

RIGHT OF ENTRY PERMIT

P- 00260

THIS RIGHT OF ENTRY PERMIT is made and entered, in duplicate, as of February 18, 2022, for reference purposes only, pursuant to authorization by the PARKS AND RECREATION COMMISSION of the City of Long Beach ("Commission") at its meeting on January 20, 2022, by and between the PUBLIC CORPORATION FOR THE ARTS FOR THE CITY OF LONG BEACH, DBA ARTS COUNCIL FOR LONG BEACH, a nonprofit corporation ("Permittee"), whose address is 115 Pine Avenue, Suite 350, Long Beach, California 90802 and the CITY OF LONG BEACH, a municipal corporation ("City").

1. ACCESS. City grants to Permittee, its artists, contractors, agents, and employees (collectively, the "Permittee Parties"; individually, a "Permittee Party") the non-exclusive right to enter City of Long Beach ("City")-owned property described in Exhibit "A" attached to this Permit and incorporated by reference ("City-owned Property") solely for the purpose of working to produce and maintain a mural.

2. LOCATION. Los Cerritos Park, 3750 Del Mar Avenue, Long Beach, CA 90807, as referenced on Exhibit A, attached hereto and incorporated herein by reference.

3. TIME OF USE AND PERMIT CONDITIONS.

A. Permittee Parties shall be authorized to occupy the Premises, during Los Cerritos Park operational hours only, for the express purpose to paint, complete, and maintain one mural, located on the exposed exterior wall of the bathroom structure. The mural shall feature children on tricycles as referenced in Exhibit A. Notification of blight/graffiti or environmental damage by any cause must be repaired or cause to be repaired by Permittee Parties within 72 hours of damage report, or Permittee shall provide written notice and plan to the City's Parks, Recreation and Marine Department ("Department") within 24 hours as to when repairs will be fully completed. If the mural is not repaired or maintained to the satisfaction of the Department Director, both Permittee and Permittee Parties agree

1 that the mural may be removed/painted out by the Department.

2 B. Permittee Parties must receive pre-approval for the placement  
3 of any personal equipment (e.g., ladders, scaffold, paint sprayer, etc.) at Los  
4 Cerritos Park and must place a protective barrier around the area of the mural, and  
5 under Permittee Parties' equipment and paint, to not impact the adjacent areas of  
6 paint overspray. Permittee Parties may not provide personal equipment unless the  
7 equipment has been inspected by the Department/ a City safety officer and the  
8 equipment meets Cal OSHA safety specifications. The Department shall provide all  
9 utilities used by Permittee Parties during the painting and during Permittee's  
10 maintenance of the mural. Permittee Parties may store limited art supplies in Los  
11 Cerritos Park on a space available basis, as approved in advance by the Park  
12 Supervisor.

13 C. Permittee Parties shall properly prepare the walls for mural  
14 painting as required and approved by the Department prior to mural painting.  
15 Permittee Parties may be required to provide a special graffiti coating to the finished  
16 mural to protect the mural from graffiti, as approved in advance by the Director.

17 D. Permittee Parties shall confirm that the mural shall be  
18 completed no later than February 28, 2023, unless extended in writing by the  
19 Director. If time extensions are needed due to the size of the project, weather,  
20 personal emergencies, or under any other reasonable circumstance, a written  
21 request must be submitted to and approved by the Director to avoid non-compliance  
22 of contracted responsibilities by the Permittee and Permittee Parties.

23 E. The Permittee and Permittee Parties shall sign a waiver that  
24 they waive any and all claims or rights, under any circumstance, related to or arising  
25 under this Permit, against the City of Long Beach. The Permittee Parties understand  
26 and agree that the mural is to be painted onto the exposed exterior wall of the  
27 bathroom structure at Los Cerritos Park and the mural may be subject to destruction,  
28 distortion, mutilation or other modification, and may be subject to removal at a later

1 date. The Permittee and Permittee Parties understand and agree that the  
2 Department and/or City shall have the sole discretion to remove the mural at any  
3 time.

4 F. Permittee Parties shall not work with any minors unless  
5 approved and supervised by Department staff, and parental/guardian waivers are  
6 signed and copies of such are provided to the Department. The City shall be entitled  
7 to photograph and film Permittee Parties painting the mural for use in publications,  
8 educational materials, and/or promotion for the use in the form of print media, as  
9 well as internet, film, and all other forms of electronic and other media, including  
10 third party works.

