

REVOCABLE USE PERMIT

34956

THIS REVOCABLE USE PERMIT is issued and granted as of April 4, 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 April 3, 2018, by and between the CITY OF LONG BEACH, a municipal corporation ("City") and LAGOON PLAY GROUP, a California nonprofit corporation ("Permittee"), with offices located at 5119 E. Colorado Street, Long Beach, California 90814-1838, to use the facility described below, subject to the following terms and conditions.

1. USE.

A. Preschool Classroom and Joint Use Restrooms. Subject to and on the terms and conditions of this Permit, Permittee shall have the non-exclusive use of the indoor preschool classroom, along with non-exclusive use of the joint use restrooms, located in the Model Boat Shop/preschool building adjacent to the Colorado Lagoon, shown on Exhibit "A", attached hereto and incorporated herein (the "Permit Area"). Permittee may use the Permit Area to operate a parent-participation preschool. The preschool meets on Monday through Friday, excluding school holidays, from 8:00 a.m. until 3:00 p.m., or on the days and hours approved by the Director of Parks, Recreation and Marine ("Director").

B. Joint Use Outdoor Area. Permittee shall have exclusive use of the joint use outdoor area, which includes the preschool playground, during the Permit term of each calendar year. During the last half of June and the months of July and August, City shall have exclusive use of the joint use outdoor area for City summer programs.

C. Model Boat Shop Area and Joint Use Garage Bay. Permittee may, at the discretion of the Director, use the joint use garage bay to conduct the preschool program during the Permit term. Permittee agrees to remove its property by the end of the Permit term so that City may access the Model Boat Shop for

1 summer programming. The Model Boat Shop area is specifically restricted for City
2 use only.

3 D. Permittee acknowledges and agrees that, by this Permit,
4 Permittee does not acquire any right, title, or interest in the Permit Area, including
5 the right to possession and control, but acquires only the mere right to use.
6 Permittee acknowledges and agrees that this Permit shall not be deemed a lease
7 for any purpose.

8 2. TERM.

9 A. The term of this Permit shall commence at midnight on
10 September 1, 2018, and shall terminate at 11:59 p.m. on June 10, 2023, unless
11 sooner terminated as provided in this Permit. The Permit term shall observe the
12 Long Beach Unified School District's traditional school year, and will begin one (1)
13 week after the start of the school year, and conclude one (1) week before the end
14 of the school year. The term may be extended for one (1) additional five-year period
15 at the discretion of the City Manager.

16 B. Permittee agrees that nothing contained in this Permit creates
17 any right in Permittee for any relocation assistance or payment pursuant to the
18 provisions of Title 1, Division 7, Chapter 16 of the California Government Code from
19 the City on expiration or revocation of this Permit.

20 3. TERMINATION. Either party shall have the right to terminate this
21 Permit by giving thirty (30) calendar days prior written notice to the other party.

22 4. PERMIT FEE. Permittee shall pay to the City four hundred fifty dollars
23 (\$450) in annual rent, due by September 30th of each Permit year. The annual rent will
24 cover the cost of City-provided utilities and basic maintenance of all Permit locations. The
25 Permit fee may increase during the Permit term, as authorized through the City's normal
26 budget process.

27 5. UTILITIES. City shall provide and pay for all utilities, including
28 telephone, water, gas, and electricity. No internet service shall be provided nor paid for by

1 the City.

2 6. MAINTENANCE. City shall provide limited basic repairs to keep the
3 Permit Area habitable, Permittee shall maintain the joint use outdoor area in a safe and
4 clean manner.

5 7. IMPROVEMENTS. Permittee, at its sole cost and expense, may
6 install, erect, or make improvements or repairs to the Permit Area, upon prior written
7 approval by the Director. All approved improvements shall become the property of the
8 City, unless otherwise stated in writing by the Director.

9 8. PARKING. City and Permittee agree there is no expectation for City-
10 provided parking.

11 9. FINGERPRINTING. Pursuant to City policies regarding adult activity
12 with children in City parks, Permittee shall ensure that all teachers, parents or guardians,
13 and volunteer participants are fingerprinted through Live Scan, as a part of the background
14 check process, prior to teaching and/or interacting with children.

15 10. INSURANCE.

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

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

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

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

8 iii. If applicable, "All Risk" property insurance in an amount
9 sufficient to cover the full replacement value of Permittee's personal property
10 at the Permit Area.

11 iv. If applicable, commercial automobile liability insurance
12 equivalent in scope to ISO form CA 00 01 06 92 covering Auto Symbol 1 (Any
13 Auto), in an amount not less than Five Hundred Thousand Dollars
14 (\$500,000.00) combined single limit per accident.

