

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

RIGHT-OF-ENTRY PERMIT

33336

THIS RIGHT-OF-ENTRY PERMIT is made and entered, in duplicate, as of November 21, 2013 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on November 19, 2013, by and between CHRIS KELLEY, Inc., a California corporation doing business as CHILDS PLAY, whose address is 2910 Oak Street, Santa Ana, CA 92707 ("Permittee"), and the CITY OF LONG BEACH ("City"), a municipal corporation.

WHEREAS, Permittee intends to enter City-owned property at Coolidge Park, located at 352 East Neece Street, for the purpose of installing donated improvements; and

WHEREAS, because the work is on public property, the City desires to enter this Agreement to allow Permittee or its contractor to perform the desired work;

NOW, THEREFORE, in consideration of the mutual terms and conditions of this Right-of-Entry Permit, the parties agree as follows:

1. Permittee shall install donated improvements as shown on Exhibit "A" attached hereto. "Permittee" shall comply or cause its contractor to comply with all applicable laws and regulations with respect to the installation, including maintaining a safe environment for members of the public in the vicinity of the work.

2. Access. City grants to Permittee, its contractors, agents and employees (collectively, the "Permittee Parties"; individually, a "Permittee Party") a nonexclusive right to enter the City-owned Premises for the purpose of installing donated improvements. City acknowledges that the permission granted by this Permit may include placing, using and leaving equipment and materials, provided the location of equipment and materials shall first be approved by the City Manager or his designee.

3. Time of Use. Permittee Parties shall enter City-owned Property in accordance with this Permit during the normal business hours of City and on forty-eight (48) hours prior notice to the City, which notice may be oral and shall be given to the

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CITY OF LONG BEACH
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1 Manager of Maintenance Operations for the City's Department of Parks, Recreation and
2 Marine.

3 4. Duration of Permit.

4 A. Permission to enter shall begin on November 20, 2013 and,
5 unless expanded in writing, shall end on November 19, 2014, unless sooner
6 terminated as provided in this Permit, unless the services to be performed
7 hereunder or the project is completed sooner.

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

16 5. Insurance.

17 As a condition precedent to the effectiveness of this Permit, Permittee shall
18 procure and maintain at Permittee's expense for the duration of the Permit from an
19 insurance company that is admitted to write insurance in California or from authorized
20 non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M.
21 Best Company:

22 (a) Commercial general liability insurance equivalent in scope to ISO
23 form CG 00 01 11 85 or CG 00 01 10 93 in an amount not less than One Million
24 Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00)
25 general aggregate. Such coverage shall include but not be limited to broad form
26 contractual liability, cross liability, independent contractors liability, and products
27 and completed operations liability. The City, its officials, employees and agents
28 shall be named as additional insureds by endorsement on the City's endorsement

1 form or on an endorsement equivalent in scope to ISO form CG 20 26 11 85, and
2 this insurance shall contain no special limitations on the scope of protection given
3 to the City, its officials, employees and commissions.

4 (b) Workers' compensation insurance as required by the California
5 Labor Code and employer's liability insurance in an amount not less than One
6 Million Dollars (\$1,000,000.00) per accident or occupational illness.

7 (c) "All Risk" property insurance in an amount sufficient to cover the full
8 replacement value of Permittee's personal property at the permit area.

9 (d) Commercial automobile liability insurance equivalent in scope to ISO
10 form CA 00 01 06 92 covering Auto Symbol 1 (Any Auto), in an amount not less
11 than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per
12 accident.

13 Any self-insurance program shall protect the City, its officials, employees
14 and agents in the same manner and to the same extent as they would have been
15 protected had the policy or policies not contained retention provisions. Each insurance
16 policy shall be endorsed to state that coverage shall not be suspended, voided or
17 canceled by either party except after thirty (30) days prior written notice to City, and shall
18 be primary and not contributing to any other insurance or self-insurance maintained by
19 City, its officials, employees and agents.

20 Permittee shall require that all contractors and subcontractors which
21 Permittee uses in connection with this Permit maintain insurance in compliance with this
22 Section unless otherwise agreed in writing by City's Risk Manager or designee.

23 Prior to the start of the term of this Permit, Permittee shall deliver to City
24 certificates of insurance and required endorsements, including any insurance required of
25 Permittee's contractors and subcontractors, for approval as to sufficiency and form. The
26 certificates and endorsements shall contain the original signature of a person authorized
27 by that insurer to bind coverage on its behalf. In addition, Permittee shall, at least thirty
28 (30) days prior to expiration of the insurance required hereunder, furnish to the City

1 certificates of insurance and endorsements evidencing renewal of such insurance. City
2 reserves the right to require complete certified copies of all policies of Permittee or
3 Permittee's contractors or subcontractors, at any time. Permittee shall make available to
4 the City all books, records and other information relating to the insurance coverage
5 required herein during normal business hours.