11 G. The City will designate a Department liaison through which  
12 Permittee will communicate.

13 4. DURATION OF PERMIT.

14 A. Permission to enter shall begin on March 1, 2022, and continue  
15 through February 28, 2023, with the option to renew for three (3) additional three-  
16 year periods for mural maintenance purposes, at the discretion of the Director.  
17 Either party may terminate this Permit with thirty (30) days' written notice.

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

25 5. PERMIT FEE AND PROJECT FUNDING. The public benefit provided  
26 by performing maintenance will offset any fee related to this Right-of-Entry Permit. With  
27 respect to costs incurred, Permittee will provide funding for mural supplies, Permittee  
28 Parties (including artists), and maintenance of the mural. The Commission, Department

1 and/or City shall not provide any funding, supplies, or staff support, other than overall  
2 Department supervision, unless approved in advance and in writing by the Department  
3 Director. Should the Permittee obtain funding through donations and/or sponsorships, the  
4 City reserves the right to approve any recognition of funders on the mural in advance and  
5 in writing. As the sponsoring, hiring and funding entity, Permittee affirms that it will cover  
6 or cause to be covered all ongoing costs for maintenance of the mural, either directly and/or  
7 through the City's Percent for Public Art Program mural restoration fund.

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

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

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

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

26                   D.     Any self-insurance program, self-insured retention, or  
27 deductible must be separately approved in writing by City's Risk Manager or  
28 designee and shall protect the City, its officials, employees and agents in the same

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

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

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

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

25 H. Notwithstanding any other provision of this Permit, if Permittee  
26 or a Permittee Party fails to comply with this Section, the City may immediately  
27 revoke this Permit and the permission granted by this Permit.  
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1                   7.     PERMITTEE'S INDEMNIFICATION OF CITY.

2                   A.     Permittee shall indemnify, protect and hold harmless City, its  
3                   Boards, Commissions, and their officials, employees and agents ("Indemnified  
4                   Parties"), from and against any and all liability, claims, demands, damage, loss,  
5                   obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
6                   costs and expenses, arising or alleged to have arisen, in whole or in part, out of or  
7                   in connection with (1) Permittee's breach or failure to comply with any of its  
8                   obligations contained in this Permit, or (2) negligent or willful acts, errors, omissions  
9                   or misrepresentations committed by Permittee, its officers, employees, agents,  
10                  subcontractors, or anyone under Permittee's control, in the performance of work or  
11                  services under this Permit (collectively "Claims" or individually "Claim").

12                  B.     In addition to Permittee's duty to indemnify, Permittee shall  
13                  have a separate and wholly independent duty to defend Indemnified Parties at  
14                  Permittee's expense by legal counsel approved by City, from and against all Claims,  
15                  and shall continue this defense until the Claims are resolved, whether by settlement,  
16                  judgment or otherwise. No finding or judgment of negligence, fault, breach, or the  
17                  like on the part of Permittee shall be required for the duty to defend to arise. City  
18                  shall notify Permittee of any Claim, shall tender the defense of the Claim to  
19                  Permittee, and shall assist Permittee, as may be reasonably requested, in the  
20                  defense.

21                  8.     PREVAILING WAGE RATES. Permittee is directed to the prevailing  
22                  wage rates. Permittee shall forfeit, as a penalty to the City, Fifty Dollars (\$50.00) for each  
23                  laborer, worker or mechanic employed for each calendar day, or portion thereof, that such  
24                  laborer, worker or mechanic is paid less than the prevailing wage rates for any work done  
25                  by Permittee or any subcontractor, under this Permit.

26                  9.     NON-RESPONSIBILITY OF CITY. City, its officers and employees  
27                  shall not be responsible or liable for loss or damage by theft, fire, flood, burglary, vandalism  
28                  or any other cause to the supplies, equipment or other personal property of Permittee

1 Parties in or on the City-owned Property, except to the extent caused by the gross  
2 negligence of the City, its officers or employees. By executing this Permit and in  
3 consideration for being allowed entry to the City-owned Property, Permittee waives all  
4 claims against the City, its officers or employees for such loss or damage.

