



THE CITY OF SAN DIEGO

Date: August 2, 2013

Mr. David Kinney
Executive Director
Balboa Park Central
1549 El Prado
San Diego, Ca 92101

Dear: Mr. Kinney,

Subject: Right of Entry Permit to utilize the passenger loading zone on Pan American Road East and certain surrounding area Balboa Park parking lots for the purpose of providing valet services to Balboa Park patrons.

The City of San Diego ("City") hereby grants permission to the Balboa Park Central and/or its agent(s) ("Permittee") to enter upon the above-referenced City-owned property ("Permit Area"), as delineated on the attached Exhibit "A", based upon the following terms and conditions:

1. Right to Enter: CITY is the owner of certain real property located at Pan American Road East (the Mall), Spreckels Organ Pavilion, Federal Building, and Inspiration Point parking lots in Balboa Park (the "City Property"). PERMITTEE is being granted the non-exclusive use of a portion of the City Property for a loading zone lane located on Pan American Road East in the existing passenger loading zone, and the non-exclusive use of the Federal Building, Spreckels Organ Pavilion, and Inspiration Point lots for vehicle storage: all within Balboa Park (collectively the "Permit Area"), as more particularly described in Exhibit A: Permit Area attached hereto. Permittee's and/or its agent(s) use of the Permit Area shall be limited to providing valet parking and vehicle storage ("Permit Use") to the patrons of the Prado Restaurant, the Old Globe Theater, and any other institutions in Balboa Park as mutually agreed to by CITY and PERMITTEE during the term of this permit, and for no other purpose whatsoever. All new construction must comply with City design guidelines, regulations, California Building Code Title 24, and Americans with Disability Act standards. Any items that are not pre-approved or not to code will be rejected at the time of walk-through, and must be removed and/or corrected at the Permittee's expense. It is the responsibility of the Permittee or its agent(s) to obtain the necessary permits and inspections required for the work involved and to ensure the improvements to be implemented will adhere to, California Building Code Title

24, ADA, the Park and Recreation Department's *Consultant's Guide to Park Design and Development*, *San Diego Standard Drawings* (Document No. AEC1231063), the *Standard Specifications for Public Works Construction* (Greenbook, 2009 edition), the City of San Diego "*Whitebook*" supplement to the Greenbook (Document No. PITS090110-1), City of San Diego regulations and other local agencies regulations.

2. Fee: The processing fee is hereby waived for this project because valet operations provide a benefit to park patrons and Balboa Park. In addition, Permittee's lease agreement with the City states as follows: Throughout the term of this lease, the Park and Recreation Department of CITY shall issue LESSEE a Right of Entry Permit at no charge designating a public parking lot in Balboa Park from which LESSEE can operate valet parking or shuttle service to and from the restaurant.
3. Contingency: Permittee must validate to the satisfaction of the City that it has all the necessary funds and a 5% contingency on hand to complete the improvement project before beginning the project.
4. Term: This permit shall be in effect upon execution hereof by City and Permittee and approval by the City Attorney, and shall expire on January 02, 2014. Reasonable extension may be granted, if necessary.
5. Commencement of Work and Public Access: Permittee must contact Ryan Robertson, Senior Park Ranger, Developed Regional Parks, 619-235-1120, at least two working days prior to the start date of the project and submit a work schedule. Permittee shall notify Ryan Robertson a minimum of ten (10) working days prior to start of work that may or may not affect the use of any public access in the area as shown on Exhibit "A".
6. Volunteers: Permittee shall be responsible for any work to be done with volunteer labor and ensure that volunteer workers adhere to all conditions as stated in this Right of Entry Permit and work only on the approved scope of work. Any work done that is not previously approved shall be removed at the Permittee's expenses.
7. Insurance: Permittee shall deliver to City a current certificate of insurance for:
 - a) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000); and
 - b) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least Two Million Dollars (\$2,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and

all work pursuant to this Permit. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and

c) Workers' Compensation Insurance, as required by the laws of the State of California for all of Permittee's employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least Two Million Dollars (\$2,000,000).

7.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

7.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the duration of the term of this Permit. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this permit.

7.3 Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to City. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

7.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of Permittee and must be disclosed and acceptable to City at the time evidence of insurance is provided.

7.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, Permittee shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. Permittee shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, Permittee shall immediately notify City and obtain replacement insurance as soon as possible.

7.6 Modification. To assure protection from and against the kind and extent of risk existing with the Permit Area, City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Permit by giving Permittee thirty (30) days prior written notice. Permittee shall also obtain any additional insurance required by City for new improvements, changed

circumstances, or City's reasonable re-evaluation of risk levels related to the Permit Area.

