



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



MVE

RECEIVED
CITY OF SAN DIEGO

01 NOV 13 PM 2:22

BILL OF SALE

REAL ESTATE ASSETS DEPT.

KNOW ALL MEN BY THESE PRESENTS:

THAT CINDERELLA CARRIAGE COMPANY

the undersigned, for lawful and valuable consideration, the receipt of which is hereby acknowledged, do(es)

hereby grant, transfer, sell and convey to:

BRISCOE GROUP, a California corporation

the personal property described as:

All horses, carriages, tack and equipment, all office furniture, fixtures and equipment, all inventory, supplies and other tangible assets, all permits pertaining to the business, to the extent they are assignable, all of seller's rights under the month to month Right of Entry Permit for the Old Police Station located at 801 West Market Street, San Diego, CA 92101, leasehold interest to 432 F Street; San Diego, CA, leasehold improvements, leasehold interest in a 1996 Ford F-350 truck, one truck and one trailer, all of seller's rights under the Radio Maintenance Agreement, all of seller's rights under the Fly Guard System Lease, The Cinderella Carriage Company and Carriage Stop Cafe' trade names and logos, all other intangible assets of the business, including without limitation business telephone numbers and goodwill.

of those certain businesses known as CINDERELLA CARRIAGE COMPANY located at 801 West Market Street

in the City of San Diego, County of San Diego, California 92101 and CARRIAGE STOP CAFE' located at 432 F Street

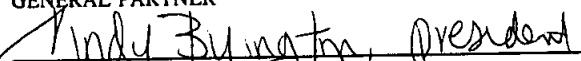
in the City of San Diego, County of San Diego, California 92101.

Seller(s) do(es) covenant and agree to warrant and defend the title to said property hereby conveyed against the just and lawful claims and demands of all persons whomsoever. This conveyance shall endure to the benefit of and be binding upon the heirs, assigns, executors and administrators of buyer and seller respectively.

DATED: February 9, 2000

CINDERELLA CARRIAGE COMPANY, a California Limited Partnership

BY: CARRIAGE MANAGEMENT, a division of Technick Development International,
GENERAL PARTNER


Cindy Byington, President



THE CITY OF

SAN DIEGO

DUPLICATE

PROPERTY DEPARTMENT, MAIL STATION 51-A

SECURITY PACIFIC PLAZA, 1200 THIRD AVENUE, SUITE 1700

SAN DIEGO, CALIFORNIA 92101-4199

TELEPHONE: (619) 236-6020

FAX: (619) 696-0590

RECEIVED

FEB 26 1990

PROPERTY DEPT.

February 12, 1990

File: Leases - Byington

Ms. Cindy Byington
Cinderella Carriage Company
P. O. Box 126062
San Diego, CA 92112-6062

Re: Renewal - Right of Entry Permit Dated July 1, 1988

Please be advised that it is our intention to renew the agreement, subject to City Council authorization, on a year-to-year basis, and subject to a 30-day termination provision by either party. As discussed with Jane Humes of this office, your agreement is also being revised to delete the rental payment of 10 percent and require a flat rate of \$50 per month per carriage. Your rent under this flat rate arrangement would be due on the first day of each month and will be subject to a 5 percent late penalty if it is not paid by the first or a 10 percent late penalty if it is not paid by the 15th of each month. All other terms and conditions of the July 1, 1988 Right of Entry Permit will remain in full force and effect. The year-to-year extension and applicable flat rate rental payments will be effective upon the first day of the month following approval of the City Council.

In addition, you asked Jane to provide you with a final determination and opinion from the City Attorney regarding the necessity for you to operate under Right of Entry Permit from the City since you are already licensed by Paratransit. The City Attorney advises that if you are operating in the park, you are also subject to the requirements of Municipal Code Section 63.02.14 (copy enclosed).

When you sign this letter agreement, it shall constitute an offer from you to the City and in no event shall this offer be deemed accepted, nor shall it become effective until necessary approval by the City Council has been obtained and all rents due City under the current permit are paid in full.

