

# OAKLAND CITY COUNCIL

RESOLUTION No. 76200 C.M.S.

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RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE CASE OF CITY OF OAKLAND VS. RAY FERRARIS, JR., ET AL., ALAMEDA COUNTY SUPERIOR COURT CASE NO. 810080-7, ARISING OUT OF EMINENT DOMAIN LITIGATION REGARDING CERTAIN REAL PROPERTY INTERESTS LOCATED AT 40 98<sup>TH</sup> AVENUE, OAKLAND, COUNTY OF ALAMEDA FOR THE AIRPORT ROADWAY PROJECT, WIDENING AND IMPROVEMENT OF 98<sup>TH</sup> AVENUE COMPONENT, IN THE AMOUNT OF \$161,000.00 PLUS INTEREST AND COURT COSTS, BUT EXCLUDING ATTORNEY FEES, TO RAY FERRARIS, JR AND NINA FERRARIS, IN THE AMOUNT OF \$125,000.00 TO GROVER EAKMAN, INCLUDING ALL COSTS, INTEREST AND ATTORNEYS FEES, PLUS A \$40.00 PER DAY PAYMENT COMMENCING ON APRIL 1, 2001 IF PROPERTY SUBJECT TO A TEMPORARY CONSTRUCTION EASEMENT IS NOT RETURNED BY MARCH 31, 2001.

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 July 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 98<sup>th</sup> Avenue by Resolution No. 74075 C.M.S.; and,

WHEREAS, the Airport Roadway Project, in Resolutions No. 74343, dated July 23, 1998, authorized City staff to initiate acquisition, site clearance and relocation activities; and

**WHEREAS**, in order to facilitate the portion of the Airport Roadway Project along 98<sup>th</sup> Avenue, the City has filed a condemnation action to acquire portions of property located at 40 98<sup>th</sup> Avenue, Oakland, County of Alameda (the "Property") Alameda County Superior Court No. 810080-7; and

**WHEREAS**, Grover Eakman ("Eakman") leases the Property from Ray Ferraris, Jr. and Nina M. Ferraris ("Ferraris"), and Eakman uses said property for the rental of automobiles to the public; and

**WHEREAS**, the City named Ferraris as defendants in this action so as to acquire their ownership interests in the property, and named Eakman as a defendant in this action so as to acquire his leasehold interest in the property; and

**WHEREAS**, the City filed an eminent domain action to acquire Ferraris' and Eakman's interests in the Property, and Ferraris and Eakman and the City have each agreed to settle the action as follows:

Eakman has agreed to relinquish his interests and waive any and all claims against the City arising out of the condemnation action, including but not limited to, all court costs, interest, attorneys fees, litigation expenses, land, improvements, fixtures and equipment and personal property, loss of goodwill, relocation benefits, and bonus value in consideration for payment by the City to Eakman in the amount of \$125,000.00, plus an additional payment of \$40.00 per day commencing on April 1, 2001 for each day after March 31, 2001 that the City fails to return the property that is subject to the temporary construction easement

Ferraris has agreed to relinquish their interests and waive any and all claims against the City arising out of the condemnation action, including all court costs, attorneys fees, litigation expenses, land improvements, fixtures and equipment, personal property, loss of goodwill, relocation benefits and bonus value in consideration for payment by the City to Ferraris in the amount of \$161,000 plus interest and court costs, but excluding attorney fees.

**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 Eakman's and Ferraris' 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 Attorney or his/her designee is authorized to execute such documents as are necessary to acquire Eakman's interests in the Property as described in the attached Exhibit A to this resolution, for an amount not to exceed \$125,000.00, including all costs, interest, attorneys fees, plus ~~an~~ additional payment of \$40.00 per day commencing on April 1, 2001 for each day after March 31, 2001 that the City fails to return the property that is subject to the temporary construction easement, and including execution of a Settlement Agreement ("Settlement Agreement").

SECTION 2: The Settlement Agreement with Eakman 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.

SECTION 3: The City Attorney or his/her designee is authorized to execute such documents as are necessary to acquire Ferraris' interests in the Property as described in the attached Exhibit B to this resolution, for an amount not to exceed \$161,000.00 plus interest and court costs, but excluding attorney fees, and including execution of a Settlement Agreement.

SECTION 4: The Settlement Agreement with Ferraris 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, **DEC 12 2000**, 19\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**


AYES-BRUNNER, ~~CHANG~~, PRESIDENT DE LA FUENTE, MILEY, NADEL, **RED**, SPEES, WAN- **7**

NOES- *None*

ABSENT- *Chang-1*

ABSTENTION- *None*

EXCUSED- *None*

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