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F. Faiz

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 79234 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

A RESOLUTION GRANTING NORTH COUNTY CENTER FOR SELF-SUFFICIENCY CORPORATION, A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION, A CONDITIONAL REVOCABLE PERMIT FOR THE ENCROACHMENTS OF PROPOSED BUILDING CORNER AND ROOF OVERHANG INTO THE PUBLIC RIGHT-OF-WAY AREA OF THOMAS L BERKLEY WAY(20TH STREET)

WHEREAS, NORTH COUNTY CENTER FOR SELF-SUFFICIENCY CORPORATION, A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION ("Permittee"), owner of that certain property described in the Grant Deed, recorded March 11, 2004, Series No. 2004103518, at the Office of the County Recorder, Alameda County, California, commonly known as 630 Thomas L Berkley Way and more particularly described in Exhibit "A" attached hereto and made a part hereof, has made application for a conditional revocable permit to the Council of the City of Oakland for the encroachments of proposed building corner and roof overhang into the public right-of-way area of Thomas L Berkley Way, and

WHEREAS, the location of said encroachments to be granted by this resolution is delineated in Exhibits "B" and Exhibit "C" attached hereto and made a part hereof; and

WHEREAS, said encroachments will not interfere with the use of Thomas L Berkley Way by the public, and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with Section 15332 (Class 32:Infill Projects) and Section 15301 (Minor alteration to existing structure) of the California Code of Regulations this project is categorically exempt from the provisions of the California Environmental Quality Act;

BE IT RESOLVED: That this resolution complies with the California Environmental Quality Act, and be it

FURTHER RESOLVED: That the Permittee is hereby granted a conditional revocable permit for the encroachments of proposed building corner and roof overhang into the public right-of-way area of

Thomas L Berkley Way, and be it

FURTHER RESOLVED: That the Council of the City of Oakland, in granting this permission prescribes as special conditions thereof, the following:

1. That the Permittee is responsible for the relocation of all existing public utilities including but not limited to fire alarm cable, master signal cable, street lighting and intersection signal cable, as required.
2. That, after notice to Permittee, this permit shall be revocable at the reasonable discretion of the Council of the City of Oakland, expressed by resolution of said Council.
3. That the Permittee, by the acceptance, either expressed or implied, of this conditional revocable permit hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the said encroachments or the air space above and agrees that said temporary use of said area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise.
4. That the Permittee shall maintain in force and effect at all times that said encroachments occupy said public sidewalk area, good and sufficient commercial general insurance in the amount of \$2,000,000 for each occurrence, and property damage insurance in the amount of \$250,000 for each occurrence both including contractual liability insuring the City of Oakland, its officers and employees, against any and all claims arising out of the existence of said encroachments in said right-of-way area, and that a certificate of such insurance and subsequent notices of the renewal thereof, shall be filed with the Director of Building Services of Community and Economic Development Agency of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled or be permitted to lapse without thirty (30) days' written notice to said Director of Building Services. The Permittee also agrees that the City may review the type and amount of insurance required every one (1) year and may require the Permittee to increase the amount of and/or change the type of insurance coverage required, if such is reasonably necessary as determined by the City.
5. That the Permittee, by the acceptance, either expressed or implied of this conditional revocable permit agrees and promises to defend and hold harmless and indemnify the City of Oakland, its agents, officers, and employees, from any and all claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out of or caused by the existence, installation or maintenance of said encroachments to said right-of-way area and street area and regardless of responsibility for negligence. The liability insurance referred to in the preceding paragraph shall cover this contractual liability, provided that nothing herein shall be interpreted as limiting the Permittee's defense, hold harmless and indemnification obligations to the amount set forth in the preceding paragraph.
6. That the Permittee shall make no changes to the encroachments hereby allowed either

structurally, with regard to dimension, or with respect to use, without the written consent of the Director of Building Services and understands that the City may impose reasonable fees and considerations for processing permits required for such proposed changes. Permittee also understands that the City is not obligated to grant any changes proposed by said Permittee.

7. That the Permittee, by the acceptance, either expressed or implied, of this conditional revocable permit shall be solely and fully responsible for the repair or replacement of any portion or all of said improvements in the event that said improvements shall have failed or have been damaged to the extent of creating a menace or of becoming a hazard to the safety of the general public; and that the Permittee shall be liable for the expenses connected therewith.
8. That upon the termination of the permission herein granted, Permittee shall immediately remove said encroachments from the right-of-way area, and shall repair any damage resulting therefrom to the satisfaction of the Director of Building Services.
9. That the Permittee shall file with the City of Oakland for recordation, a disclaimer and agreement that Permittee accepts and shall comply with and shall be bound by each and all of the terms, conditions and provisions of this resolution. Said disclaimer and agreement shall be subject to the approval of the City Attorney and the Director of Building Services.
10. That the plans and exact location of said encroachments hereby granted are subject to the review and approval of the Director of Building Services and that the Permittee shall obtain all necessary permits prior to commencing said work. Generally, said encroachments shall be located as set forth in Exhibits "B" and Exhibit "C".
11. That the Permittee acknowledges that the City makes no representations or warranties as to the conditions beneath said encroachments. By accepting this conditional revocable permit, Permittee agrees that he or she will use the encroachment area at his or her own risk, is responsible for the proper coordination of its activities with all other permittees, underground utilities, contractors, or workmen operating within the encroachment area and for the safety of himself or herself and any of his or her personnel in connection with its entry under this conditional revocable permit.
12. That the Permittee acknowledges that the City is unaware of the existence of any hazardous substances beneath the encroachment area, and hereby waives and fully releases and forever discharges the City and its officers, directors, employees, agents, servants, representatives, assigns and successors from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.). Notwithstanding the above provisions of this Paragraph 12, Permittee shall not be liable to the City for any hazardous substances on, in or beneath the encroachment area that were not caused by the Permittee, his or her agents, employees, tenants or service providers.

13. That the Permittee further acknowledges that he or she understands and agrees that he or she hereby expressly waives all rights and benefits which he or she now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."
14. That the Permittee recognizes that by waiving the provisions of Section 1542 mentioned in the preceding paragraph, he or she will not be able to make any claims for damages that may exist, and to which, if known, would materially affect his or her decision to execute this encroachment agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.
15. That the Permittee, by the acceptance of this revocable permit, agrees and promises to indemnify, defend, and hold harmless the City of Oakland, its officers, agents, and employees, to the maximum extent permitted by law, from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or be in any way connected with the Permittee's use, installation or maintenance of the encroachment, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629),

the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.).

16. That the hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

FURTHER RESOLVED: That this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Attorney and the Director of Building Services of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth after notice and failure to cure such conditions in a reasonable manner.

FURTHER RESOLVED: The City Clerk is hereby directed to have a certified copy of this resolution recorded at the Office of the Alameda County Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, MAY 17 2005, 2005.

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE - 7

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: 

LaTonda Simmons
City Clerk and the Council
Of the City of Oakland, California