6 Any modification or waiver of the insurance requirements herein shall only
7 be made with the written approval of the City's Risk Manager or designee.

8 This section shall not be construed or deemed as a limitation on liability
9 relating to Permittee hereunder or as full performance of or compliance with the
10 indemnification provisions herein.

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

18 7. Indemnification. Permittee shall indemnify and hold harmless the
19 City, its Boards, commissions, their officials, and employees from and against any and all
20 liability, claims, demands, damage, causes of action, loss, proceedings, penalties, costs
21 and expenses (including but not limited to attorney's fees, court costs, and expert and
22 witness fees) (collectively "Claims" or individually "Claim"), except for those arising out of
23 the City's negligence. The City indemnifies Permittee against any and all claims arising
24 out of City's negligence. Claims include by way of example but are not limited to: Claims
25 for property damage, personal injury or death arising, in whole or in part, from any
26 negligent act or omission of Permittee, its officers, employees, agents, invitees,
27 contractors, subcontractors, or anyone under Permittee's control (collectively
28 "Indemnitor"); Permittee's breach of this Permit; misrepresentation; willful misconduct;

1 and Claims by any employee of Indemnitor relating in any way to worker's compensation.
2 Independent of the indemnification duty and as a free-standing duty on the part of
3 Permittee, Permittee shall defend City and shall continue such defense until the Claim is
4 resolved, whether by settlement, judgment or otherwise. No finding or judgment of
5 negligence, fault, breach, or the like on the part of Indemnitor shall be required for the
6 duty to defend to arise. For purposes of the duty to defend, Claim shall include
7 allegations. Permittee shall give to the City notice of any Claim within ten (10) calendar
8 days. Likewise, the City shall notify Permittee of any Claim, shall tender the defense of
9 such Claim to Permittee, and shall assist Permittee, as may be reasonably requested, in
10 such defense.

11 8. No Title. Permittee and City acknowledge and agree that, by this
12 Permit, Permittee does not acquire any right, title or interest of any kind in the City-owned
13 Property, including but not limited to any leasehold interest. Permittee shall not allow the
14 City-owned Property to be used by anyone other than a Permittee Party or for any other
15 purpose than stated in this Permit.

16 9. No Assignment. Permittee shall not assign this Permit or the
17 permission granted by this Permit. Neither this Permit nor any interest in it shall be
18 subject to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or
19 receivership. Any attempted assignment or other transfer that is not approved by the City
20 Manager shall be void and confer no right of entry on the purported assignee or
21 transferee.

22 10. Condition After Entry. After the entry of any Permittee Party on the
23 City-owned Property, Permittee shall return the City-owned Property in as good condition
24 or better condition as the City-owned Property was in prior to such entry, reasonable
25 wear and tear excepted.

26 11. Notice. Any notice or approval given under this Permit shall be in
27 writing and personally delivered or deposited in the U.S. Postal Service, registered or
28 certified, return receipt, to the City of Long Beach, Department of Parks, Recreation and

1 Marine at 2760 Studebaker Road, Long Beach, CA 90815 Attn: Contract Management
2 Division and to Madrid Equipment Rental, Inc. at the address listed above. Notice shall
3 be deemed given on the date personal delivery is made or on the date shown on the
4 return receipt, whichever first occurs.

5 12. Consideration. This Permit is granted in consideration of the
6 Los Angeles Clippers' making payment to Permittee and donating Permittee's services at
7 Coolidge Park to the City.

8 13. Improvements. Permittee Parties shall not install, construct, erect or
9 maintain any structure or improvements on the City-owned Property except as described
10 herein.

11 14. No Limitations on City. The Permit shall not limit the City's right or
12 power to construct, erect, build, demolish, move or otherwise modify any structures,
13 buildings, landscaping or any other type of improvement on, over, in, or under the City-
14 owned Property.

15 15. No Release. The expiration or revocation of this Permit shall not
16 release either party from any liability or obligation which accrued prior to such expiration
17 or revocation.

18 16. Utilities and Security. Permittee shall not use any City utilities at any
19 time during this Permit without prior written authorization from the City Manager or his
20 designee. The City shall not have any obligation to Permittee to provide utilities, clean-up,
21 or security on the City-owned Property with respect to the right of entry granted by this
22 Permit. Permittee shall be responsible for removing all trash and debris from the site.

23 17. Compliance with Laws. Permittee Parties shall comply with all
24 applicable laws, rules, regulations and ordinances with respect to their activities on the
25 City-owned Property.

26 18. Miscellaneous.

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

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Each party warrants and represents that the person(s) signing on behalf of that party are duly authorized to bind that party to the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement with all formalities required by law as of the date first stated above.

