

## ITEM 2

### OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY

**DATE ISSUED:** 10/09/2012

**SUBJECT:**

Adopt a Resolution to Approve a Right of Entry Permit for temporary access on two adjacent properties owned by the Successor Agency, including the parking lot behind the Birch North Park Theatre and the North Park Garage, for the 2012 North Park Rocktoberfest.

**CONTACT/PHONE NUMBER:** David Graham/236-6980

**DESCRIPTIVE SUMMARY OF ITEM:**

A Right of Entry Permit for temporary access on two adjacent properties, including the parking lot behind the Birch North Park Theatre and the North Park Garage, for the 2012 North Park Rocktoberfest, to be held from 3:00 to 10:00 p.m. on Saturday, October 20, 2012. The parking lot and the parking garage are owned by the Successor Agency, and ACE Parking operates the parking garage pursuant to a management agreement with the Successor Agency.

**STAFF RECOMMENDATION:**

Approve proposed action.

**DISCUSSION:**

Background

The Birch North Park Theatre (Theatre) is located at 3812 29th Street. The Theatre was purchased by the former Redevelopment Agency of the City of San Diego (Agency) from the City of San Diego (City) in April of 2002. The Former RDA entered into a Disposition and Development Agreement (DDA) in May 2002 to sell and rehabilitate the Theatre. The Former RDA purchased the land directly south and adjacent to the Theatre in September of 2004 in order to develop a surface parking lot (Surface Lot) for Theatre and North Park business patrons.

The Former RDA's long-term proposal for the Theatre was to build a parking structure adjacent to the Theatre. The Former RDA completed construction of the North Park Garage (Garage) in February 2006 along North Park Way between 29<sup>th</sup> Street and 30<sup>th</sup> Street. After the opening of the Garage, the community proposed that the Surface Lot become a 0.5 acre mini-park. Funding for the proposed mini-park improvements is included at line item 339 in the third Recognized

Obligation Payment Schedule. The Surface Lot's proximity to residences south of North Park Way, businesses along University Avenue, and the adjacent Garage make it an ideal location for a mini-park and for hosting special events from time to time.

The Successor Agency owns the Surface Lot and the Garage and has a management agreement with ACE Parking to operate the Garage. The current agreement with ACE Parking does not have a specific provision to rent or lease out the Garage for a special community event.

#### Proposed Right of Entry Permit

DCMM, Inc., a California corporation, and North Park Main Street, a nonprofit organization, have submitted an application to the City for a Special Events Permit for the 2012 North Park Rocktoberfest (Event). The professional event organizer is David Cohen with West Coast Tavern, which is a restaurant tenant of the Theatre. The Event will feature two stages, several food trucks, vendors and entertainment. In addition, the organizer will pay \$1,000 to ACE Parking, the operator of the Garage, to use the Garage for the day of the Event in order to provide free parking for event and business patrons. The payment of \$1,000 will be taken into account in calculating the Successor Agency's net operating revenues for the Garage, after deducting expenses. The estimated income for a Saturday for the Garage is \$700 to \$1,200. The Surface Lot does not typically generate any revenue.

The Successor Agency and the event organizer now propose to execute a Right of Entry Permit containing standard terms for the Successor Agency's benefit, such as temporary access, insurance, defense and indemnification, and payment of the \$1,000 fee. The Oversight Board's approval of the Right of Entry Permit is being sought in order to confirm that the Successor Agency has the legal authority to execute the Right of Entry Permit.

#### Conclusion

The Oversight Board is respectfully requested to approve the Right of Entry Permit.