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

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

26 D. Prior to the start of the term of this Permit, Permittee shall
27 deliver to City certificates of insurance and required endorsements, including any
28 insurance required of Permittee's contractors and subcontractors, for approval as

1 to sufficiency and form. The certificates and endorsements shall contain the original
2 signature of a person authorized by that insurer to bind coverage on its behalf. In
3 addition, Permittee shall, at least thirty (30) days prior to expiration of the insurance
4 required hereunder, furnish to the City certificates of insurance and endorsements
5 evidencing renewal of such insurance. City reserves the right to require complete
6 certified copies of all policies of Permittee or Permittee's contractors or
7 subcontractors, at any time. Permittee shall make available to the City all books,
8 records and other information relating to the insurance coverage required herein
9 during normal business hours.

10 E. Any modification or waiver of the insurance requirements
11 herein shall only be made with the written approval of the City's Risk Manager or
12 designee.

13 F. This section shall not be construed or deemed as a limitation
14 on liability relating to Permittee hereunder or as full performance of or compliance
15 with the indemnification provisions herein.

16 11. HAZARDOUS MATERIALS. No goods, merchandise, supplies,
17 personal property, materials, or items of any kind shall be kept, stored, or sold in, on or at
18 the Permit Area which are in any way explosive or hazardous. Permittee shall comply with
19 California Health and Safety Code Section 25359.7 or its successor statute regarding
20 notice to the City on discovery by Permittee of the presence or suspected presence of any
21 hazardous substance in, on or at the Permit Area.

22 12. NO ASSIGNMENT. Permittee shall not assign or transfer this Permit
23 or any interest herein, nor sublease the Permit Area or any part thereof, and any attempted
24 transfer, assignment, or sublease shall result in immediate revocation of this Permit.
25 Neither this Permit nor any interest in it shall be subject to transfer by attachment,
26 execution, proceedings in solvency or bankruptcy (voluntary or involuntary), or
27 receivership. Any attempted assignment or transfer shall be a default and shall be voided
28 and shall convey no interest.

1 13. LICENSES, PERMITS, AND TAXES. Permittee shall obtain and pay
2 for all licenses and permits required for its use of the Permit Area and operations thereon.
3 In addition, Permittee shall promptly pay when due all taxes levied on its personal property
4 in, on or at the Permit Area and any possessory interest taxes attributable to this Permit.

5 14. CONTROL OF PERMIT AREA. The City Manager shall have absolute
6 and full control of the Permit Area during this Permit. If necessary for the health, welfare
7 or safety of the general public, or as a result of the expiration or revocation of this Permit,
8 the City Manager shall have the right to enter the Permit Area and take possession thereof
9 immediately. The City Manager reserves the right to enter the Permit Area at any and all
10 reasonable times including the times and days of Permittee's use. City reserves the right
11 to do any work at the Permit Area for the preservation, operation and maintenance of the
12 Permit Area. City will inform Permittee when such work is going to be done if it impacts
13 Permittee's use.

14 15. COMPLIANCE. Permittee shall comply with all applicable laws, rules,
15 regulations, and directives of the City Manager relating to the use of the Permit Area.
16 Failure to do so may result in the immediate revocation of this Permit.

17 16. SIGNS AND ADVERTISEMENTS. All signs, advertising or
18 promotional material placed in, on or at the Permit Area shall be approved, in advance, in
19 writing by the City Manager. Permittee shall pay the cost of production, maintenance and
20 repair of said signs, advertising or promotional material.

21 17. NONDISCRIMINATION.

22 A. During its use of the Permit Area and operations, Permittee and
23 its employees shall not discriminate on the basis of race, religion, national origin,
24 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
25 disability by refusing to furnish such person any accommodation, facility, service, or
26 privilege offered to or enjoyed by the general public. Nor shall Permittee publicize
27 its operations in any manner that would directly or inferentially reflect on or question
28 the acceptability of the patronage of any person on any of these bases.

1 B. Permittee shall not discriminate against any employee or
2 applicant for employment on any of these bases. Permittee shall take affirmative
3 action to ensure that applicants are employed and that employees are treated
4 without regard to any of said bases. Such action shall include but not be limited to
5 employment upgrading, demotion, transfer, recruitment or recruitment advertising,
6 layoff or termination, rates of pay or other forms of compensation, and selection for
7 training, including apprenticeship.

