all  
3 applicable laws, rules, regulations and ordinances with respect to their activities on the  
4 City-owned Property.

5           21.    MISCELLANEOUS.

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

8           B.    If any part of this Permit shall be held by a court of competent  
9 jurisdiction to be invalid, void or unenforceable, then the remainder of the Permit  
10 shall remain in full force and effect and shall not be affected, impaired or invalidated.

11          C.    This Permit may only be amended by a written agreement,  
12 signed by the City and Permittee.

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

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

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

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

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

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IN WITNESS WHEREOF, the parties have executed this Permit on the respective dates set forth opposite their signatures.

NAPLES ISLANDS GARDEN CLUB, a nonprofit organization

14 January, 2016

By Sandra H. Davidson  
Name SANDRA H. DAVIDSON  
Title President

14 January, 2016

By Barbara S. Jordan  
Name Barbara S. Jordan  
Title First Vice President

"Permittee"

CITY OF LONG BEACH, a municipal corporation

Feb. 3, 2016

By T. Ball  
City Manager  
EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City" Assistant City Manager

This Right of Entry Permit is approved as to form on 1/20, 2016.

CHARLES PARKIN, City Attorney

By [Signature]  
Deputy





**Naples Islands Garden Club**  
City-Owned Property