

RIGHT OF ENTRY PERMIT

P - 00261

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. Wrigley Heights Dog Park, 3401 Golden Avenue, Long Beach, CA 90806, 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 Wrigley Heights Dog Park operational hours only, for the express purpose to paint, complete, and maintain one mural, located on the exterior wall adjacent to Golden Avenue. The mural shall feature a colorful representation of several characters that merge into one vibrant piece, 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

1 Department Director, both Permittee and Permittee Parties agree that the mural may
2 be removed/painted out by the Department.

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

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

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

24 E. The Permittee and Permittee Parties shall sign a waiver that
25 they waive any and all claims or rights, under any circumstance, related to or arising
26 under this Permit, against the City of Long Beach. The Permittee Parties understand
27 and agree that the mural is to be painted onto the exposed exterior wall adjacent to
28 Golden Avenue at Wrigley Heights Dog Park and the mural may be subject to

1 destruction, distortion, mutilation or other modification, and may be subject to
2 removal at a later date. The Permittee and Permittee Parties understand and agree
3 that the Department and/or City shall have the sole discretion to remove the mural
4 at any time.

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

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

14 4. DURATION OF PERMIT.

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

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

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

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

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

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

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

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

D. Any self-insurance program, self-insured retention, or 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 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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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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 12th, 2022

By [Signature]
Name Griselda Suarez
Title Executive Director

_____, 2022

By [Signature]
Name Sayon Suprasdent
Title President

"Permittee"

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

May 5, 2022

By [Signature]
Director

"Commission"

This Right of Entry Permit is approved as to form on
March 25th, 2022.

CHARLES PARKIN, City Attorney

By [Signature]
Anita Lakhani, Deputy City Attorney

EXHIBIT “A”

ATTACHMENT B
WRIGLEY HEIGHTS DOG PARK
3401 GOLDEN AVE



ARTIST: JAMES BROOKS