Please indicate your acceptance of the foregoing terms and conditions by signing the enclosed copy of this letter, and returning it to Jane Humes. It would be sincerely appreciated if you would sign and return the letter

DOCUMENT NO. RR-275872

FILED JUN 11 1990

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

within the next five days so that further processing to the City Council can take place. If you should have any questions, you may contact Jane at 236-5774.

Very truly yours,


Don Barone, Property Services Supervisor
for the City Manager

DSB:JEH:st(43-2)

Enclosures

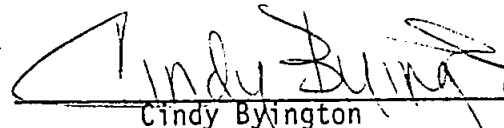
cc: Jack Krasovich
Penny Scott
Susan Drake

ABOVE ACCEPTED AND ACKNOWLEDGED:

Date:

2/20/90

By:


Cindy Byington

Pursuant to the order of the City Council of The City of San Diego, California, CINDY BYINGTON

is employed on the terms stated in the foregoing letter.

RESOLUTION No. R- **275872**
Adopted **JUN 11 1990**

Adopted JUN 11 1990

~~Property Director~~

ATTEST:

Ellen Bovard
Deputy City Clerk

Deputy City Clerk

Approved as to form and legality:

JOHN W. WITT, City Attorney

By

Deputy City Attorney

R 275872

(R-90-1479)

RESOLUTION NUMBER R- 275872

ADOPTED ON JUN 11 1990

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to extend the agreement with CINDY BYINGTON, on a year-to-year basis and subject to termination on 30 days notice, for the horsedrawn carriage concession in Balboa Park, under the terms and conditions set forth in that extension to agreement on file in the office of the City Clerk as Document No. RR- 275872.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
03/19/90
Or.Dept:Prop.
R-90-1479
Form=r.none

Passed and adopted by the Council of The City of San Diego on
June 11, 1990 by the following vote:

YEAS: Roberts, Hartley, Pratt, Bernhardt, Henderson, McCarty;
Filner, O'Connor.

NAYS: None.

NOT PRESENT: Wolfsheimer.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: ELLEN BOVARD, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 275872, passed
and adopted by the Council of The City of San Diego, California
on JUN 11 1990.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Ellen Bovard, Deputy

CITY OF SAN DIEGO	
PROPERTY DEPT.	
☐	DIRECTOR
☐	DEPUTY MANAGER
☒	FILE COPY
☐	CHRON. COPY
☐	ORIGINATOR

August 22, 1988

File: Job 219748

Cindy Byington
Cinderella Carriage Company
P. O. Box 126062
San Diego, CA 92112-6062

Re: Right of Entry Permit - Balboa Park

This is to inform you that for the remaining period of your Right of Entry Permit, you may operate your horse-drawn carriage service in Balboa Park with the \$500,000 additional insured insurance coverage.

However, at the termination of your permit, you must submit to the City a "run loss" statement from your insurance company.

In addition, it would behoove you not to obligate your services in Balboa Park after December 31, 1988 unless you have negotiated and confirmed a new Right of Entry Permit with the City.

If you have any questions, please call me at 236-5398.

Cynthia E. Kodama, Property Agent
Property Management Division

CEBK:st(43-2)

cc: Jerry Johnson, Risk Management
Penny Scott, Park & Rec. Dept.
Hal Valderhaug, City Attorney's Office
Susan Drake, Auditor's Office

CITY OF SAN DIEGO	
PROPERTY DEPT.	
☐	DIRECTOR
☐	DEPUTY MANAGER
☒	FILE COPY
☐	CHRON. COPY
☐	ORIGINATOR

June 23, 1988

Files: Property File - R402-1
 Permit File - Cinderella
 Carriage Company
 Job 219748

Cinderella Carriage Company
 P. O. Box 126062
 San Diego, CA 92112-6062

Attention Cindy Byington

Re: Right of Entry Permit - Balboa Park

The City of San Diego ("City") hereby grants permission to Cinderella Carriage Company ("Permittee") to enter upon the above-referenced City-owned property ("premises"), as shown highlighted in yellow on the attached Exhibit "A," upon the following terms and conditions:

