

RIGHT OF ENTRY PERMIT

P - 00247

THIS RIGHT OF ENTRY PERMIT is made and entered, in duplicate, as of July 19, 2021, for reference purposes only, pursuant to authorization by the PARKS AND RECREATION COMMISSION of the City of Long Beach ("Commission") at its meeting on July 15, 2021, 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. Houghton Park, 6301 Myrtle Avenue (Exhibit A).

3. TIME OF USE AND PERMIT CONDITIONS. Permittee Parties shall be authorized to occupy the Premises, during Houghton Park operational hours only, for the express purpose to paint, complete, and maintain a mural. The mural is an ode to Houghton Park's history and home to the Uptown Jazz Festival (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 that the mural may be removed/painted out by the Department.

Permittee Parties must receive pre-approval for the placement of any personal equipment (e.g., ladders, scaffold, paint sprayer, etc.) at Houghton Park and

1 must place a protective barrier around the area of the mural, and under Permittee Parties'  
2 equipment and paint, to not impact the adjacent areas of paint overspray. Permittee  
3 Parties may not provide personal equipment unless the equipment has been inspected  
4 by the Department/ a City safety officer and the equipment meets Cal OSHA safety  
5 specifications. The Department shall provide all utilities used by Permittee Parties during  
6 the painting and during Permittee's maintenance of the mural. Permittee Parties may  
7 store limited art supplies in Houghton Park community center, on a space available basis,  
8 as approved in advance by the Park Supervisor. Permittee Parties shall have access to  
9 the community center during operational hours.

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

14 Permittee Parties shall confirm that the mural shall be completed no later  
15 than December 21, 2021, unless extended in writing by the Director. If time extensions  
16 are needed due to the size of the project, weather, personal emergencies, or under any  
17 other reasonable circumstance, a written request must be submitted to and approved by  
18 the Director to avoid non-compliance of contracted responsibilities by the Permittee and  
19 Permittee Parties.

20 The Permittee and Permittee Parties shall sign a waiver that they waive any  
21 and all claims or rights, under any circumstance, related to or arising under this Permit,  
22 against the City of Long Beach. The Permittee Parties understand and agree that the  
23 mural is to be painted onto the exterior of the bleachers at Houghton Park and the mural  
24 may be subject to destruction, distortion, mutilation or other modification, and may be  
25 subject to removal at a later date. The Permittee and Permittee Parties understand and  
26 agree that the Department and/or City shall have the sole discretion to remove the mural  
27 at any time.

28 Permittee Parties shall not work with any minors unless approved and

1 supervised by Department staff, and parental/guardian waivers are signed and copies of  
2 such are provided to the Department. The City shall be entitled to photograph and film  
3 Permittee Parties painting the mural for use in publications, educational materials, and/or  
4 promotion for the use in the form of print media, as well as internet, film, and all other  
5 forms of electronic and other media, including third party works.

6 The City will designate a Department liaison through which Permittee will  
7 communicate.

8 4. DURATION OF PERMIT.

9 A. Permission to enter shall begin on August 1, 2021, and  
10 continue through July 31, 2022, with the option to renew for two (2) additional three-  
11 year periods for mural maintenance purposes, at the discretion of the Director.  
12 Either party may terminate this Permit with thirty (30) days' written notice.

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

20 5. PERMIT FEE AND PROJECT FUNDING. The public benefit provided  
21 by performing maintenance will offset any fee related to this Right-of-Entry Permit. With  
22 respect to costs incurred, Permittee will provide funding for mural supplies, Permittee  
23 Parties (including artists), and maintenance of the mural. The Commission, Department  
24 and/or City shall not provide any funding, supplies, or staff support, other than overall  
25 Department supervision, unless approved in advance and in writing by the Department  
26 Director. Should the Permittee obtain funding through donations and/or sponsorships, the  
27 City reserves the right to approve any recognition of funders on the mural in advance and  
28 in writing. As the sponsoring, hiring and funding entity, Permittee affirms that it will cover

1 or cause to be covered all ongoing costs for maintenance of the mural, either directly and/or  
2 through the City's Percent for Public Art Program mural restoration fund.

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

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

15 B. Workers' compensation insurance as required by the California  
16 Labor Code and employer's liability insurance in an amount not less than  
17 \$1,000,000 per accident.

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

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

1 Permittee shall notify the City within five (5) days after any insurance required in this  
2 Permit has been voided by the insurer or canceled by Permittee.

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

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

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

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

23 7. PERMITTEE'S INDEMNIFICATION OF CITY.

24 A. Permittee shall indemnify, protect and hold harmless City, its  
25 Boards, Commissions, and their officials, employees and agents ("Indemnified  
26 Parties"), from and against any and all liability, claims, demands, damage, loss,  
27 obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
28 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or

1 in connection with (1) Permittee's breach or failure to comply with any of its  
2 obligations contained in this Permit, or (2) negligent or willful acts, errors, omissions  
3 or misrepresentations committed by Permittee, its officers, employees, agents,  
4 subcontractors, or anyone under Permittee's control, in the performance of work or  
5 services under this Permit (collectively "Claims" or individually "Claim").

