

  
\_\_\_\_\_  
City Attorney

# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

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**A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ENTER INTO A MEMORANDUM OF AGREEMENT (MOA) WITH THE CITY OF PIEDMONT ESTABLISHING THAT THE CITY OF PIEDMONT WILL PROCESS PLANNING AND BUILDING ENTITLEMENTS FOR A REAR FLOOR AREA ADDITION, UPPER BALCONY AND LOWER DECK AT 513 BOULEVARD WAY, A PROPERTY LOCATED WITHIN BOTH JURISDICTIONS; AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS**

**WHEREAS**, the applicant for the property owner of 513 Boulevard Way, which is located in the cities of Oakland and Piedmont, approached both jurisdictions regarding the extension and remodeling of the first floor kitchen into the covered sun porch, extending the master bedroom into the existing sunroom and adding a bathroom on the second floor, extending the existing roof plane, and constructing an upper balcony and lower deck, new planters, landscaping and retaining walls at 513 Boulevard Way; and

**WHEREAS**, the applicant and the City of Piedmont request that land use and building permits for the development proposal be processed by the City of Piedmont; and

**WHEREAS**, the City of Oakland agrees that the issuance of planning and building permits and building inspections should be solely handled by the City of Piedmont as the majority of the single-family home is within the City of Piedmont, and the proposed construction within the City of Oakland is only 83 sq. ft. of new floor area or approximately 300 sq. ft. of new building footprint; and

**WHEREAS**, the City of Oakland is committed to seeing properties developed in as efficient a manner as possible; and

**WHEREAS**, the City Council hereby finds and determines that California Environmental Quality Act (CEQA) exemptions 15268(b) (Projects that are Ministerial) and 15301(e) (Existing Facilities) apply to this project, both of which provide a separate and independent basis for CEQA clearance; now, therefore be it

**RESOLVED:** that the City Administrator or designee is authorized to negotiate and execute a Memorandum of Agreement (MOA), in substantially similar form as to the MOA attached hereto at *Exhibit A*, for the development of a residential home addition, balcony and deck at 513 Boulevard Way and to negotiate and execute all documents, amendments, agreements and instruments reasonably necessary or required to implement this Resolution; and be it

**FURTHER RESOLVED:** that the MOA and all such other documents, amendments, agreements and instruments, shall be reviewed and approved by the City Attorney's Office as to form and legality prior to execution; and be it

**FURTHER RESOLVED:** that CEQA exemptions 15268(b) (Projects that are Ministerial) and 15301(e) (Existing Facilities) apply to this project, both of which provide a separate and independent basis for CEQA clearance.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - , GALLO, FIFE, KALB, KAPLAN, REID, TAYLOR, THAO AND PRESIDENT FORTUNATO BAS

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

Asha Reed  
City Clerk and Clerk of the Council  
of the City of Oakland, California

**EXHIBIT A**

## **MEMORANDUM OF AGREEMENT**

This MEMORANDUM OF AGREEMENT (“MOA”), dated as of this \_\_\_\_ day of \_\_\_\_\_, 2021 (“Effective Date”), is entered into by and between the City of Piedmont, a municipal corporation (“Piedmont”) and the City of Oakland, a municipal corporation (“Oakland”), with reference to the following facts and circumstances:

### **RECITALS**

A. The property located at 513 Boulevard Way (the “Property”) consists of one lot, and one tax parcel (APN No. 050 085500500), that straddles the Piedmont/Oakland border. The legal description and assessor parcel map for the Property is provided as Exhibit A, which is attached hereto and incorporated herein. The Property is generally bounded by single-family properties at 516-522 Boulevard Way across the street to the north, a duplex at 516-518 and a single-family property at 522 Crofton Way (Oakland) to the south at the rear of the Property, a single-family property at 511 Boulevard Way (Piedmont) to the west, and a single-family property at 523 Boulevard Way (Piedmont) to the east. The Property consists of 9,255 square feet (determined by a survey), with approximately 3,933 square feet or 57 percent of which is located in Piedmont, and approximately 5,322 square feet or 29.5 percent of which is located in Oakland.

