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OAKLAND
Introduced by
2010 JUN 30 AM 10:54

Councilmember

Approved for Form and Legality



City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 82898 C.M.S.

**A RESOLUTION GRANTING ALTA BATES - SUMMIT MEDICAL CENTER A
CONDITIONAL AND REVOCABLE PERMIT TO ALLOW A SOIL SHORING
SYSTEM TO ENCROACH UNDER THE PUBLIC RIGHT-OF-WAY FOR AN
ADDITION TO THE EXISTING PUBLIC HOSPITAL LOCATED AT 370
HAWTHORNE AVENUE**

WHEREAS, Alta Bates - Summit Medical Center (Permittee), a California non-profit public benefit corporation, as the owner of the property described in a grant deed, recorded January 9, 2004, series no. 2004012127, with the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor with the parcel no. 009-0729-001-05, and further identified by the City of Oakland as 370 Hawthorne Avenue, and more particularly described in *Exhibit A* attached hereto, has made an application to the City Engineer of the City of Oakland for a conditional and revocable encroachment permit (PPE 10057) to allow the installation and abandonment in-place under the public roadway of a soil shoring system along Hawthorne Avenue to support the excavation of a new basement for an addition to the existing public hospital, and

WHEREAS, at its meeting on May 9, 2010, the Planning Commission of the City of Oakland approved the Planned Unit Development (PUD09104) for the project and certified the Environmental Impact Report (ER090001) and adopted California Environmental Quality Act (CEQA) Findings and a Statement Of Overriding Considerations in connection with the approval of the project; and

WHEREAS, the City Council hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project, including the encroachment permit as conditioned herein, and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is "no new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); and

WHEREAS, the California Health and Safety Code reserves the life/safety review, permitting, and inspections of public hospitals for conformance with the requirements of the California Model

Codes (Building, Electrical, Plumbing, Mechanical) for the California Office of the State Architect; and

WHEREAS, the location and limits of the encroachment are delineated in *Exhibits B* and *C* attached hereto; and

WHEREAS, the installation and abandonment in-place of said encroachment will not interfere with the use by the public of the roadway or sidewalk; now, therefore, be it

RESOLVED, that the encroachment permit, as conditioned herein, does comply with the California Environmental Quality Act; and be it

FURTHER RESOLVED, that the encroachment, as conditioned herein and delineated in *Exhibits B* and *C* is hereby granted for a revocable permit to allow the installation and abandonment in-place of a soil shoring system under the public roadway along Hawthorne Avenue for an addition to an existing public hospital located at 370 Hawthorne Avenue; and be it

FURTHER RESOLVED, that the encroachment permit is hereby conditioned by the following special requirements:

1. 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; and
2. after notice to the Permittee, this permit shall be revocable at the sole discretion of the Council of the City of Oakland, expressed by resolution of said Council; and
3. the Permittee, by the acceptance of this conditional and revocable permit, hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the encroachments or the air space above and agrees that said temporary use of the area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise; and
4. the Permittee shall maintain in force and effect at all times that the encroachments occupy the public sidewalk area, good and sufficient commercial general insurance in an amount not less than \$1,000,000.00 for each occurrence/ \$2,000,000.00 annual aggregate with a property damage sub-limit in the amount not less than \$1,000,000.00 for each occurrence, including contractual liability and naming as additional insured the City of Oakland, its directors, officers, agents, representatives, employees, and volunteers 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 City Engineer of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled, materially changed, or be permitted to lapse without thirty (30) days written notice to said City Engineer. The Permittee also agrees that the City of Oakland may review the type and amount of insurance required at any time and may require the Permittee to increase the amount

of and/or change the type of insurance coverage required. In addition, the insurance amounts stated above shall be automatically adjusted upwards cumulatively consistent with the Consumer Price Index (CPI) in the Bay Area every five (5) years; and

5. the Permittee, by the acceptance of this conditional permit agrees and promises to defend, hold harmless, and indemnify the City of Oakland, its directors, agents, officers, officials, employees, representatives, assigns, successors, and volunteers 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 the encroachments into the public right-of-way and regardless of responsibility for negligence. This indemnification shall survive termination of this Permit; and
6. the Permittee shall make no changes to the encroachments hereby allowed either structurally, with regard to dimension, or with respect to use, without the prior written consent of the City Engineer and understands that the City of Oakland may impose reasonable fees and considerations for processing permits required for such proposed changes. The Permittee also understands that the City of Oakland is not obligated to grant any changes requested by the Permittee; and
7. the Permittee, by the acceptance of this conditional permit shall be solely and fully responsible for the repair or replacement of any portion or all of the improvements in the event that the 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; and
8. upon the termination of the permission herein granted, the Permittee shall immediately remove the encroachments from within the public right-of-way, and shall repair any damage resulting there from to the satisfaction of the City Engineer; and
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; and that the disclaimer and agreement shall be subject to the approval of the City Attorney and the City Engineer; and
10. the plans and exact location of the encroachments hereby granted are subject to the review and approval of the City Engineer and that the Permittee shall obtain all necessary permits prior to commencing said work; and that the encroachment shall be located as set forth in Exhibits A and B; and
11. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the encroachments; and that by accepting this conditional revocable permit, the Permittee agrees that it will use the encroachment area at its 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 its own safety and any of its personnel in connection with its entry under this conditional revocable permit; and

12. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the encroachment areas, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, representatives, and volunteers 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.); and
13. the Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it 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" ; and
14. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its 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; and
15. 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 Engineer 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; and be it

FURTHER RESOLVED, that this resolution shall become null and void upon the failure of the Permittee to complete the construction of said addition to the existing public hospital; and be it

FURTHER RESOLVED, that the City Clerk is hereby directed to file a certified copy of this resolution for recordation with the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 20 2010, 2010.

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID,
AND PRESIDENT BRUNNER - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:

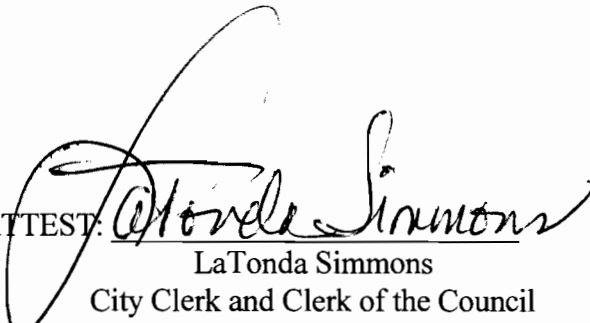

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

Lands of Alta Bates – Summit Medical Center from a grant deed, recorded January 9, 2004, series no. 2004012127, by the Alameda County Clerk-Recorder

PARCEL ONE:

A portion of Thirty-Fourth (34th) Street (formerly College Avenue and Plymouth Avenue as those avenues appear respectively on those certain maps entitled "Map of Buena Vista Homestead, Oakland," filed February 24, 1868, at Map Book 3 on page 25 and "Map of the Pacific Theological Seminary #2", filed January 16, 1878 at Map Book 2 on Page 2, records of Alameda County, California) more particularly described as follows:

Beginning at the Northwestern corner of Lot 56 as said lot appears on the hereinabove named "Map of Buena Vista Homestead . . ." and running thence along Thirty-Fourth (34th) Street, South 72° 00' 02" East, 162.80 feet more or less along the Southern line of said Thirty-Fourth Street (the bearing of the Southern line of Thirty-Fourth Street along the Northern line of Lots 52 through 58 on said last named map being taken as South 72° 00' 02" East for purposes of this description only); thence continuing along said last named line of Thirty-Fourth (34th) Street North 13° 17' 00" East, 21.88 feet; thence North 64° 33' 00" East, 66.74 feet; thence leaving said Southern line of Thirty-Fourth (34th) Street South 75° 00' 00" West, 46.71 feet to a point on the arc of a circle concave to the North and having a radius of 200 feet whose center bears North 15° 00' 00" West from said last named point; thence continuing along said last named arc through a central angle of 33° 00' 00", a distance of 115.19 feet; thence North 72° 00' 00" West, 41.35 feet; and thence South 81° 26' 00" West to the Point of Beginning. The hereinabove described parcel contains 2,739 square feet more or less.

PARCEL TWO:

Beginning at the point of intersection of the Northern line of Hawthorne Avenue with the Eastern line of a certain parcel of land granted by the President and Board of Trustees of the Pacific Theological Seminary, a corporation, to Bernard Gallagher, recorded July 3, 1901 in Book 770 of Deeds at page 380 Alameda County Records; and thence North 13° 17' East along said Eastern line 120.29 feet to the Northeastern corner of said parcel of land; thence North 76° 43' West 110.25 feet to the Southwestern corner of that parcel of land designated as parcel No. 5 in the deed from William B. Bosley, et al. to Samuel Merritt Hospital, a non-profit California Corporation, recorded in Book 7715 of Official Records at page 67, Alameda County Records; thence North 13° 17' East along the Western line of said parcel #5 156 feet to a point on the Southern line of 34th Street; thence Easterly along the Southern line of 34th Street as follows: South 72° East 70.49 feet, North 13° 17' East 21.88 feet, North 64° 33' East 66.74 feet; Easterly along the arc of a curve to the left with a radius of 214 feet an arc distance of 83.29 feet, tangent to the last named curve North 51° 43' 55" East 57.00 feet. Easterly along the arc of a tangent curve to the right with a radius of 140 feet an arc distance of 132.92 feet, and tangent to the last named curve South 73° 32' 05" East 245 feet to the intersection with the Western line of Webster Street; thence along the last named line South 16° 05' 55" West 207.55 feet, Southwesterly along the arc of a tangent curve to the right with a radius of 200 feet an arc distance of 143.02 feet, tangent to the last named curve South 57° 04' 17" West 68.94 feet, Southwesterly along the arc of a tangent curve to the left with a radius of 230 feet an arc distance of 101.72 feet to the intersection with the Northern line of Hawthorne Avenue; thence along said Northern line North 76° 41' West 204.24 feet, North 15° 49' East 220.00 feet, North 74° 11' West 112 feet and South 13° 17' West 226.05 feet to the point of beginning.