CHRIS KELLEY, Inc., a California corporation dba CHILDS PLAY

December 9th, 2013

By 
Signature

President
Title

/, 2013

By _____
Signature

Title

"Permittee"

CITY OF LONG BEACH, a municipal corporation

12.31, 2013

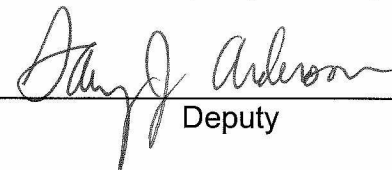
By  Assistant City Manager
City Manager

"City"

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Right of Entry Permit is approved as to form on Dec. 13, 2013.

CHARLES PARKIN, City Attorney

By  Deputy

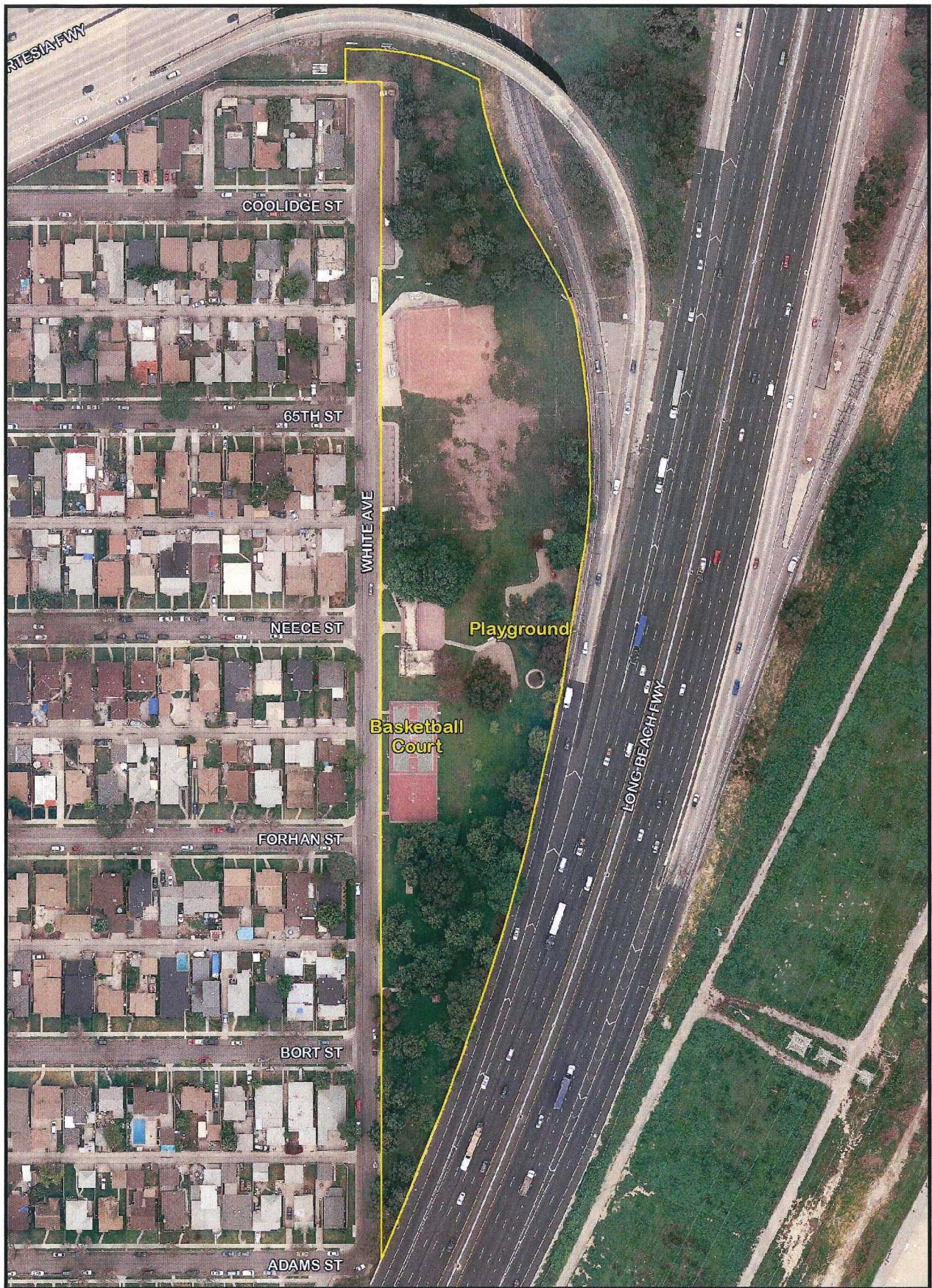


Exhibit A Coolidge Park