1. Permittee's use of the premises shall be limited to a horse-drawn carriage service using Balboa Park streets and parking lots as shown on Exhibit A. Other areas to be used must be approved in writing by the City Manager. A maximum of ~~four~~ ^{two} horse-drawn carriages may be in the park at any given time; however, more than two carriages at any given time requires the Balboa Park District Manager to be given advance written notification.
2. Consideration to City for granting this permit shall be 10 percent of the gross income payable to the City of San Diego by the 10th of the following month.
3. If Permittee fails to pay the rent when due, Permittee will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, Permittee shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties hereto to be appropriate to compensate City for loss resulting from rental delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
4. All rent required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P. O. Box 2289, San Diego, California, 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place of payment may be changed at any time by City upon thirty (30) days written notice to Permittee. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. Permittee assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

5. "Gross income or receipts" as used in this Permit shall include all income resulting from occupancy of the premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by Permittee to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Permittee in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of Permittee. The percentage rent shall be calculated and paid by Permittee on the basis of said gross income whether the income is received by Permittee or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of Permittee for the purpose of calculating the percentage rent hereunder required to be paid by Permittee to City, except as may be otherwise specified by or pursuant to this Permit.
6. Permittee shall, at all times during the permit term, keep or cause to be kept true and complete books, records and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents as necessary to allow City to easily determine the total gross income.
7. All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by City.
8. All Permittee's books of account, records and supporting documentation will be kept for at least three (3) years and made available to City in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the premises. The City, at its

discretion, shall have the right to inspect and audit the business of Permittee, its agents, sublessees, concessionaires and licensees operating on and in connection with the premises as necessary and appropriate for City to determine the amounts of rent due City in compliance with the requirements of this permit.

At City's request, Permittee shall promptly provide, at Permittee's expense, any necessary data to enable City to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of Permittee's receipts and expenses.

9. The full cost of City's audit(s) will be borne by City unless one or both of the following conditions exists, in which case Permittee hereby agrees to pay City's cost of audit(s):
 - a. The audit(s) reveal an underpayment of more than five percent (5%), or more than \$10,000 whichever is less, between the rent due as reported and paid by Permittee pursuant to this permit and rent due as determined by the audit(s); or
 - b. Permittee has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with this section hereof.

Permittee shall pay any deficiency determined by the audit(s) within thirty (30) days of notice thereof by City. City will credit any overpayment against incoming rents. Any overpayment determined after the end of this permit will be refunded by City within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

10. This permit shall be in effect for six months beginning with the first day of the calendar month following execution by the City Manager unless terminated earlier as provided for herein.

11. Permittee certifies that a policy of public liability and property damage insurance, in which "The City of San Diego" is named as an additional insured, has been secured in an amount of not less than ~~\$1 million~~ combined single limit liability and that said policy shall be kept in force for the duration of this permit. A certificate of said insurance shall be filed with the City Property Department upon execution of this permit.

12. Permittee agrees to defend, indemnify, protect, and hold City and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to

*City of SD
only requires
\$500,000*

OB
*\$500,000 has
always been
acceptable*

Permittee's employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of Permittee and its agents, officers, or employees in performing the work or services herein and all expenses of investigating and defending against same; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers, or employees.

13. All risks in connection with Permittee's use of the premises and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee.
14. Permittee shall not use the premises in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the peace of persons in the surrounding area.
15. This permit is revocable at any time by the City of San Diego. It is mutually agreed that the City of San Diego shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this permit, and, further, that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this permit.
16. Permittee recognizes and understands that this permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Permittee further agrees that such tax payment shall not reduce any fee paid the City of San Diego hereunder and that such tax shall be paid by Permittee before becoming delinquent.
17. Permittee shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the premises.
18. Permittee shall not assign any rights granted by this permit nor any interest therein. Any assignment by operation of law shall automatically terminate this permit.
19. No signs shall be displayed on the carriages without the prior written consent of the City Manager.
20. Permittee shall take precautions acceptable to the City Manager to avoid committing horse waste on the premises. Horse waste must be picked up and disposed of immediately.

