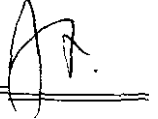


OAKLAND CITY COUNCIL

RESOLUTION No. 76258 C. M. S.

INTRODUCED BY COUNCILMEMBER _____



A RESOLUTION GRANTING THE COUNTY OF ALAMEDA, A CONDITIONAL REVOCABLE PERMIT FOR THE ENCROACHMENT OF AN EXISTING STRUCTURAL SIDEWALK AND BASEMENT WITHIN THE PUBLIC SIDEWALK AREAS OF THIRTEENTH AND FRANKLIN STREETS

WHEREAS, The County of Alameda, a political subdivision ~~of~~ the State of California, ("**Permittee**"), owners of that certain property described in the **Deed**, recorded March 16, 2000, Series No. 2000-077519, at the Office of the County Recorder, Alameda County, California, commonly known as 393 Thirteenth **Street** have made application for a conditional revocable permit to the Council of the City of Oakland for the encroachment of an existing structural sidewalk and basement within the public sidewalk ~~areas~~ of Thirteenth and **Franklin Streets**; and

WHEREAS, the location of said encroachment to be granted by this resolution is delineated in Exhibit "A" attached hereto and made a part hereof; **and**

WHEREAS, said encroachments will not interfere with the public use of Thirteenth and **Franklin Streets**; 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 CEQA: City of Oakland, have been **satisfied**, and that in **accordance** with Section 15301, **Class 1** of the California Code ~~of~~ Regulations this project is exempt **from** the provisions of the California Environmental Quality Act; now therefore,

BE IT RESOLVED: That **this** resolution complies *with the* CEQA, and be it

FURTHER RESOLVED: That the Permittee is hereby granted a conditional revocable permit for the encroachment of an existing structural sidewalk and basement within the public right-of-way areas **of** Thirteenth and **Franklin Streets**; and be it

FURTHER RESOLVED: That the Council of the City of W a n d , 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 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 revocable permit hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the said encroachment ~~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. The Permittee shall maintain in force and effect at all times that said encroachment occupies said public sidewalk area, good and sufficient public liability insurance in the amount of \$300,000 for each occurrence, and property damage insurance in the amount of \$50,000 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 of 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 five (5) years 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 revocable permit agrees and promises to defend and hold harmless and indemnify the City of Oakland, its agents, officers, and employees, from any and every 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 encroachment 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 Permittee shall make no changes to the encroachment 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 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 encroachment from **the** right-of-way area. and any damage resulting therefrom shall be repaired to the satisfaction of the Director of Building Services.
9. 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 encroachment hereby **granted** are subject to the review and approval of the Community and Economic Development Agency, Building Services Division and that the Permittee **shall** obtain all necessary permits prior to commencing said work. Generally, said encroachment shall be located **as** set forth in Exhibit "A".
11. That the Permittee acknowledge that the City makes no representations or warranties **as** to the conditions beneath said encroachment. By accepting **this** revocable permit, Permittee agree that it will use the encroachment area at its own risk, **are** responsible for the proper coordination of its activities with all other Permittee, underground utilities, contractors, or workmen operating within the encroachment area and for the safety of itself and any of its personnel **in connection** with its entry under this revocable permit.
12. That the Permittee acknowledge that the City is unaware of the existence of any hazardous **substances** beneath the encroachment area, and hereby waive and fully release and forever discharge 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, **fires**, 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 was not caused by the Permittee, its agents, employees, tenants or service providers.

13. Permittee further acknowledge that they understand and agree that they hereby expressly waive all rights and benefits which they now have 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. Permittee recognize that by waiving the provisions of this section, Permittee will not be able to make any claims for damages that may exist, and to which, if known, would materially affect their decision to execute this encroachment agreement, regardless of whether Permittee' 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, agree and promise 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, **finer**, 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' **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, JAN 30 2001, 19

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, ~~CHANG, MILEX~~, NADEL, REID, ^{WAN} ~~RUSSELL~~, SPEES AND
 PRESIDENT DE LA FUENTE — 6

NOES- None

ABSENT- Chang (Excused)