PARCEL THREE:

Beginning at the point of intersection of the Northern line of Hawthorne Avenue with the Eastern line of a certain parcel of land granted by the President and Board of Trustees of the Pacific Theological Seminary, a corporation, to Bernard Gallagher, recorded July 3, 1901 in Book 770 of Deeds at page 380 Alameda County Records; and thence North 13° 17' East along said Eastern line and its extension 226.05 feet; thence South 74° 11' East 112 feet; thence South 15° 49' West 220 feet to a point on the Northern line of Hawthorne Avenue; thence along said Northern line North 76° 41' West 60.58 feet; and Westerly along the arc of a curve to the left with a radius of 740 feet and arc distance of 41.61 feet to the point of beginning.

EXHIBIT B

Limits of the Soil Shoring Tie-Backs Encroachment

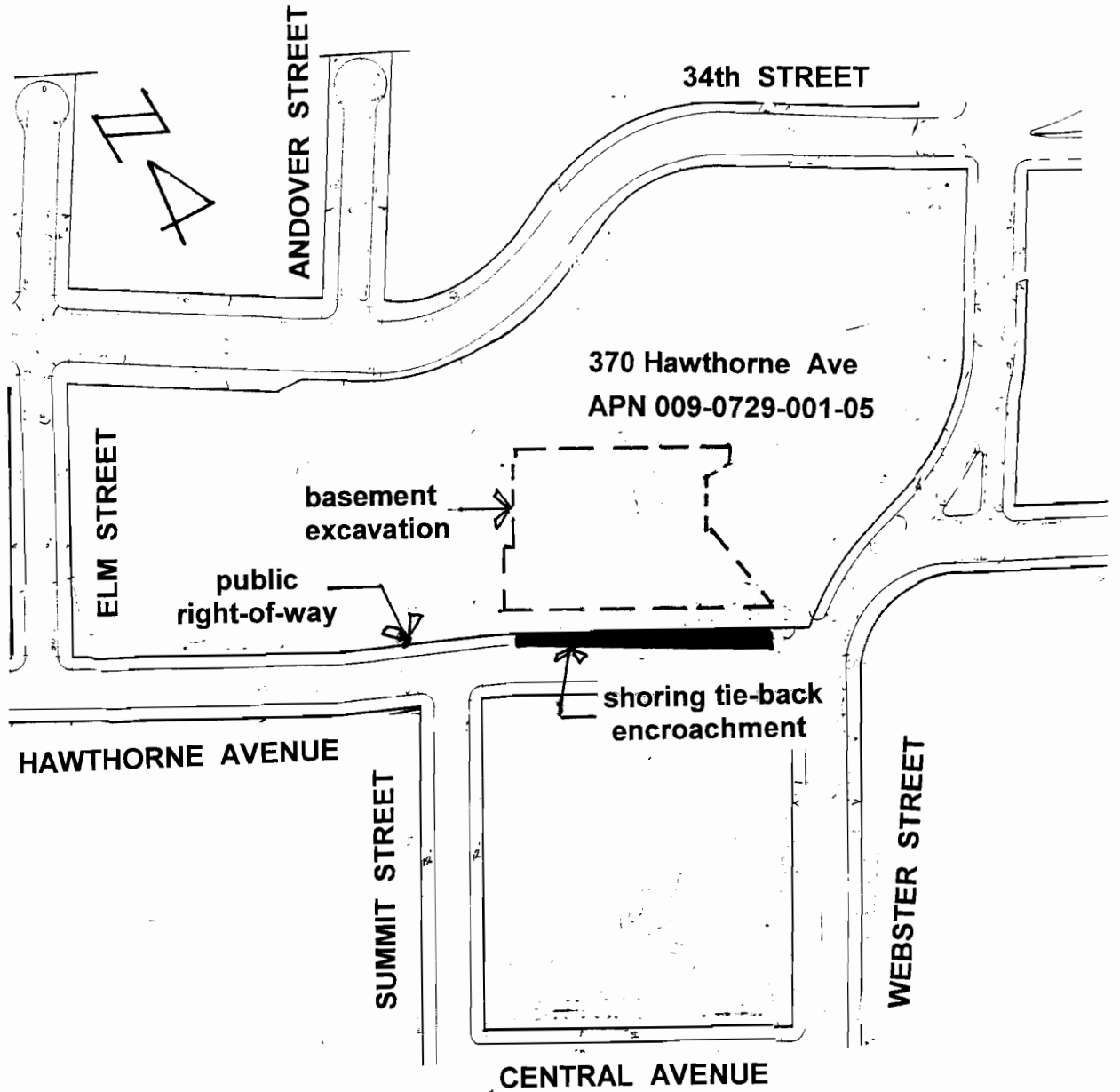


EXHIBIT C

Installation of the Soil Shoring Tie-Backs Encroachment