21. This activity is a Class I project categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

Please acknowledge your agreement to the foregoing terms and conditions on the enclosed copy of this letter and return it to the City Property Department, together with your insurance certificate within 10 days from receipt hereof.

If you should require additional information or have any questions, please call Cindy Kodama, Property Agent, at 236-5398.

Very truly yours,


Maureen A. Stapleton
Deputy City Manager

JLS:CEBK:st(43-5)

Attachments

cc: County Assessor
Auditor
Financial Management
Penny Scott, Park & Rec., Central Div.

THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 6 DAY OF July, 1988.
CINDERELLA CARRIAGE COMPANY

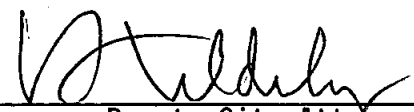
By 
Cindy Byington

CEQA EXEMPTION VERIFIED


David A. Potter
EQD Deputy Director

APPROVED AS TO FORM AND LEGALITY BY:

JOHN W. WITT, City Attorney

By 
Deputy City Attorney



THE CITY OF

SAN DIEGO

CENTRAL DIVISION • 1970 "B" STREET • SAN DIEGO, CALIFORNIA 92102

RECEIVED

JUL 15 1986

PROPERTY DEPT.

PARK AND
RECREATION
DEPARTMENT
236-5700

June 25, 1986

Ms. Cindy Byington
Cinderella Carriage Company
855 "I" Avenue
Coronado, CA 92118

Dear Ms. Byington:

This is to extend your Right of Entry Permit dated August 24, 1983. The permit to provide a horse drawn carriage service in Balboa Park is extended to August 24, 1986, under the same terms and conditions.

In addition you are hereby authorized a hold over on a month to month basis with the same terms and conditions as the Right of Entry Permit issued in August of 1983.

The hold over will start August 24, 1986 and will continue until City Council approves or disapproves a long term agreement. The hold over is subject to a thirty day cancellation notice by the City of San Diego.

You should keep your liability insurance current and continue your monthly payments to the City by the 5th of each month.

If the above is agreeable, please sign and date the copy attached and return the signed copy to my office as soon as possible.

Sincerely,

Marcia McLatchy
District Manager, Balboa Park

MM/pr

cc: Deputy Director, Central
City Auditor
Property Dept.

THE ABOVE IS ACKNOWLEDGED TO AND ACCEPTED THIS

DAY OF July, 1986 by:

Cindy Byington



THE CITY OF

SAN DIEGO

CENTRAL DIVISION • 1970 "B" STREET • SAN DIEGO, CALIFORNIA 92102

PARK AND
RECREATION
DEPARTMENT
236-5700

June 28, 1985

Ms. Cindy Byington
Cinderella Carriage Company
855 "I" Avenue
Coronado, CA 92118

Dear Ms. Byington:

This is to extend your Right of Entry Permit dated August 24, 1983. The permit to provide a horse drawn carriage service in Balboa Park is extended to June 30, 1986, under the same terms and conditions.

Sincerely,

Marcia McLatchy
District Manager, Balboa Park

MM/pr

cc: Deputy Director, Central
City Auditor
Property Dept.



THE CITY OF

SAN DIEGO

CENTRAL DIVISION • 1970 "B" STREET • SAN DIEGO, CALIFORNIA 92102

PARK AND
RECREATION
DEPARTMENT
236-5700

January 10, 1985

Ms. Cindy Byington
Cinderella Carriage Company
855 "I" Avenue
Coronado, CA 92118

Dear Ms. Byington:

This is to extend your Right of Entry Permit dated August 24, 1983. The permit to provide a horse drawn carriage service in Balboa Park is extended to July 1, 1985, under the same terms and conditions.

Sincerely,

Marcia McLatchy
District Manager, Balboa Park

McL/pr

cc: Deputy Director, Central
City Auditor
Property Dept.