7.7 Accident Reports. Permittee shall immediately report to City any accident causing property damage or injury to persons and related to the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

7.8 Causes of Loss - Special Form Property Insurance. Permittee shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of Permittee's insurable property related to the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. Permittee shall deliver to City a certificate of such insurance.

8. Indemnification. Permittee shall protect, defend, indemnify, and hold City, its elected officials, officers, representatives, agents, 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 Permittee's officers, employees, agents, contractor's, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Permit or Permittee's Operations, including damages arising out of release of hazardous materials, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of City, its elected officials, officers, representatives, agents and employees. City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Permittee shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.
9. No Discrimination: Permittee agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Permittee's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
10. Permittee's Risk: All risks in connection with Permittee's use of the Permit Area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee.

11. Nuisance: Permittee shall not use the Permit Area in any manner which, in the opinion of the Mayor, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
12. Revocable Permit: 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.
13. Compliance with Law: 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 Permit Area.
14. Unauthorized Activities: Permittee shall not engage in any activity on City-owned property other than the activity for which this permit is expressly issued.
15. No Assignment: Permittee shall not assign any rights granted by this permit nor any interest therein without the prior written approval of the Mayor. Approval of any such proposed assignment may be withheld at the sole and absolute discretion of the Mayor. Any assignment by operation of law shall automatically terminate this permit.
16. Signs: No signs shall be displayed on the Permit Area or City property without the prior written consent of the Mayor.
17. Maintenance of Permit Area: The security and safety of the Permit Area affected by work for the Permittee's contract shall be the sole responsibility of Permittee during the entire term of this permit. Permittee shall be responsible for the maintenance and cleanup of the Permit Area immediately following each day's work. Construction fence and warning signs must be properly maintained on a daily basis. Trenches shall not be left open overnight or any other time when work associated with the Permittee's operations are not being actively performed.
18. Staging Area: The Senior Park Ranger must approve any area where building or construction materials or vehicles are requested to be secured on the property overnight. All materials must be secured inside a locked storage container or surrounded by fencing. At no time shall any debris be left on the Permit Area that may be a hazard to public safety.
19. Hazardous Materials: Permittee shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area or the City Property. Permittee and Permittee's agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area or City Property without City's prior written consent. For the purposes of this provision, a release shall include but not

be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

19.1 Remediation. If Permittee's occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a hazardous substance, Permittee shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.

19.2 Indemnity. Permittee shall protect, defend, indemnify, and hold City, harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from Permittee's occupancy, use, development, maintenance, or restoration of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

19.3 Notice of Release. If Permittee knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area or the City Property, Permittee shall immediately notify City and deliver a written report thereof to City within three (3) business days of receipt of the knowledge or cause for belief. If Permittee knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, Permittee shall take all actions necessary to alleviate the danger. Permittee shall notify City immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area or the City Property.

19.4 Environmental Assessment. Upon reasonable cause to believe that Permittee's occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property ("Permittee's Operations"), resulted in any hazardous substance being released on or beneath the Permit Area or the City Property, City may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at Permittee's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by Permittee's Operations on, in, or under the Permit Area or the City Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county,

state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. Permittee shall cause, or if Permittee fails to do so within a reasonable period of time, City may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and Permittee shall pay all costs and expenses therefor.

20. Repairs: Permittee shall be responsible for the repair or replacement of any improvements damaged during the course of construction. This shall include, but not be limited to paving, fencing, irrigation systems, turf, structures, electrical systems and any item determined to be damaged by the Senior Park Ranger, as a result of Permittee's operations. Plants and trees damaged beyond repair shall be replaced with the same species and of similar size and value, at the Permittee's expense. Replaced turf shall be installed sod and not seed or sprigs. Permittee shall also be responsible for all mitigation requirements as a result of impacts to any biological area caused by the Permittee's operations.
21. Vehicular Traffic: All vehicular traffic shall be confined to concrete, asphalt or decomposed aggregate surfaces unless approved otherwise by the Senior Park Ranger prior to the commencement of the Permittee's operations.
22. Return of Property: At the completion of the Permittee's operations, Permittee shall be responsible for returning the Permit Area to its original condition subject to the satisfaction of the City of San Diego Park and Recreation Department.
23. Subcontractors: Permittee shall provide a list of any and all contractors and subcontractors to the Senior Park Ranger including name, address, email, fax and phone number. All work shall be done by contractors licensed within the State of California.
24. Clean Water Act: The Permittee shall comply with the Clean Water Act and prevent construction debris from entering into the existing storm drain systems. The construction project shall 1) use dry clean-up methods for spills and outdoor cleaning, 2) vacuum, sweep and use rags or dry absorbents, 3) properly label, store and dispose of hazardous wastes, 4) rake or sweep dust, litter and sediment, and properly dispose of, in construction trash receptacles, 5) use mops when water is needed to clean, and 6) locate the nearest storm drains and take measures to ensure that construction debris will not enter or be discharged into them.
25. Grading: Due to Storm Water Pollution Prevention Plan requirements, grading, filling, dumping, new planting or fencing beyond what is shown on the approved plans is prohibited unless first approved in writing by the Mayor. Permittee shall not change the surface grade or construct any permanent barriers on the permit area. Any violations will be corrected by Permittee at its sole expense to the