David Graham  
Office of the Mayor

Jay Goldstone  
Chief Operating Officer

Attachment: Proposed Right of Entry Permit

**RIGHT OF ENTRY PERMIT  
FOR 2012 ANNUAL EVENT IN NORTH PARK**

This Right of Entry Permit (Permit) is entered into by and between the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic (Agency), and DCMM, Inc., a California corporation, acting through the nonprofit host organization, North Park Main Street (Permittee), upon the terms and subject to the conditions set forth herein. The Agency and Permittee may be referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. Permittee has requested access to certain real property owned by the Agency, which includes the surface parking lot directly south and adjacent to the Birch North Park Theatre at 3812 29th Street and the improved, multi-level parking garage along North Park Way between 29th Street and 30th Street (collectively, Property or Permit Area). A graphic depiction of the Permit Area is contained in Exhibit A, attached hereto and incorporated herein by this reference.

B. The purpose of the requested access is to allow physical access for the third annual North Park Rocktoberfest event (Event) on the surface parking lot, which will include musical entertainment, food and beverages, and vendors, and to provide parking spaces in the parking garage for organizers of the event and members of the public.

C. The Agency is willing to allow the requested access for the Event upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Term. Permittee and its agents, employees, contractors, subcontractors, representatives, invitees, volunteers, and licensees (collectively, Permittee Users) may access the Permit Area on October 20, 2012 from 7:00 a.m. to midnight only for the purposes described in Section 2 below, which will allow the Event to be held from 3:00 p.m. to 10:00 p.m. and will enable the organizers of the Event to access the Permit Area before and after the Event. The time period may be extended only by a written agreement executed by both of the Parties.

2. Uses. The Permittee Users may access the Permit Area for the following purposes: (i) organizing and attending the Event on the surface parking lot; (ii) making the parking garage available to organizers of the Event and members of the public for parking in connection with the Event; and (iii) preparing the Permit Area for the Event and removing all Event-related materials from the Permit Area after the conclusion of the Event. The Permittee Users may not use the Permit Area to stage or store materials, equipment or construction vehicles, or for any purpose, except as expressly allowed by this Permit.

3. Right to Enter. Permittee understands and acknowledges that access under this Permit is limited to the Permit Area, and does not extend to any other property. The Agency

makes no representations or warranties as to the suitability of the Permit Area for the uses contemplated by Permittee. Permittee's exercise of the rights and privileges granted herein is at Permittee's request and is undertaken voluntarily and at its own risk. Only with prior notification to and written approval by the Agency, Permittee may undertake, at Permittee's sole cost, reasonable temporary improvements at the Permit Area solely for the purpose of facilitating the smooth operation of the Event. The Mayor or designee has sole discretion, on the Agency's behalf, to determine the acceptability of temporary improvements. Permittee shall close access to the Permit Area to the public, except in connection with the Event, from 7:00 a.m. until midnight on October 20, 2012, by posting signage as appropriate to describe the hours of public access to the Permit Area and taking steps as necessary to provide for the removal of vehicles then remaining on the Permit Area. Permittee shall be solely responsible for controlling public access to the Permit Area. The Permittee Users shall observe all rules and regulations of the Agency and ACE Parking in connection with the parking garage.

4. Permit Fee. Before the date of the Event and any entry onto the Permit Area, Permittee shall pay to ACE Parking, the operator of the parking garage, a one-time, non-refundable permit fee of One Thousand Dollars (\$1,000) in exchange for Permittee's right to access the Permit Area pursuant to this Permit, including the use of the parking garage for public parking by the Permittee Users.

5. Agency's Directives. The Permittee Users shall comply promptly with any and all directives by the Agency with respect to this Permit, including, without limitation, removing all vehicles from the Permit Area and restoring the Permit Area to its original condition.

6. No Lease. This Permit is not a lease. This Permit is revocable by the Agency at any time at the Agency's sole discretion. The Agency shall not be obligated for any loss, financial or otherwise, which may be incurred by the Permittee Users as a result of termination of this Permit, and the Permittee Users hereby expressly waive any claim for any such loss.

7. Governmental Permits. Permittee shall be responsible, at its sole expense, for obtaining any and all required governmental permits and authorizations for the Event and for complying with all applicable federal, state and local laws and regulations in connection with the Event. The Agency has granted access under this Permit solely in its proprietary, non-regulatory capacity as the owner of the Permit Area. Nothing in this Permit shall constitute the issuance of any necessary permits or authorizations by the City of San Diego (City) for the Event.

