

RIGHT OF ENTRY PERMIT

P -00182

THIS RIGHT OF ENTRY PERMIT is issued and granted as of January 10, 2018 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on January 9, 2018, by and between the LONG BEACH COMMUNITY FOUNDATION, a California nonprofit corporation ("Permittee"), whose address is 400 Oceangate, Suite 800, Long Beach, California 90802, and the CITY OF LONG BEACH, a municipal corporation ("City").

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 to design and install a Sound Garden and a public seating area at Houghton Park, located at 6301 Myrtle Avenue.

2. PERMITTED AREA. Approximately 1,400 square feet of undeveloped area within Houghton Park, directly north of the community center, and any other areas necessary for the construction or mobilization that do not interfere with current programs or activities, as determined by the Director, or designee, of the Department of Parks, Recreation and Marine.

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

4. DURATION OF PERMIT.

A. Permission to enter shall begin on January 15, 2018, and continue through January 14, 2020.

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

1 shall leave the City-owned Property in a clean, neat, and safe condition. Any
2 supplies, equipment, and personal property which are not removed within the fifteen
3 (15) day period shall become the property of the City without payment by or liability
4 of any kind on the part of the City.

5 5. FUNDING. All necessary funding to design, build and install the
6 Sound Garden and accompanying seating shall be the responsibility of Permittee.

7 6. MAINTENANCE. Upon completion of the Sound Garden, City shall
8 assume all ongoing maintenance costs.

9 7. INSURANCE. As a condition precedent to the effectiveness of this
10 Permit, Permittee shall provide evidence of insurance equal to the following insurance
11 coverage:

12 A. Commercial general liability insurance equivalent in scope to
13 ISO form CG 00 01 10 93 in an amount not less than \$1,000,000 per occurrence or
14 \$2,000,000 general aggregate. The coverage shall include but not be limited to
15 broad form contractual liability, cross liability, independent contractors liability, and
16 products and completed operations liability. The City, its officers, employees and
17 agents shall be named as additional insureds by endorsement on the City's
18 endorsement form or on an endorsement equivalent in scope to ISO form CG 20 26
19 11 85, and this insurance shall contain no special limitations on the scope of
20 protection given to the City, its officers, employees and agents.

21 B. Workers' compensation insurance as required by the California
22 Labor Code and employer's liability insurance in an amount not less than
23 \$1,000,000 per accident.

24 C. Commercial automobile liability insurance (equivalent in scope
25 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not
26 less than \$500,000 combined single limit per accident.

27 D. Any self-insurance program, self-insured retention, or
28 deductible must be separately approved in writing by City's Risk Manager or

1 designee and shall protect the City, its officials, employees and agents in the same
2 manner and to the same extent as they would have been protected had the policy
3 or policies not contained retention or deductible provisions. Each insurance policy
4 shall be endorsed to state that coverage shall not be reduced, non-renewed, or
5 canceled except after thirty (30) days prior written notice to City, and shall be primary
6 and not contributing to any other insurance or self-insurance maintained by the City.
7 Permittee shall notify the City within five (5) days after any insurance required in this
8 Permit has been voided by the insurer or canceled by Permittee.

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

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

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

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

1 8. PERMITTEE'S INDEMNIFICATION OF CITY. Permittee shall
2 indemnify, defend and hold the City, its Commissions and Boards, or their officials,
3 employees, or agents harmless from all liability, loss, damage, claims, demands, penalties,
4 fines, proceedings, causes of action, taxes, assessments, costs, and expenses (including
5 attorney's fees and experts' fees) arising from the right to enter granted by this Permit and
6 the activities of Permittee Parties on the City-owned Property under this Permit. This
7 indemnity shall survive the expiration or revocation of this Permit. The foregoing shall not
8 apply to claims or causes of action caused by the sole negligence or willful misconduct of
9 the City, its Commissions and Boards, or their officials, employees, or agents.

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

17 10. CITY'S INDEMNIFICATION OF PERMITTEE / NON-
18 RESPONSIBILITY OF PERMITTEE. Upon full completion of the Sound Garden by
19 Permittee and acceptance by City, Permittee shall not be responsible or liable for any loss
20 or damage relating to the use of the Sound Garden and/or public seating area at Houghton
21 Park. Upon full completion of the Sound Garden by Permittee and acceptance by City,
22 City shall indemnify, defend and hold Permittee, its directors, officers, employees and
23 agents harmless from all liability, loss, damage, claims, demands penalties, fines,
24 proceedings, causes of action, taxes, assessments, costs and expenses (including
25 attorney's fees and experts' fees) arising from the use of the Sound Garden and/or public
26 seating area at Houghton Park. The foregoing shall not apply to claims or causes of action
27 caused by the sole negligence or willful misconduct of Permittee Parties.