B. When considering properties intersected by the border between the City of Piedmont and the City of Oakland, by long-standing arrangement between the cities, certain properties are considered Piedmont properties for the purposes of providing 911 and other municipal services, and certain properties are considered Oakland properties for the purposes of providing 911 and other municipal services. The Property is considered a Piedmont property eligible for Piedmont 911 services, municipal waste removal services, access to the Piedmont Unified School District schools, and other municipal services. The neighboring residences which have vehicular and pedestrian access to Boulevard Way are also considered Piedmont properties for those same services.

C. TECTA Associates/ Tansy Robinson (“Applicant”) for Property owner Robert Sharman desires to remodel an existing single-family home located on the Property, and extend the first floor kitchen into the covered sun porch, extend the master bedroom into the existing sunroom and add a bathroom on the second floor, extend the existing roof plane, and construct an upper balcony and lower deck, new planters, landscaping and retaining walls with the majority of the deck and site located in Oakland (the “Project”).

D. The majority of the existing, approximately 1,634 sq. ft. home’s footprint is located in Piedmont with only 83 sq. ft. located in Oakland.

E. In order to efficiently consider the Project, the cities desire to enter into this MOA to memorialize the designation of Piedmont as the lead agency for the purposes of both land use approvals and building inspection of the Project, including but not limited to

issuance of building and occupancy permits, and the provision of 911 and other municipal services to the Project, consistent with the terms and conditions contained in this MOA.

## **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

### **I. Lead Agency under CEQA**

Piedmont shall serve as Lead Agency for purposes of review under the California Environmental Quality Act (CEQA).

### **II. Planning Approval Process**

The City of Piedmont will be the approval authority for all land use approvals regarding the Property, including but not limited to zoning approvals, variances, and issuance of conditional use permits or the like, to the extent any such approvals may be necessary. Piedmont shall apply its land use regulations, except as may be otherwise stated in this MOA.

- A. Applications. The Applicant has submitted an application for Design Review Permit to the City of Piedmont Planning Department for the Project. A notice regarding the Project will be sent to the City of Oakland at the same time as the notices are sent to neighbors as required by the City of Piedmont Planning Code. Any staff reports will be sent to the City of Oakland prior to a Planning Commission hearing at the same time the report is made available to the public.
- B. Conditions of Approval. The City of Piedmont will provide the City of Oakland a copy of the Conditions of Approval for the Project, if any, if and when the Project is approved.
- C. Ongoing Jurisdiction. Both Piedmont and Oakland understand that, by virtue of the proposed location of this Project, the Project, if approved, will be constructed both within the City of Oakland and the City of Piedmont. As a consequence, except as otherwise provided in this MOA, the Property is subject to the laws of both cities.
  - Oakland acknowledges the continuing jurisdiction of the City of Piedmont, its Charter, and its Municipal Code within those portions of the Property located within the City of Piedmont, and will not undertake any action or approval that will result in any violation of any of those laws. Piedmont acknowledges the continuing jurisdiction of the City of Oakland, its Charter, and Municipal Code within those portions of the Project located within the City of Oakland and will not undertake any action or approval that will result in any violation of those laws, except as may regard planning or building

approvals for buildings on the Property. The City of Piedmont shall have jurisdiction over planning and building approvals for the Property.

- The City of Oakland and the City of Piedmont both reserve the right to take such actions as necessary to enforce the laws, conditions or requirements within each city. Both cities agree to cooperate with the other city in any action undertaken to enforce any condition or requirement imposed on the Project.