8 18. HEALTH AND SAFETY. Permittee shall correct safety deficiencies
9 and violations of safety practices immediately and shall cooperate fully with the City
10 Manager in the investigation of accidents occurring in, on or at the Permit Area. In the
11 event of injury to a patron or customer, Permittee shall see that the injured person receives
12 prompt and qualified medical attention. If Permittee fails to correct unsafe or unhealthy
13 conditions which have led or, in the opinion of the City, could lead to injury, the City
14 Manager may immediately revoke this Permit.

15 19. DEFAULT.

16 A. If Permittee fails or refuses to comply with any term or condition
17 of this Permit after notice of such failure or refusal from the City Manager, then the
18 City Manager may immediately revoke this Permit. The acceptance of all or part of
19 the payment of any Permit Fee after default shall not be deemed a waiver of any
20 right to revoke this Permit on account of such default. Any waiver by the City of a
21 default shall be in writing, and shall not be construed as or constitute a waiver of
22 any subsequent default of the same or any other term or condition of this Permit.

23 B. Failure to pay, when due, any fees, charges, assessments, or
24 taxes due the City including but not limited to permit fees, business license fees,
25 and charges for refuse service, gas, water, sewer or other utility provided by City
26 shall be a default under this Permit.

27 20. NO WAIVER. The failure or delay of the City to insist on strict
28 compliance with any provision of this Permit shall not be deemed a waiver of any right or

1 remedy that City may have and shall not be deemed a waiver of any subsequent or other
2 failure to comply with any provision of this Permit. The receipt and acceptance of all or a
3 part of the payment of a delinquent Permit Fee shall constitute only a waiver of timely
4 payment for the particular Permit Fee payment involved and shall not constitute a waiver
5 of any other failure to comply.

6 21. CLAIMS. The City, its officials, employees, and commissions shall not
7 be liable for and Permittee hereby waives all claims against the City, its commissions,
8 officials and employees for loss, theft, or damage to equipment, furniture, trade fixtures,
9 furnishings, records, and other personal property in, on or at the Permit Area, for loss or
10 damage to Permittee's business, or injury to or death of persons in, on or at the Permit
11 Area from any cause except to the extent caused by the gross negligence or willful
12 misconduct of the City, its commissions, officials and employees.

13 22. ABANDONMENT. If Permittee abandons the Permit Area or
14 discontinues use thereof by operation of law or otherwise, title to any personal property
15 belonging to Permittee and left in, on or at the Permit Area forty-five (45) days after
16 abandonment or discontinuance of use shall be deemed to have been transferred to the
17 City. The City shall thereafter have the right to remove and to dispose of said property
18 without liability to Permittee or to any person claiming under Permittee, and shall have no
19 duty to account therefore. Permittee hereby names the City Manager as Permittee's
20 attorney in fact to execute and deliver such documents or instruments as may be
21 reasonably required to dispose of such property and transfer title thereto.

22 23. REVOCAION. In addition to other provisions herein providing for
23 immediate revocation, the City Manager may revoke this Permit immediately (a) if the City
24 Manager determines that Permittee has violated or failed to comply with any provision of
25 this Permit unless another remedy is stated herein; (b) if the City Manager has evidence of
26 misrepresentation or fraud by Permittee; (c) if the City has evidence that Permittee acted
27 unfairly or in bad faith in dealing with the public; or (d) if necessary for the health, welfare
28 or safety of the public. On revocation, Permittee shall immediately cease its use of the

1 Permit Area and its operations thereunder and remove its property from the Permit Area.

2 24. INDEMNIFICATION.

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

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

22 25. NOTICE. Notice shall be in writing and personally delivered or
23 deposited in the U.S. Postal Service, first class, postage prepaid to the City of Long Beach
24 at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager, and to
25 Permittee at the address first stated above. Change of address shall be given in the same
26 manner as described in this Section for other notices. Notice shall be deemed given on
27 the date deposited in the mail or on the date personal delivery is made, whichever is
28 applicable and occurs first.

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

1 26. POSSESSORY INTEREST. This Permit may create a possessory
2 interest subject to taxation and, if so, Permittee shall pay said tax prior to delinquency.
3 Evidence of payment shall be given to City upon request.

4 27. MISCELLANEOUS. This Permit shall be governed by and construed
5 in accordance with the laws of the State of California. This Permit constitutes the entire
6 understanding between the City and Permittee and supersedes all other agreements, oral
7 or written, with respect to the subject matter herein. Revocation or expiration of this Permit
8 shall not affect rights or liability that accrued hereunder prior to such revocation or
9 expiration. This Permit shall not be construed or interpreted against either the City or
10 Permittee as the drafter. This Permit is not intended or entered for the purpose of creating
11 any benefit or right for any person or entity that is not a signatory to this Permit.