satisfaction of the Mayor and are grounds, at the City's option, for immediate termination of this permit.

26. Pre-Construction Meeting: A minimum of five (5) working days prior to commencement of construction, Permittee shall invite Ryan Robertson, Senior Park Ranger, Developed Regional Parks, 619-235-1120 to the pre-construction meeting. This meeting shall establish points of contact, define means and methods of Permittee's operations and coordinate the work schedule with Park and Recreation operations and scheduled activities.

27. Permittee Contact: Permittee shall provide a designated contact with name and emergency phone number as listed here:

Name: David Kinney_____ Alternate contact: Rick Ingram_____

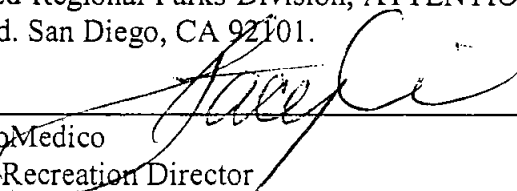
Cell Number: 619-606-5682_____ Cell Number: 619-251-7456_____

Office Number: 619-235-3066 ext. 1105 Office Number: 858-587-8888_____

28. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California

This permit shall take effect once the Permittee has received a signed copy of this permit.

Please acknowledge your agreement to the foregoing terms and conditions on the enclosed duplicate original and three (3) copies of this Right of Entry Permit and return them, with the Certificate of Insurance and relevant Endorsements, to the Park and Recreation Department, Developed Regional Parks Division, ATTENTION: Ryan Robertson, Senior Park Ranger, 2125 Park Blvd. San Diego, CA 92101.

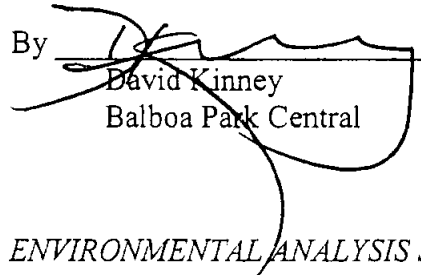


Stacey LoMedico
Park and Recreation Director

Date: 8/8/13

The above is acknowledged and accepted this 3rd day of September, 2013.

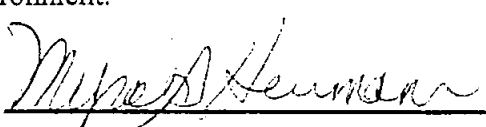
By



David Kinney
Balboa Park Central

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity (Right of Entry Permit for re-locating valet loading zone lane from the Plaza De Panama to the passenger loading zone on Pan American Road East (the Mall), without impacting existing parking or public access thereto, and non-exclusive use of the Federal Building, Spreckels Organ Pavilion, and Inspiration Point parking lots for vehicle storage, is not a project as defined by the California Environmental Quality Act Section 21065 and State CEQA Guidelines Section 15378(b)(5), as it will not result in direct or indirect physical changes in the environment.

BY: 

Title: Senior Planner

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Right of Entry Permit
August 2, 2013

Approved as to form and legality this 3rd day of April, 2013.

JAN I. GOLDSMITH, City Attorney

By: Shannon Thomas

Shannon Thomas
Deputy City Attorney

Attachments:

Exhibit A: Permit area

cc:

David Kinney, Balboa Park Central
Rick Ingram, Sunset Parking Service
Bruce Martinez, District Manager, Balboa Park
Patti Phillips, Real Estate Assets Department
Kathleen Hasenauer, Deputy Director, Developed Regional Parks
File

Pan American Rd East (The Mall)

Spreckels Organ Pavilion Parking Lot

Federal Building Parking Lots
Inspiration Point Parking Lots

Inspiration Point Parking Lots

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