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

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

24 12. CONDITIONS OF PERMIT. Permittee shall obtain all necessary  
25 certificates, permits and approvals as required by federal, state, and local authority and  
26 must meet any and all Americans with Disabilities Act (ADA) requirements prior to entry to  
27 City-owned Property.

28 13. NOTICE. Any notice or approval given under this Permit shall be in

1 writing and personally delivered or deposited in the U.S. Postal Service, registered or  
2 certified, return receipt, to the City of Long Beach, Department of Parks, Recreation and  
3 Marine at 2760 Studebaker Road, Long Beach, CA 90815, Attn: Contract Management  
4 Division. Notice shall be deemed given on the date personal delivery is made or on the  
5 date shown on the return receipt, whichever first occurs.

6 14. CONDITION AFTER ENTRY. After the entry of any Permittee Party  
7 on the City-owned property, Permittee shall return the City-owned property in as good  
8 condition or better condition as the City-owned property was in prior to such entry,  
9 reasonable wear and tear excepted.

10 15. IMPROVEMENTS. Permittee shall not install, construct, erect or  
11 maintain any structure or improvements on the City-owned property except as described  
12 in this Permit and any attachments.

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

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

20 18. NONDISCRIMINATION. In connection with performance of this  
21 Permit and subject to applicable rules and regulations, Permittee shall not discriminate  
22 against any employee or applicant for employment because of race, religion, national  
23 origin, color, age, sex, sexual orientation, gender identify, AIDS, HIV status, handicap, or  
24 disability. Permittee shall ensure that applicants are employed, and that employees are  
25 treated fairly during their employment, without regard to these bases. These actions shall  
26 include, but not be limited to, the following: employment, upgrading, demotion or transfer,  
27 recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of  
28 compensation, and selection for training, including apprenticeship.

1 It is the policy of City to encourage the participation of Disadvantaged,  
2 Minority and Women-owned Business Enterprises in City's procurement process, and  
3 Permittee agrees to use its best efforts to carry out this policy in the hiring of Contractors  
4 to the fullest extent consistent with the efficient performance of this Permit. Permittee may  
5 rely on written representations by consultants and subcontractors regarding their status.  
6 Permittee shall report to City in May or in December or, in the case of short-term  
7 agreements, prior to invoicing for final payment, the names of all sub consultants and  
8 contractors hired by Permittee for this Project and information on whether or not they are  
9 a Disadvantaged, Minority or Woman-owned Business Enterprise, as defined in Section 8  
10 of the Small Business Act (15 U.S.C. Section 637)

11 19. COMPLIANCE WITH LAWS. Permittee Parties shall be responsible  
12 to acquire and pay for all necessary City permits and approvals, and pay any and all fees;  
13 and shall comply with all applicable laws, rules, regulations and ordinances with respect to  
14 their activities on the City-owned property.

15 20. INDEPENDENT CONTRACTOR. Permittee is an independent  
16 contractor and not an employee, agent or other representative of the City. Permittee shall  
17 have the right to select the means, manner and method of performing the services  
18 described herein. Permittee understands and agrees that Permittee is not authorized to  
19 incur any expenses or any liability whatsoever on behalf of the City and has no authority,  
20 expressed or implied, to obligate or make representations on behalf of the City.

21 21. LIAISONS AND COMMUNICATION. Permittee will designate a  
22 Department liaison through which the Arts Council will communicate.

23 22. 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.

PUBLIC CORPORATION FOR THE ARTS  
FOR THE CITY OF LONG BEACH, DBA  
ARTS COUNCIL FOR LONG BEACH,  
nonprofit corporation

March 12<sup>th</sup>, 2022

By [Signature]  
Name Griselda Suarez  
Title Executive Director

\_\_\_\_\_, 2022

By [Signature]  
Name Sayon Syprasoenh  
Title President

"Permittee"

PARKS AND RECREATION  
COMMISSION OF THE CITY OF LONG  
BEACH, CALIFORNIA

May 5, 2022, 2022

By [Signature]  
Director

"Commission"

This Right of Entry Permit is approved as to form on

\_\_\_\_\_, 2022.

CHARLES PARKIN, City Attorney

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

# EXHIBIT “A”

**ATTACHMENT A**  
**LOS CERRITOS PARK PROPOSED MURAL**  
**3750 DEL MAR AVE**



**ARTIST: LAJON MILLER**

