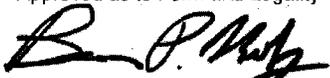


FILED
OFFICE OF THE CITY CLERK
OAKLAND

2021 MAR 26 AM 8:32

Approved as to Form and Legality


City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 88570 C.M.S.

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 THE DEVELOPMENT OF AN ACCESSORY DWELLING UNIT (ADU) AT 1086 ANNERLEY ROAD, A PROPERTY LOCATED WITHIN BOTH JURISDICTIONS; AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

WHEREAS, the property owner of 1086 Annerley Road, which is located in the cities of Oakland and Piedmont, approached both jurisdictions regarding construction of an accessory dwelling unit (ADU) at 1086 Annerley Road; and

WHEREAS, the property owner requests 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 there is little difference between Piedmont and Oakland's codes in regards to ADU development standards; 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 15303(a) (New Construction or Conversion of Small Structures) 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 as *Exhibit A*, for the development of an ADU at 1085 Annerley Road 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 15303(a) (New Construction or Conversion of Small Structures) apply to this project, both of which provide a separate and independent basis for CEQA clearance.

IN COUNCIL, OAKLAND, CALIFORNIA, MAR 29 2021

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND PRESIDENT FORTUNATO BAS - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

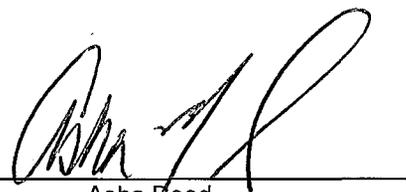
ATTEST: 
Asha Reed
City Clerk and Clerk of the Council
of the City of Oakland, California

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 1086 Annerley Road (the "Property") consists of one lot, and one tax parcel (APN No. 050-861-62), that straddles the Piedmont/Oakland border. The legal description for the Property is provided as **Exhibit A**, which is attached hereto and incorporated herein. The Property is generally bounded by Annerley Road on the North, a single family home at 4151 Lakeshore Avenue (Oakland) on the South, a single family property at 1082 Annerley Road (Piedmont) on the West, and a single family property at 1092 Annerley Road (Oakland) on the East. The Property consists of 4,840 square feet (determined by Alameda County Assessor's Office), approximately 3,412 square feet or 70.5% of which is located in Piedmont, and approximately 1,428 square feet or 29.5% of which is located in Oakland. An existing single family residence is built on the Piedmont portion of the lot, which fronts Annerley Road.

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 Annerley Road are also considered Piedmont properties for those same services.

C. Aileen DeSoto ("Applicant") desires to build an accessory dwelling unit ("ADU") located on the rear portion of the Property that is located entirely in Oakland (the "Project").

D. The existing single-family home on the Property is located entirely within Piedmont, but the ADU proposed by the Project would be entirely situated in the Oakland portion of the Property.

E. Both Piedmont and Oakland desire to see this site's use compatible with the surrounding properties and consistent with the cities' land use regulations and plans.

F. 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. Applicant will submit a planning application to the City of Piedmont Planning Department for an Accessory Dwelling Unit (ADU). A notice regarding the project will be sent to the City of Oakland upon receipt of the application, or as soon thereafter as reasonably practicable given the project is likely subject to ministerial approval within sixty (60) days pursuant to Government Code section 65852.2.
- 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 within the City of Oakland. 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.
- B. Building Address. The existing residence will retain the address of 1086 Annerley Road, Piedmont, and the Project will have a Piedmont address of 1086-B Annerley Road.

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: Karen August
Phone: (510) 238-5217
FAX: (510) 238-4730
Email: KAugust@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@oaklandcrtymey.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.

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: _____

Authorized by Resolution No. _____
 Adopted _____

Attest: _____

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

Approved as to form:
 By: _____
 Name: _____
 Title: _____

Approved as to form:
 By: _____
 Name: _____
 Title: _____

EXHIBIT A

ORDER NO.: 1116016410-LF

EXHIBIT A

The land referred to is situated in the County of Alameda, City of Piedmont, State of California, and is described as follows:

Lot 24, Block "A" "Lakewood Park", filed August 10, 1916, Map Book 14, Page 38, Alameda County Records.

APN: 050-861-62

