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CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

July 16, 2013

HONORABLE CITY COUNCIL
Oakland, California

Subject: RESOLUTION APPROVING SETTLEMENT OF ROLLS-ROYCE ENGINE SERVICES-OAKLAND INC. V. CITY OF OAKLAND (ALAMEDA SUPERIOR COURT CASE NO. RG13671409), BY ACCEPTING PAYMENT FROM ROLLS-ROYCE OF \$223,084 IN BUSINESS TAXES AND INTEREST AND WAIVING CITY'S CLAIM TO PAYMENT OF PENALTIES OF \$34,817, IN EXCHANGE FOR DISMISSAL OF ROLLS-ROYCE'S LAWSUIT (FINANCE AND MANAGEMENT AGENCY- BUSINESS TAXES PER OMC CH. 5.04)

Dear President Kernighan and Members of the City Council:

At closed session on June 4, 2013, the City Council considered a proposed settlement of a lawsuit filed by Rolls-Royce Engine Services-Oakland, Inc. ("Rolls-Royce") regarding application of the City's Business Tax Ordinance (Chapter 5.04 of the Oakland Municipal Code; the "Ordinance").

The lawsuit challenged an administrative decision that (1) reclassified Rolls-Royce as a "service" business rather than a "manufacturer" under the Ordinance and (2) found Rolls-Royce liable to the City for taxes, penalties and interest under the Ordinance for certain, specified years based upon the reclassification, in the amount of \$257,901.

The settlement proposal was for the City to accept the payment by Rolls-Royce of taxes and interest (\$223,084) and to waive its claim to recover penalties (\$34,817), in exchange for Rolls-Royce's dismissal of the lawsuit (which includes a challenge to the reclassification of Rolls-Royce as a "service" business under the Ordinance).

HONORABLE CITY COUNCIL

July 16, 2013

Subject: Resolution Approving Settlement of Rolls-Royce Engine Services-Oakland,
Inc. v. City of Oakland (Alameda Superior Court Case No. RG13671409)

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The City Council accepted the settlement proposal. Accordingly, we have prepared this Resolution authorizing and directing the City Attorney to enter into a settlement agreement consistent with the term of the settlement proposal to resolve the Action, and we request that the City Council adopt the Resolution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barbara J. Parker, for". The signature is fluid and cursive.

BARBARA J. PARKER
City Attorney

Attorney(s) Assigned:

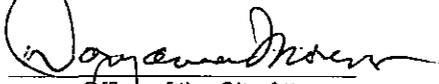
Kevin D. Siegel, Burke, Williams & Sorensen LLP

Attachments:

Proposed Resolution

1173199.1

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Office of the City Attorney

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION APPROVING SETTLEMENT OF ROLLS-ROYCE ENGINE SERVICES-OAKLAND INC. V. CITY OF OAKLAND (ALAMEDA SUPERIOR COURT CASE NO. RG13671409), BY ACCEPTING PAYMENT FROM ROLLS-ROYCE OF \$223,084 IN BUSINESS TAXES AND INTEREST AND WAIVING CITY'S CLAIM TO PAYMENT OF PENALTIES OF \$34,817, IN EXCHANGE FOR DISMISSAL OF ROLLS-ROYCE'S LAWSUIT (FINANCE AND MANAGEMENT AGENCY - BUSINESS TAXES PER OMC CH. 5.04)

WHEREAS, on or about December 14, 2012, the Oakland Tax Board of Review issued, on behalf of the City, a written administrative decision ("Administrative Decision") regarding the application of the City's Business Tax Ordinance (Chapter 5.04 of the Oakland Municipal Code; the "Ordinance") to Rolls-Royce Engine Services-Oakland, Inc. ("Rolls-Royce");

WHEREAS, the Administrative Decision (1) reclassified Rolls-Royce as a "service" business rather than a "manufacturer" under the Ordinance and (2) found Rolls-Royce liable to the City for taxes, penalties and interest under the Ordinance for certain specified years based upon the reclassification, in the amount of \$257,901; and

WHEREAS, in March 2013, Rolls-Royce (1) paid the taxes and interest under protest (\$223,084) but not the penalties (\$34,817) that were the subject of the Administrative Decision and (2) filed suit in Alameda Superior Court to reverse the Administrative Decision—Rolls-Royce Engine Services-Oakland Inc. v. City of Oakland et al., Case No. RG13671409 (the "Action"), which is pending; and

WHEREAS, on June 4, 2013, the City Council considered and authorized a settlement of the Action in which the City would accept the payment of the taxes and interest (\$223,084) and waive its claim to recover penalties (\$34,817) in exchange for Rolls-Royce's dismissal of the Action; now therefore be it resolved

RESOLVED: The City Attorney is authorized and directed to settle the matter of Rolls-Royce Engine Services-Oakland Inc. v. City of Oakland et al., Case No. RG13671409, City Attorney File No. X03914, to accept payment of taxes and interest from Rolls Royce Engine Services-Oakland, Inc. in the amount of \$223,084

(previously paid) and waive the City's claim to recover penalties of \$34,817 in exchange for dismissal of the Action.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF
AND PRESIDENT KERNIGHAN

NOES –

ABSENT –

ABSTENTION –

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

1173197.1