8. No Nuisance. The Permittee Users shall not exercise the rights and privileges granted hereunder in any manner that, in the sole opinion of the Mayor or designee, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area. To the maximum extent feasible, the Permittee Users shall cooperate with, and avoid interfering with, the activities of the Agency, the City, and their respective employees, contractors and consultants.

9. Volunteers. Permittee shall be responsible for work to be done with volunteer labor and shall ensure that volunteer workers adhere to all conditions as stated in this Permit. Any work done or temporary improvement that is not previously approved, in writing, shall be removed immediately at Permittee's expense.

10. No Discrimination. Permittee covenants and agrees for itself, its successors and assigns and all persons claiming under or through them, that there shall be no discrimination 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, transfer, occupancy and enjoyment 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. Permittee, specifically and more particularly, covenants by and for itself, its heirs, and its executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the California Government Code, in the use, occupancy, tenure or enjoyment of the Permit Area.

11. Restoration. Upon completion of the Event, and at its sole expense, Permittee shall promptly cause the Permit Area to be returned and restored to its pre-access condition. Permittee shall be responsible for the maintenance and cleanup of the Permit Area immediately following the Event and shall promptly remove all trash, debris, and related material from the Permit Area and lawfully dispose of all such material in a legal disposal site. In addition, Permittee shall promptly cause the removal of all temporary improvements and other items assembled for the Event, the repair of any and all damage to fences or other existing site improvements, and the removal of any and all spilled fuels, solvents and/or similar hazardous materials. Permittee shall pay for all damage to the Permit Area, the Agency's personal property on the Permit Area, and the personal property of third parties on the Permit Area resulting from Permittee's operations on the Permit Area or use of the Permit Area by the Permittee Users.

12. Defense and Indemnification. Permittee shall, to the fullest extent allowed by law, defend, indemnify and hold harmless the Agency, the City, and their respective elected officials, officers, employees, agents and representatives from and against any and all claims asserted, causes of action, losses, damages, liabilities, judgments, and/or demands arising out of or in any manner directly or indirectly connected with this Permit or the operations or activities of the Permittee Users, including damages arising out of the release of hazardous materials, and all expenses of investigating and defending the same, including, without limitation, paying reasonable attorneys' fees and costs; provided however that Permittee's duty to indemnify and hold harmless shall not include claims or liability arising from the established sole gross negligence or intentional misconduct of the Agency, the City, or their respective elected officials, officers, representatives, agents and employees. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue any or all of the indemnified parties for liabilities arising out of any activity within or upon or relating to the Permit Area and this Permit. This indemnity obligation shall include, without limitation, claims for bodily injury, property damage, natural resource damages, emergency response costs, removal costs, clean-up costs, remediation costs, penalties, and/or fines which arise out of or are in any manner directly or indirectly connected to this Permit and/or the acts or omissions of any third party or the Permittee Users in connection with the exercise of the rights granted under this Permit, and all expenses of investigating, prosecuting or defending against same, including any appeals. Permittee shall promptly provide the Agency with written notice of any event or circumstance,

such as damages or losses related to the Event, which Permittee reasonably believes may be covered by the defense and indemnification provisions of this Permit.

13. Insurance. Before the date of the Event and any entry onto the Permit Area, Permittee shall furnish the Agency with certificates of insurance evidencing coverage including, at a minimum: Commercial General Liability coverage with a \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and \$2,000,000 in the aggregate. The policy shall name the Agency and the City as additional insureds. The insurance coverage must be issued by an insurance company or companies authorized and licensed to do business in the State of California and having an insurance rating in the most recent edition of the A.M. Best Key Rating Guide of at least an “A-” and “V” or better. The policies may not be cancelled, terminated or allowed to expire without 30-days’ prior written notice to the Agency from the insurance company. The policies shall be primary and shall consider any insurance carried by the Agency to be excess and non-contributory.