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

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

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

27 10. NO TITLE. Permittee and City acknowledge and agree that, by this  
28 Permit, Permittee does not acquire any right, title or interest of any kind in the City-owned

1 Property, including but not limited to any leasehold interest. Permittee shall not allow the  
2 City-owned Property to be used by anyone other than a Permittee Party or for any other  
3 purpose than stated in this Permit. Notwithstanding any language to the contrary in this  
4 Permit, if a court of competent jurisdiction deems this Permit to be a lease, then Permittee  
5 waives any right of redemption under any existing or future law in the event that the City  
6 removes it from the City-owned Property and agrees that, if the manner or method used  
7 by the City in ending any right held by Permittee under this Permit gives to Permittee a  
8 cause of action similar to or based on damages that would otherwise arise in connection  
9 with unlawful detainer, then the total amount of damages to which Permittee would be  
10 entitled in such action shall be One Dollar. Permittee agrees that this Section may be filed  
11 in such action and that, when so filed, it shall be a stipulation by Permittee fixing the total  
12 damages to which Permittee is entitled in such action.

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

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

22 13. NOTICE. Any notice or approval given under this Permit shall be in  
23 writing and personally delivered or deposited in the U.S. Postal Service, registered or  
24 certified, return receipt, to the City of Long Beach, Department of Parks, Recreation and  
25 Marine at 2760 Studebaker Road, Long Beach, CA 90815, Attn: Contract Management  
26 Division. Notice shall be deemed given on the date personal delivery is made or on the  
27 date shown on the return receipt, whichever first occurs.

28 14. CONDITION AFTER ENTRY. After the entry of any Permittee Party

1 on the City-owned property, Permittee shall return the City-owned property in as good  
2 condition or better condition as the City-owned property was in prior to such entry,  
3 reasonable wear and tear excepted.

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

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

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

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

23 It is the policy of City to encourage the participation of Disadvantaged,  
24 Minority and Women-owned Business Enterprises in City's procurement process, and  
25 Permittee agrees to use its best efforts to carry out this policy in the hiring of Contractors  
26 to the fullest extent consistent with the efficient performance of this Permit. Permittee may  
27 rely on written representations by consultants and subcontractors regarding their status.  
28 Permittee shall report to City in May or in December or, in the case of short-term



1 agreements, prior to invoicing for final payment, the names of all sub consultants and  
2 contractors hired by Permittee for this Project and information on whether or not they are  
3 a Disadvantaged, Minority or Woman-owned Business Enterprise, as defined in Section 8  
4 of the Small Business Act (15 U.S.C. Section 637)

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

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

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

17 22. MISCELLANEOUS.

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

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

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

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

28 E. On the expiration or revocation of this Permit, Permittee agrees

1 to and shall execute such documents, in recordable form if so requested, as the City  
2 deems reasonably necessary to end the Permit and remove the Permit as an  
3 encumbrance on the City-owned Property.

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

8 G. This Permit is not intended or entered for the purpose of  
9 creating any benefit or right for any person or entity that is not a signatory or a  
10 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

July 28, 2021

By [Signature]  
Name Emelda Suarez  
Title Executive Director

July 28, 2021

By [Signature]  
Name Brian Trimble  
Title Board President

"Permittee"

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

, 2021

By [Signature]  
Director

"Commission"

This Right of Entry Permit is approved as to form on

, 2021.

CHARLES PARKIN, City Attorney

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

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach, CA 90802-4664

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

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

6 July 28, 2021

By [Signature]  
Name Emelda Suarez  
Title Executive Director

8 July 28, 2021

By [Signature]  
Name Brian Trimble  
Title Board President

11 "Permittee"

12 PARKS AND RECREATION  
13 COMMISSION OF THE CITY OF LONG  
14 BEACH, CALIFORNIA

15 \_\_\_\_\_, 2021

By \_\_\_\_\_  
Director

16 "Commission"

17 This Right of Entry Permit is approved as to form on

18 August 2, 2021.

20 CHARLES PARKIN, City Attorney

21 By [Signature]  
Deputy

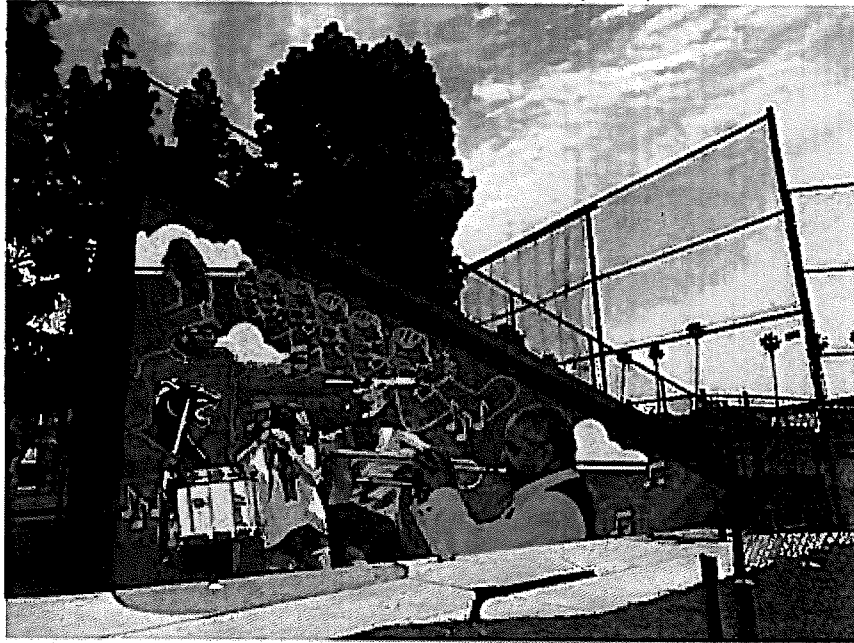
EXHIBIT “A”

## Attachment A

### Mural Rendering

Dimensions: 1 Bleacher Backside: 19 ft x 54 ft

2 Bleacher Sides: 19ft x 35 ft (each)



**Location:**  
Houghton Park, 6301 Myrtle Avenue

