

CITY OF SAN DIEGO

RIGHT OF ENTRY PERMIT

THIS RIGHT OF ENTRY PERMIT ("Permit") is executed by and between the CITY OF SAN DIEGO, a municipal corporation ("City"), and AMERICAN SCAFFOLD, a California corporation ("Permittee").

1. Grant. City hereby grants permission to Permittee to enter upon City-owned property located at 33rd Street and Newton Avenue, consisting of approximately 2,500 square feet, and as specifically set forth on the attached Exhibit "A" ("Permit Area"), incorporated by this reference. Permission to enter the Permit Area is conditioned upon the terms set forth below.
2. Use of Permit Area. Permittee shall have exclusive use of the Permit Area for access to adjacent property and parking and for no other purpose whatsoever. Permittee shall be responsible for obtaining all permits and security for the maintenance and use of the Permit Area.
3. Permit Fee. Consideration to City for granting this Permit shall be a Three Hundred Sixty Dollar (\$360) non-refundable processing fee and a Three Hundred Seventy-Five Dollar (\$375) monthly Permit fee commencing on the Effective Date, as defined below. Permit fees should be made by check payable to the City Treasurer and mailed to the Office of the City Treasurer, P.O. Box 122289, San Diego, CA 92112-4165 or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, CA 92101, on or before the first day of each month. The first and last months Permit fees will be prorated as necessary to achieve payment on the first of the month. To compensate City for loss of interest and staff time associated with monitoring and follow-up on late payments, payments postmarked or paid in person after the first of the month will be subject to a late fee of five percent (5%) of the monthly Permit fee if one (1) to fifteen (15) days past due, and to an additional five percent (5%) [for a total of ten percent (10%)] late fee if sixteen (16) or more days past due. In no event shall the late fee be less than Twenty-Five Dollars (\$25).
4. Effective Date. This Permit shall be in effect upon execution by City and Permittee and as of the approval date of the City Attorney ("Effective Date") and shall expire on October 1, 2006, or upon completion of Permittee's project, whichever occurs first.
5. Insurance. Prior to approval of this Permit by City, Permittee shall deliver to City a certificate of insurance for public liability and property damage in which "The City of San Diego, its elected officials, officers, representatives, agents and employees" are named as

additional insureds, in an amount of not less than Two Million Dollars (\$2,000,000) combined single limit liability with an occurrence claims form. The policy shall be kept in force for the duration of this Permit. The certificate of insurance shall be filed with City's Real Estate Assets Department upon execution of this Permit.

6. Hold Harmless. Permittee agrees to defend, indemnify, protect, 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 employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the grant of this Permit to the Permittee, the development or operation of the Permit Area or the work and operations to be performed under this Permit, 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 active negligence, sole negligence, or sole willful misconduct of City, its elected officials, officers, representatives, agents and employees.
7. No Discrimination. Permittee shall not 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.
8. 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.
9. Nuisance. Permittee shall not use the Permit Area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
10. Revocable Permit. This Permit is not a lease. It is a license to use City property, revocable at any time by City. It is mutually agreed that 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. City shall have and maintain the right at all times to enter upon the Permit Area in City's sole discretion.
11. Possessory Interest Tax. 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. Such tax payment shall not reduce any fee paid City under this Permit. Permittee shall pay any tax or assessment before it becomes delinquent.

12. Compliance with Laws. 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.
13. Deposit. Permittee shall file with City's Real Estate Assets Department a Three Hundred Seventy-Five Dollar (\$375) cash performance deposit to assure that, upon expiration or earlier termination of this Permit, Permittee shall at its sole cost remove all materials and repair and/or restore the Permit Area to its original condition, including any hazardous or toxic waste remediation, to the satisfaction of the City Manager.
14. No Assignment. Permittee shall not assign any rights granted by this Permit nor any interest therein without the prior written approval of the City Manager. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this Permit.
15. Signs. No signs shall be displayed on the Permit Area without the prior written consent of the City Manager.
16. Encumbrances. Permittee shall keep the Permit Area free from all encumbrances and liens of any nature during the term of this Permit. Permittee shall defend, hold harmless and indemnify City from and against any and all such encumbrances and/or liens and from and against any claim, liability, cost or expense (including all costs and attorneys' fees), which may be filed or instituted against the Permit Area (including without limitation Permittee's failure or the failure of any contractor or subcontractor hired by Permittee) to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections.
17. Maintenance of the Permit Area. Permittee shall be solely responsible for maintaining the Permit Area in a decent, safe, healthy and sanitary condition at all times during the entire term of this Permit to the satisfaction of the City Manager or designee.
18. Waiver. The failure of City to insist upon strict performance by Permittee of any condition of this Permit, in one or more instances, shall not be construed as a waiver of any such condition, and the same shall remain in full force and effect.
19. Oral Representations. This Permit contains the complete expression of the agreement between the parties, and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as set forth herein. The conditions hereof cannot be changed in any respect except by written agreement between the parties.
20. Permit Fee Adjustment. After one year, the Permit fee will be adjusted to reflect any increase in the Consumer Price Index ("CPI"). The adjustment will take effect on the first day of the first full month following the anniversary date of this Permit. The fee

adjustment will be calculated by City and the index used will be the CPI for "All Urban Consumers" for the Los Angeles/Anaheim/Riverside area using an average of the first full calendar quarter prior to commencement of this Permit term as the base index denominator and an average of the first full calendar quarter prior to the effective date of the adjustment as the current index numerator for the calculation. Permittee will continue paying the Permit fee at the existing rate until notified of the new rate by City. Permittee shall then promptly remit the difference between the Permit fees paid at the old rate and those due at the new rate.

21. Floodplain Restrictions. Due to the location of the Permit Area in a floodplain, grading, filling, dumping, new planting or fencing are prohibited unless first approved in writing by the City Manager. Permittee shall not change the surface grade or construct any barriers on the Permit Area. Any such violations will be corrected by Permittee, at its sole expense, to the satisfaction of the City Manager and are grounds, at City's option, for immediate termination of this Permit.
22. Inspection. City may enter and inspect the operations permitted under this Permit at any time.
23. Legal Proceedings. Should it become necessary for City to commence legal proceedings to collect any payments due hereunder or to enforce any other condition of this Permit, Permittee agrees to pay all legal costs in connection therewith, including reasonable attorneys' fees.
24. Notices.

Notices to City shall be mailed to:

City of San Diego
Real Estate Assets Department
Attention: Deputy Director, Asset Management and Marketing Division
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101

Notices to Permittee shall be mailed to:

American Scaffold
Attention: Lester C. Knight
3284 Newton Avenue
San Diego, CA 92113

or notices may be delivered to Permittee.

IN WITNESS WHEREOF, this Right of Entry Permit is executed by City, acting by and through its City Manager, and by Permittee, acting by and through its lawfully authorized officer.

CITY OF SAN DIEGO

Date: 9/24/03

By: Carol A. Chiodo
Carol A. Chiodo, Deputy Director

AMERICAN SCAFFOLD, a California corporation

Date: 9-11-03

By: Lester C. Knight
Title: CEO

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301. This activity is exempt from CEQA pursuant to State CEQA Guidelines, Section 15061(b)3.

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

Date: 9/24/03

By: Kenneth Teasley

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, City Attorney

Date: 9/29/03

By: Cheryl A. Rusato
Deputy City Attorney

Site No. T521

CLY/cj

9/4/03

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EXHIBIT "A" - PERMIT AREA