THE **CITY OF**
SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIFORNIA 92101

PARK and
RECREATION
DEPARTMENT
236-6643

August 24, 1983

Ms. Cyndy Byington
Cinderella Carriage Company
702 Seventh Avenue
San Diego, CA 92101

Dear Ms. Byington:

Re: Right of Entry Permit, Balboa Park

Permission is, hereby, granted to enter upon the above City-owned property, as shown in yellow on the attached exhibit, upon the following terms and conditions:

1. Permittee's use of the property shall be limited to providing a horse-drawn carriage service using Balboa Park streets and parking lots as shown. Other areas may be used with approval of the Park and Recreation Director or his designee.
2. Consideration for the granting of this permit shall be 10 percent of the gross receipts payable at end of each month. Permittee will be billed monthly in arrears.
3. This Permit shall be in effect August 27, 1983 through February 26, 1984.
4. Permittee certifies that a policy of liability insurance in which "The City of San Diego" is named as an additional insured has been secured in an amount of not less than \$1,000,000 Combined Single Limit Liability, and this policy shall be kept in force for the duration of this Permit. A certificate of insurance shall be filed with the Park and Recreation Department upon execution of this Permit.

5. Permittee shall assume the defense of and indemnify and save the City of San Diego harmless from all claims, expenses and liability of every kind, nature and description, resulting in any manner from the use or condition of the property described and/or from any and all operations conducted by Permittee on City property.
6. All risks in connection with Permittee's operations and use of City property, or in the vicinity thereof shall be borne in full by Permittee.
7. Permittee shall not use the premises in any manner which, in the opinion of the Park and Recreation Department of the City of San Diego, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
8. This Permit is terminable upon 30 day's written notice by either party. It is mutually agreed that the City shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee, as a result of termination of this Permit, and further that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this permit.
9. Permittee recognizes and understands that this may create a possessory interest subject to property taxation and that the Permittee may be subject to the payment of property taxes levied on such interest. Permittee further agrees that such tax payment shall not reduce any fee paid the City hereunder and that any such tax shall be paid by the Permittee before becoming delinquent.
10. Permittee shall, at its sole cost and expense, comply with all the requirements of all Municipal, State, and Federal authorities now in effect or which may hereinafter be in effect, which pertain to the above-referenced City-owned property.

11. Permittee shall not discriminate in any manner against any person on account of race, color, sex, creed, or national origin in permittee's use of premises or the obtaining and holding of employment.
12. Special Provisions:
 - A. Permittee shall maintain complete and accurate records in a manner satisfactory to the Park and Recreation Director or his designee from which City can determine the amounts of all income, subject to percentage rental payment.
 - B. All signs to be displayed must have prior written consent of the Park and Recreation Director or his designee.
 - C. Permittee shall not assign any rights granted by this Permit, nor any interest therein. Any assignment by operation of law shall automatically terminate this Permit.
 - D. The Park and Recreation Director or his designee may upon immediate notice change or restrict access to any portion of the routes or pick-up points shown on the attached exhibit or restrict hours of operation.
 - E. A maximum of four carriages may be operated in the park at any given time.
 - F. The Park and Recreation or his designee shall have the right to inspect records or daily driver logs at any time.

Ms. Cyndy Byington
August 24, 1983
Page 4

Please acknowledge your agreement to the foregoing terms and conditions on the extra copy of this letter and return it to this office by August 26, 1983. If you should require additional information or have any questions, please call Dave Seyfarth at 236-5717.

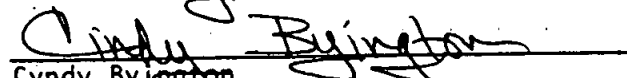
Very truly yours,



ARMAND V. CAMPILLO
PARK AND RECREATION DIRECTOR

DS/rb

THE ABOVE IS ACKNOWLEDGED TO AND ACCEPTED THIS
DAY OF August, 1983 by:


Cyndy Byington

cc: City Auditor
Property Department
Deputy Director, Central