14. Waiver. The Agency’s failure to insist upon the strict performance of any of Permittee’s obligations under this Permit, in one or more instances, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of the citizens. The Agency’s failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, and the Agency may at any and all times require the cure of any such breach.

15. Entire Permit. 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 terms of this Permit cannot be changed in any respect except by written agreement between the Parties.

16. Contact Information. The designated contact person on Permittee’s behalf for any issues related to this Permit shall be David Cohen, (619) 203-8584.

17. Authorization. The undersigned representatives of the Parties certify that they are each authorized to execute this Permit on behalf of their respective Party. Permittee understands and acknowledges that the Agency’s administrative approval of this Permit is conditioned upon the approval of the Oversight Board for the Agency and the approval or deemed approval of the California Department of Finance.

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IN WITNESS WHEREOF, the Parties have executed this Permit as of the dates shown below, and the Permit shall be deemed effective as of the date of the Agency's signature subject to the terms and conditions hereof.

**AGENCY:**

City of San Diego,  
solely in its capacity as the designated  
successor agency to the Redevelopment  
Agency of the City of San Diego, a former  
public body, corporate and politic

Date: \_\_\_\_\_

By: \_\_\_\_\_

Jay M. Goldstone  
Chief Financial Officer

**PERMITTEE:**

DCMM, Inc., a California corporation

Date: 10/12/12

By:  \_\_\_\_\_

Name: David Cohen

Title: Owner

Approved as to form:

Jan I. Goldsmith  
City Attorney

By: \_\_\_\_\_

Kevin Reisch  
Deputy City Attorney

EXHIBIT A

**Graphic Depiction of Permit Area**

[see next page]

THEATER BUILDING

101'8"

11'05"

90'0"

189'5"

TESTS / VENDORS

29TH STREET

FOOD TRUCKS

PEDESTRIAN SIDEWALK

132'8"

2x12' SAINS GATES FOR FIRE LANE

171'10"

12' EXIT

STAGE

TENT

TENT

TENT

BEER

STAGE

BEER

STAGE

UNIMAGED AND PENNIE FACILITY TO (MAY) EXIT

164'11"

ACE EXIT (TAV)

244'8"

NORTH PARK WAY

Agency Property Line

OVERSIGHT BOARD RESOLUTION NUMBER OB-2012-31

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE RIGHT OF ENTRY PERMIT WITH THE OPERATOR OF AN ANNUAL SPECIAL EVENT IN NORTH PARK

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26), the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as amended by Assembly Bill 1484 (AB 1484); and

WHEREAS, DCMM, Inc., a California corporation, acting through the nonprofit host organization, North Park Main Street (Permittee), has asked the Successor Agency for permission to use real property owned by the Successor Agency for the 2012 annual special event known as Rocktoberfest (Event), to be held on October 20, 2012, in the North Park Redevelopment Project Area; and

WHEREAS, the Successor Agency proposes to enter into a Right of Entry Permit with the Permittee to allow the Permittee's use of the pertinent real property, consisting of the surface parking lot directly south and adjacent to the Birch North Park Theatre at 3812 29th Street and the improved, multi-level parking garage along North Park Way between 29th Street and 30th Street (collectively, Permit Area); and

WHEREAS, the Right of Entry Permit contains standard provisions in the Successor Agency's favor, such as provisions related to indemnification and insurance, and also requires the Permittee to pay a one-time, non-refundable permit fee of One Thousand Dollars (\$1,000) to ACE Parking, the Successor Agency's designated operator of the parking garage.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board that the Right of Entry Permit for the Event, a copy of which is attached as the sole exhibit to the Staff Report accompanying this item, is hereby approved.

**PASSED AND ADOPTED** by the Oversight Board at a duly noticed meeting of the Oversight Board held on October \_\_\_\_, 2012.

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Chair, Oversight Board