THE CITY OF SAN DIEGO

DUPLICATE

ORIGINAL

MAYOR JERRY SANDERS

December 12, 2007

Alcazar Garden Tile Project
1350 El Prado
San Diego, CA 92101

Mr. Michael Kelly
President, The Committee of 100

Dear Mr. Kelly:

Subject: Right of Entry Permit – Alcazar Garden Tile Project

The City of San Diego ("City") hereby grants permission to The Committee of 100 and/or its agent(s) ("Permittee") to enter upon the above-referenced City-owned property ("permit area"), for the sole purpose to remove damaged decorative tiles and install new decorative tiles on the fountains and benches on the attached Exhibit "A", based upon the following terms and conditions:

1. Right to Enter: Permittee's and/or its agent(s) use of the permit area shall be limited to the use of a portion of Balboa Park known as Alcazar Garden. This Right-of-Entry Permit in no way construes that the Permit Area is for use by The Committee of 100 on a permanent basis. The area is for removal and installation of decorative tiles. It is the Permittee's responsibility to be aware of any closures that would affect Permittee and to abide by any and all State, City, and Balboa Park Rules, and Regulations.

2. Consideration to City for granting this permit is typically a $360 non-refundable processing fee commencing on the effective date hereof. "The processing fee is hereby waived for this project."

3. Term: This permit shall be in effect upon execution hereof by City and Permittee and shall expire on March 31, 2008. Reasonable extension may be granted, if necessary.

4. Commencement of Work and Public Access: Permittee must contact Bruce Martinez, District Manager, (619) 235-1124 at least two working days prior to the start date of the project and submit a work schedule. Permittee shall notify Bruce Martinez a minimum of ten (10) working days prior to start of any work that may or may not affect the use of any public access in the area.

5. Volunteers: Permittee shall be responsible for 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.

6. Insurance: 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 $2 million combined single limit liability with an occurrence claims form 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 Developed Regional Parks Division upon execution of this permit.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Permittee shall not engage in any activity on City-owned property other than the activity for which this permit is expressly issued.

14. 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 in the sole and absolute discretion of the Mayor. 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 Mayor.

16. Maintenance of Permit Area: Maintenance 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.

17. Staging Area: The District Manager 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.

18. Hazardous Materials: If City determines that contamination or hazardous materials, solid or liquid wastes, have been discharged or buried, and are found present in the existing soil or surrounding soil, or have been deposited on site, as a result of the occupancy or activities by Permittee and/or its agents under this right

of entry permit, Permittee and/or its agents shall be responsible for the removal of contaminated and/or hazardous materials pursuant to all applicable governmental regulations and restoration of the site to an uncontaminated condition, at no cost to the City. Prior to bringing or importing any soil onto the site, Permittee and/or its agents shall provide City with certification from an appropriately certified, licensed and qualified soil testing expert laboratory demonstrating that the soil to be imported meets all applicable state, federal and local requirements, standards or other guidelines for the quality of soil imported to a City site.

19. CEQA: The Permittee shall be responsible to ensure this activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301 (Existing Facilities) and shall file such exemption with the County of San Diego. A copy of the County of San Diego stamped exemption shall be provided to the City prior to construction.

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 District Manager, as a result of Permittee's operation. 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 District Manager 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. Security and Safety: Permittee shall be responsible for the security and safety of the area that is affected as a result of the Permittee's operations. Permittee shall be solely responsible for erecting and maintaining all temporary barriers, warnings and caution signs to protect the general public during the Permittee's operations. This includes all times when work is and is not being performed. Trenches shall not be left open overnight or any other time when work associated with the Permittee's operations are not being actively performed.

24. Subcontractors: Permittee shall provide a list of all contractors and subcontractors to the District Manager including name, address, email, fax and phone number. All work shall be done by contractors licensed within the State of California.

25. 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.

26. 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.

27. Pre-Construction Meeting: A minimum of 5 working days prior, Permittee shall invite Bruce Martinez, District Manager, (619) 235-1154 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.

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

Name: Michael Kelly Alternate contact: _____

Cell Number: _____ Cell Number: _____

Office Number: _____ Office Number: _____

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: Becky Yzaguirre, 2125 Park Boulevard, San Diego, CA 92101-4792.

Stacey LoMedico
Park and Recreation Director

The above is acknowledged and accepted this 24th day of December, 2007

By _____
Michael Kelly
President, The Committee of 100

Approved as to form and legality this 4th day of January, 2008.

By _____
Kimberly Davies
Deputy City Attorney

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is Categorically Exempt from CEQA pursuant to State CEQA Guidelines, Sections 15301 (Existing Facilities – Right of Entry) and 15304(e)(Minor Use of Land – Temporary Use). Approved by Environmental Analysis Section, Development Services Department, per CEQA MOU with Park and Recreation Department.

BY: _____
Name: BARRY Kelleher
Title: PARK DESIGNER
per MOU w/ EAS

Attachments: Exhibit "A" – Balboa Park Map
cc: Charles Daniels, Park Planner
Kathleen S. Hasenauer, Deputy Director