ABSTENTION- None


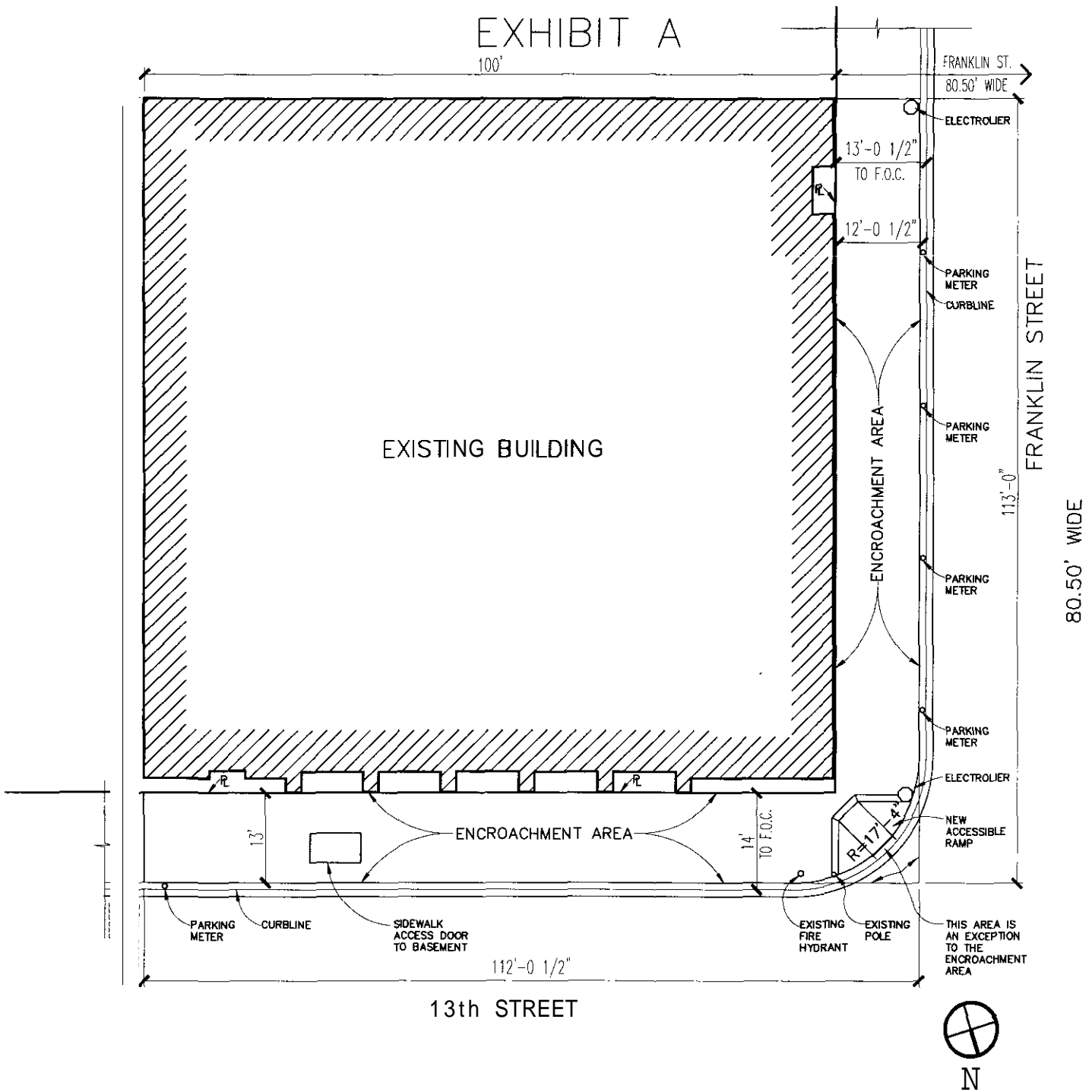
ATTEST: 
 CEDA FLOYD
 City Clerk and Clerk of the Council
 of the City of Oakland, California

EXHIBIT A



ENCROACHMENT
393-13th STREET, OAKLAND, CA

1" = 20'-0"

471 Ninth Street
Oakland, CA 94607

**Michael
Willis
Architects**



date: 12/8/2000

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