

OAKLAND CITY COUNCIL



RESOLUTION No. 76154 C.M.S.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE CASE OF CITY OF OAKLAND VS. ENTERPRISE RENTAL CAR, ET AL., ALAMEDA COUNTY SUPERIOR COURT CASE NO. 810064-9, ARISING OUT OF EMINENT DOMAIN LITIGATION REGARDING CERTAIN REAL PROPERTY LOCATED AT 190 98TH AVENUE, OAKLAND, COUNTY OF ALAMEDA FOR THE AIRPORT ROADWAY PROJECT, WIDENING AND IMPROVEMENT OF 98TH AVENUE COMPONENT, IN THE AMOUNT OF \$775,000.00, PLUS INTEREST AND COURT COSTS.

WHEREAS, the voters of Alameda County approved Measure B in November 1986 for sales tax funding of specific transportation projects in the county; and,

WHEREAS, the Airport Roadway Project ("Project") is one of the projects designed by Measure B with the Port of Oakland (Port) as the Project Sponsor; and,

WHEREAS, on May 21, 1996, the City Council approved, by Resolution No. 72668 C.M.S. the funding agreement (Agreement) with the Alameda County Transportation Authority (ACTA), the City of Alameda (Alameda) and the Port for sharing the Project expenditure and other related actions to successfully complete the Project; and,

WHEREAS, the City Council approved amendments to the Agreement on December 9, 1997 (by Resolution No. 73963 C.M.S.) and on June 23, 1998 (by Resolution No. 74343 C.M.S.); and,

WHEREAS, on February 17, 1998 the City Council approved the Project and the widening of 98th Avenue by Resolution No. 74075 C.M.S.; and,

WHEREAS, in order to facilitate the portion of the Airport Roadway Project along 98th Avenue, the City filed a condemnation action to acquire portions of the property located at 190 98th Avenue, Oakland, County of Alameda, California whose legal description is set out in Exhibit A hereof (the "Property"), Alameda County Superior Court No. 810064-9; and,

WHEREAS, Moms Draying (the "Owner") owns the Property and Enterprise Rental Car (the "Tenant") leases the Property, the City has named Owner and Tenant as defendants in the action to acquire their interests in the Property; and,

WHEREAS, the City filed an eminent domain action to acquire Owner's and Tenant's, interests in the Property and the City, Owner and Tenant have agreed to settle the action with the Owner and Tenant agreeing to relinquish their interests in consideration for payment by the City; and,

WHEREAS, the project committee overseeing the administration of the Airport Roadway Project, pursuant to the agreements among the project sponsors, the City, the Port of Oakland, the City of Alameda and the Alameda County Transportation Authority, has approved acquisition of the Owner and Tenant interests in the Property for the amount described below and the expenditure of project funds for that acquisition, **now therefore**

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES RESOLVE AS FOLLOWS:

SECTION 1: The City Manager or his designee is authorized to execute such documents as are necessary to acquire the Owner's and Tenant's interests in the Property for an amount not to exceed \$775,000.00, plus interest and court costs, including execution of a Settlement and Property Acquisition Agreement (the "Settlement Agreement"), and contingent upon the City Council adopting the companion Ordinance to acquire the Property;

SECTION 2: The City Manager or his designee is authorized to take such actions as are necessary to complete the acquisition, perform the City's obligations under the Settlement Agreement, and carry out the intent of this Resolution.

SECTION 3: The Stipulation for Entry of Judgment and Judgment in Condemnation shall be approved as to form and legality by the City Attorney and a copy shall be filed with the office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, **NOV 28 2000**, 19__

PASSED BY THE FOLLOWING VOTE:

AYES-BRUNNER, CHANG, PRESIDENT DE LA FUENTE, MILEY, NADEL, REID, SPEES, WAN- **8**

NOES- *None*
ABSENT- *None*
ABSTENTION- *None*
EXCUSED- *None*


ATTEST: 
CEDA FLOYD
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIFORNIA

EXHIBIT A

City of Oakland
County of Alameda

LEGAL DESCRIPTION

FEE TAKE

Real Property In the City of Oakland, County of Alameda, State of California, being a portion of land as described in Deed AJ-55215, recorded June 30, 1954, described as follows:

BEGINNING at the most northerly corner of said Land; thence along the northwesterly line of said Land ~~S~~**S63°38'16"W**, 272.39 feet; thence from a tangent that bears **S63°38'16"W** and along a curve to the left with a radius of 17.00 feet, through an angle of **122°30'05"** and an arc length of **36.34** feet to the southwesterly boundary of said Land; thence along said southwesterly line **S58°51'49"E**, 48.10 feet; thence from a tangent that bears **N52°57'12"W** and along a curve to the right with a radius of 24.00 feet, through an angle of **20°50'36"** and an arc length of 8.73 feet; thence **N04°35'01"E**, 29.30 feet; thence from a tangent that bears **N42°23'35"E** and along a curve to the right with a radius of 24.00 feet, through an angle of **24°58'47"** and an arc length of 10.46 feet; thence from a tangent that bears **N67°22'26"** and along a curve to the **left** with a radius of 3045.00 feet, through an angle of **02°41'50"** and an arc length of 143.40 feet; thence **N64°40'36"E**, 104.01 feet to the northeasterly boundary of said Land; thence along said northeasterly line **N59°59'57"W**, 15.76 feet; thence **N26°21'44"W**, 25.56 feet to the point of beginning

CONTAINING 10,817 square feet, more or less.

The bearing and distances of this description are based on the California Coordinate System, using the 1983 North American Datum. Multiply the distances shown by 1.0000705 to obtain ground distances.

This real property description has been prepared by me, or under my direction, in conformance with the Land Surveyors Act.