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

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

13. CONDITIONS OF PERMIT.

A. Permittee shall obtain all necessary certificates, permits and approvals, and pay any and all fees, as required by federal, state, and local authority prior to commencing with the design and installation of a Sound Garden and a public seating area at Houghton Park.

B. Final plans and specifications must be approved, in writing, by City, prior to any construction by Permittee, or its agents.

14. NOTICE. Any notice or approval required by this Permit shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage

1 prepaid, addressed to Permittee at the address first stated above, and to the City at 2760
2 Studebaker Road, Long Beach, California 90815, Attn: Director. Notice of change of
3 address shall be given in the same manner as stated for other notices. Notice shall be
4 deemed given on the date deposited in the mail or on the date personal delivery is made,
5 whichever occurs first..

6 15. CONSIDERATION. This Permit is granted in consideration of
7 Permittee's design and installation of a Sound Garden and a public seating area at
8 Houghton Park.

9 16. NO LIMITATIONS ON CITY. The Permit shall not limit the City's right
10 or 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 17. 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 18. NONDISCRIMINATION. In exercising its right of entry and use of the
17 City-owned Property, Permittee shall not discriminate on the basis of race, religion, national
18 origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
19 disability.

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

23 20. MISCELLANEOUS.

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

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

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

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

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

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

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

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

LONG BEACH COMMUNITY
FOUNDATION, a California nonprofit
corporation

April 19, 2018

By Marcelle Epley
Name Marcelle Epley
Title President & CEO

April 20, 2018

By Gary Delong
Name Gary Delong
Title Board Chair

Tom Modica
Assistant City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

"Permittee"

CITY OF LONG BEACH, a municipal
corporation

May 14, 2018

By T.B. Miller
City Manager

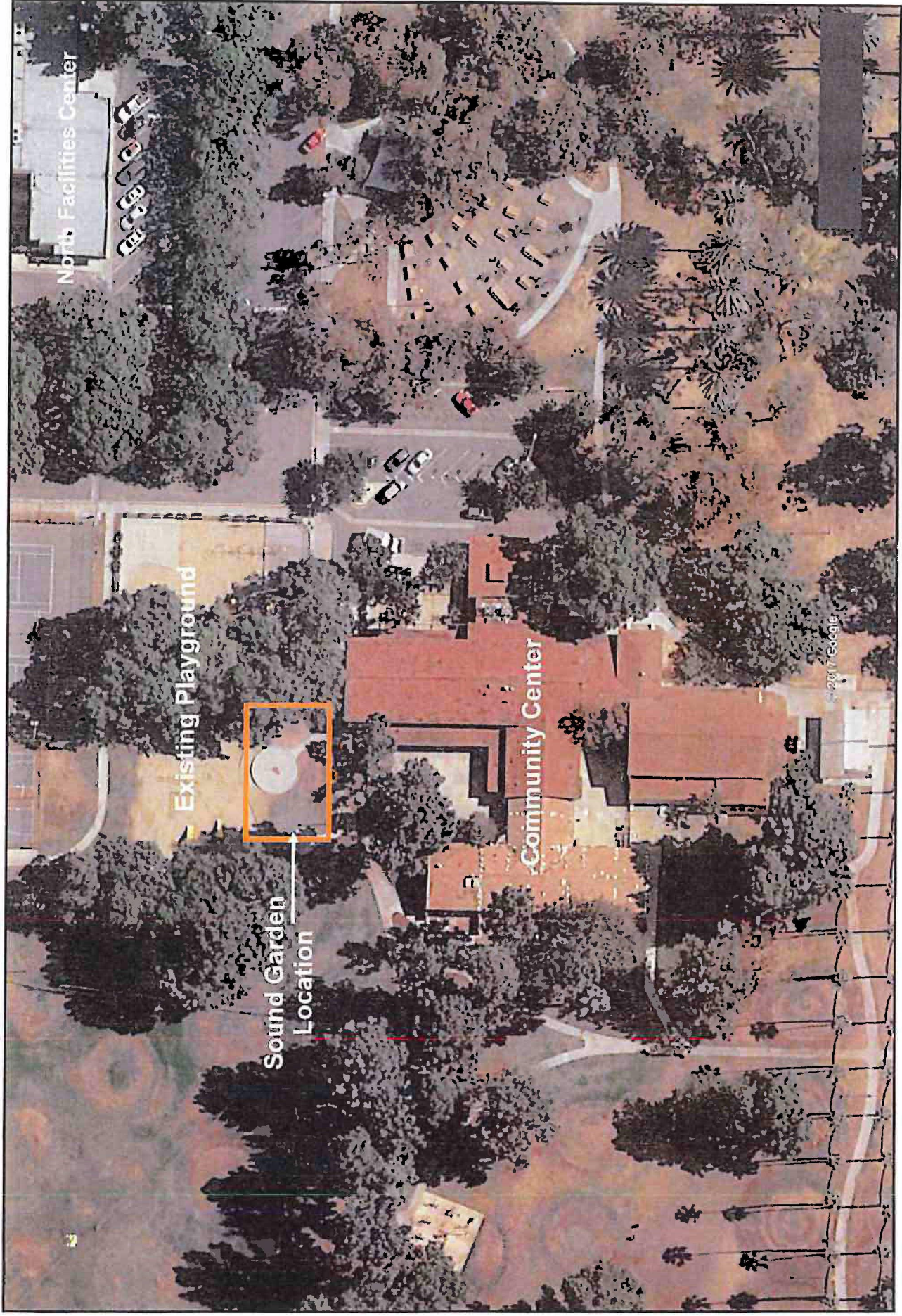
"City"