### **III. Building and Permit Issues**

- A. Building Permit and Plan Check. Piedmont will be responsible for building permit issuance, plan check, issuance of certificates of occupancy, building inspections and similar activities for the entire Project consistent with the appropriate procedures, fees, and standards of Piedmont. Except as set forth elsewhere in this MOA, inspections of the Project will be conducted by the City of Piedmont. Prior to the issuance of a building permit, the City of Piedmont Fire Department shall review and approve the fire and life safety systems including, but not limited to, fire hydrants, fire sprinkler systems, fire alarm systems, fire department access, and water distribution systems. In addition, prior to the issuance of a building permit, the Piedmont Planning Department shall review the building permit plans to ensure compliance with the approved Conditions of Approval, if any. The City of Piedmont retains the authority to issue future building permits for buildings on the Property located either partially or wholly within its jurisdiction.

### **IV. Emergency Service**

The Piedmont Fire Department shall be responsible for the provision of emergency and public safety services to the Project, including those portions located in the City of Oakland. Each City shall provide reciprocal response assistance as needed.

### **V. Fees**

- A. Public Improvement Fees. The Applicant shall be responsible for paying any public improvement fees required for the Project in Piedmont, including sewer connection fees and sewer user fees as applicable. The Applicant shall be responsible for paying sewer connection fees to the City of Piedmont for those units in the Project that discharge to the City of Piedmont sewer system. The sewer user fees are collected by East Bay Municipal Utility District as a part of monthly water bills.
- B. Other Fees. The Applicant shall be responsible for paying any fees required by Piedmont for staff review of encroachment permits, building permit plans, public improvement plans, and subdivision maps for consistency with Project approvals and city design standards.

- C. Not Comprehensive. The listing of specified fees in this Section V is not intended to serve as a comprehensive list of applicable fees from either jurisdiction.

## **VI. Indemnification**

- A. No Liability To Third Parties. Nothing in this MOA shall be deemed to create rights or obligations in the Applicant or third parties not signatories to this MOA.
- B. Indemnification.
- Oakland. Oakland shall defend, indemnify and hold harmless Piedmont from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOA or arising from or connected to the approval process or relating to the Project, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of Oakland, its officers, agents or employees.
  - Piedmont. Piedmont shall defend, indemnify and hold harmless Oakland from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOA or arising from or connected to the approval process or relating to the Project, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of Piedmont, its officers, agents or employees

## **VII. Miscellaneous Provisions**

- A. Notice. For any action related to this MOA. each City shall be sent notices at the following addresses:

To Piedmont:

City of Piedmont 120 Vista Avenue  
Piedmont, CA 94611  
Attention: Kevin Jackson, Planning & Building Director  
Phone: 510-420-3050 FAX: 510-658-3167  
Email: kjackson@piedmont.ca.gov

With a copy to:

City of Piedmont  
Attention: City Attorney  
120 Vista Avenue Piedmont, CA 94611  
Phone: 510-273-8780 FAX: 510-839-9104

To Oakland:

City of Oakland  
Dept. of Planning and Building  
250 Frank H Ogawa Plaza, Suite 2114, Oakland, CA 94612  
Attention: Heather Klein  
Phone: (510) 238-3659  
FAX: (510) 238-6538  
Email: hklein@oaklandca.gov

With a copy to:

Office of the City Attorney  
1 Frank H. Ogawa Plaza,  
Floor Oakland, CA 94612  
Attention: Brian P. Mulry  
Phone: (510) 238-6839  
FAX: (510) 238-6500  
Email: bmulry@oaklandcityattorney.org

- B. Headings. The headings in this MOA are for reference and convenience of the parties and do not represent substantive provisions of this MOA.
- C. Governing Law. This MOA shall be governed by the laws of the State of California.
- D. Modifications. Any modification of or amendment to this MOA will be effective only if it is signed in writing by all parties.
- E. Counterparts. This MOA may be executed in any number of counterparts (including by fax, PDF, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- F. Project Permit File. This MOU shall be kept and maintained at all times in the Property's Planning Permit file with the City of Piedmont Planning Department. The City of Oakland shall be provided a copy of this MOU upon request.

***[Signatures on Following Page]***



IN WITNESS WHEREOF, Piedmont and Oakland have each caused this MO to be duly executed on its behalf as of the Effective Date.

City of Piedmont

City of Oakland

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Authorized by Resolution No. \_\_\_\_\_  
Adopted \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_