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

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Permittee hereby accepts and agrees to abide by the above terms and conditions.

May 22, 2018

LAGOON PLAY GROUP, a California nonprofit corporation

By: [Signature]
Name ROSE VANDERCAPELLEN
Title President

May 22, 2018

By: [Signature]
Name Tiffany L. Carrington
Title Senior Vice President

Tom Modica
Assistant City Manager

"Permittee"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

CITY OF LONG BEACH, a municipal corporation

June 20, 2018

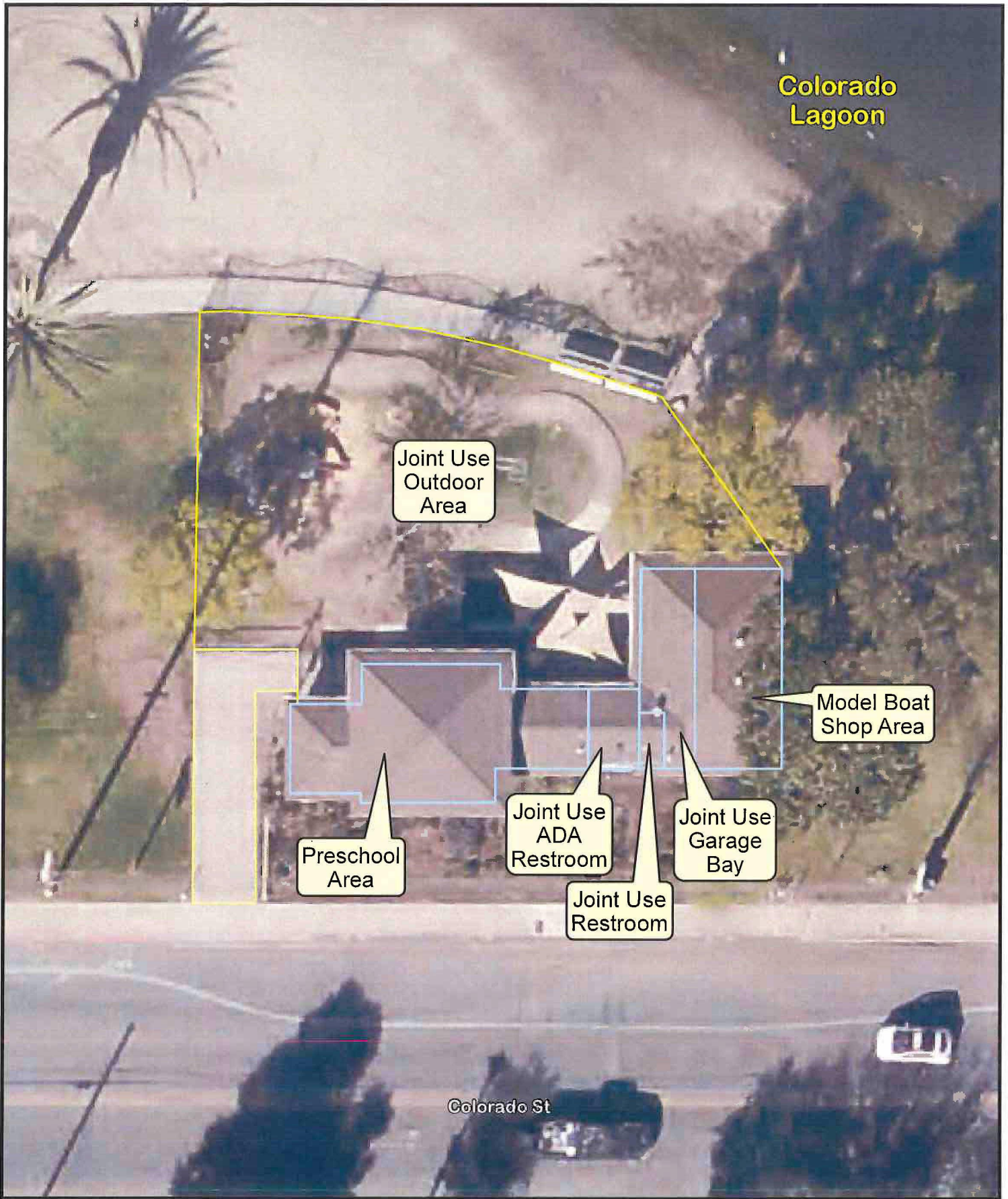
By: [Signature]
City Manager

"City"

This Revocable Use Permit is approved as to form on 5/31, 2018.

CHARLES PARKIN, City Attorney

By: [Signature]
Deputy



Attachment
Lagoon Play Group
Colorado Lagoon, Long Beach, CA