This Right of Entry Permit is approved as to form on

4/30, 2018.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy



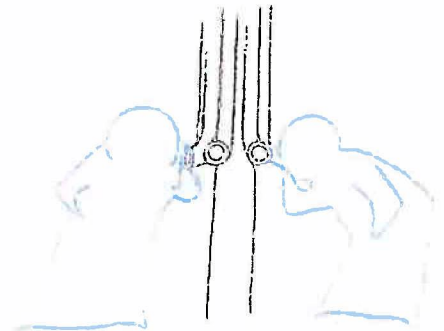
SOUND GARDEN LOCATION MAP
HOUGHTON PARK

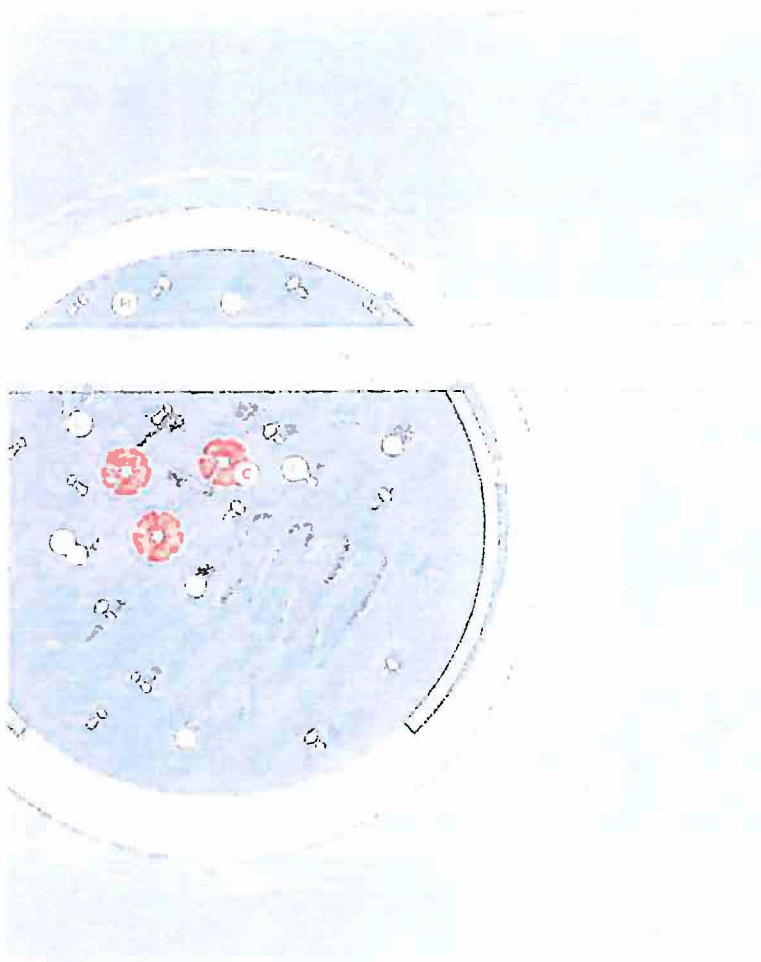
PROPOSED CONCEPT



SOUND-BASED INTERACTIVE PUBLIC ART

A unique auditory experience through a colorful twisting, interactive play sculpture where children can experience the pure joy of playing with sound effects in the public space.





KEYNOTES

- GALVANIZED STEEL SCULPTURE
- EXISTING WALKWAY
- IMPROVED
- COURSED RUBBERIZED MAT
- NEW CONCRETE WALKWAY
- PLAQUE/COMMEMORATIVE PLUM SIGN