A.P.N. 044-5020-003-60

John T. Warren
John T. Warren, C-22062
12/11/98
Date
9/30/01
Expires



CITY OF OAKLAND'S



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

Office of the City Attorney
John A. Russo
City Attorney

November 28, 2000

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-7367

President De La Fuente and Members of the City Council:

Re: A Resolution Authorizing Acquisition of Real Property Interests Following Settlement of Condemnation Litigation Relating to the Airport Roadway Project, Widening and Improvement of 98th Avenue Component

Summary

The sub-item to this agenda item is a resolution authorizing acquisition of condemned real property interests along 98th Avenue as part of the widening of 98th Avenue for the Airport Roadway Project ("Project"). It is requested that the City Council approved the resolution and authorize the City Attorney to enter into the settlement agreement. In order to acquire the property interests condemned and complete the settlement, the City Council must also approve the ordinance to acquire the property interests being condemned. The resolution for the acquisitions of the condemned real property interests is presented as a separate companion report. A report summarizing the individual resolution follows a general report.

Settlement of litigation in City of Oakland v. Enterprise Rental Car, et al., in the amount of \$775,000.00, plus interest and court costs.

Background:

On March 16, 1999 the City Council determined that the public interest and necessity required the acquisition of certain real property interest to implement the Airport Roadway Project ("Project") and approved Resolutions of Necessity to commence eminent domain actions to acquire the properties. The use of the property described in each of the ordinances is a public use authorized by law. All acts and proceedings required by Code of Civil Procedure Sections 1245.220, et seq. were undertaken and

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had been completed at the time the Resolutions of Necessity to condemn the property interests were approved.

The property acquisitions are takings within the proposed new right-of-way on the 98th Avenue segment of the Project. Ordinances for the acquisition of various condemned real property interests are attached hereto.

The Airport Roadway Project is a Measure B funded project sponsored by the Port of Oakland (Port), City of Alameda (Alameda), City of Oakland (Oakland) and the Alameda County Transportation Authority (ACTA). The City Council approved, by Resolution No. 726658 C.M.S., dated May 21, 1996, a funding agreement between the Port, Alameda, and the City of Oakland. The City Council approved amendments to the Agreement on December 9, 1997 (by Resolution 73963 C.M.S.); June 23, 1998 (by Resolution No. 74343 C.M.S.); and on June 22, 1999 (by Resolution No. 75075).

The City Council approved the Project on February 17, 1998 and the widening of 98th Avenue by Resolution No. 74075 C.M.S. On June 23, 1998, the City Council approved Resolution No. 74343 C.M.S., which authorized City staff to initiate right-of-way acquisition, site clearance, and relocation activities.

In approving the Project, the City Council made findings with respect to the Final Environmental Impact Report and California Environmental Quality Act (CEQA). In Resolution 74075 C.M.S., dated February 17, 1998, and determined that the final EIR was adequate for City Council approval.

Pursuant to Section 727 of the City charter, the Project has been determined to conform to the transportation designation for the site in the Oakland General Plan.

The Joint Economic Powers Agreement which provides for the roadway project administration by a committee of the participating agencies has approved the acquisitions of the Owner's interests in the property and the expenditure of project funds in the amount set forth in the settlement agreements.

The Council previously approved **settlements** of other condemnation actions for the Project. Other condemnations for the Project are in various stages of litigation or settlement. They will be presented to the Council when they are ready.

FISCAL IMPACT

Measure B only partially funds the project. The total project budget is \$104,085,354. The Project participants have mutually agreed that the pro rata share of the Project expenditure for ACTA, Port, Alameda and Oakland are \$73,900,000, \$20,923,354, \$8,835,000 and \$418,000, respectively, as approved by City Council on June 22, 1999 (Resolution 75075 C.M.S.)

The project budget includes \$8.28 million for right-of-way acquisitions and relocation activities along 98th Avenue. The total acquisition/settlement costs will be paid by the Airport Roadway project. City staff and professional service contracts costs are also covered under this measure.

DISABILITY AND SENIOR CITIZEN ACCESS

Title 24 and Americans with Disabilities Act requirements will be incorporated into the street design, e.g., handicap ramps and appropriate visual and audio signalization at intersections.

ENVIRONMENTAL OPPORTUNITIES

Approving this settlement agreement will assist in promoting future real estate activity that is consistent with the environmental goals of the City.

ALTERNATIVE

If the City Council does not approve the settlement agreements the City will be forced to proceed with trial of the eminent domain actions in Superior Court.

RECOMMENDATION AND RATIONAL

It is recommended that the City Council pass the ordinances approving acquisitions of the various real property interests and the comparison settlement agreement

ACTION REQUESTED BY THE CITY COUNCIL

It is recommended that the City Council approve the ordinances authorizing the City Manager to acquire of the condemned real property located on 98th Avenue by settlement of eminent domain litigation in the amount stipulated in the ordinances, plus interest thereon and court costs as required by law, contingent upon City Council approval of the companion resolutions approving and authorizing settlement of the eminent domain litigation.

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SUMMARY

A resolution has been prepared authorizing and directing the City Attorney to settle eminent domain litigation with Morris Draying (owner of the property), and Enterprise Rental Car (leases the property, (Alameda County Superior Court Case No. 810069-4) to relinquish their interests in certain real property located at 190 98th Avenue Oakland, Alameda County, California in consideration for payment by the City in the amount of \$775,000.00, plus interest and court costs, and contingent upon the City Council approving the companion Ordinance authorizing the acquisition of the Property. Approval of the Resolution is recommended.

Very truly yours,



JOHN A. RUSSO
City Attorney

Assigned Attorney
Richard F. Illgen