

CITY COUNCIL

02 DEC 23 PM 1:23
CITY CLERK
ALAMEDA COUNTY

RESOLUTION No. 77597 C.M.S.



RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE CASE OF CITY OF OAKLAND V. JOHN C. YING, AND YING Y. WANG, ALAMEDA COUNTY SUPERIOR COURT CASE NO. 810071-9, ARISING OUT OF EMINENT DOMAIN LITIGATION REGARDING CERTAIN REAL PROPERTY INTERESTS LOCATED AT 10 HEGENBERGER ROAD, OAKLAND, COUNTY OF ALAMEDA FOR THE AIRPORT ROADWAY WIDENING AND IMPROVEMENT PROJECT OF 98TH AVENUE COMPONENT, FOR THE FOLLOWING: AN AMOUNT UP TO \$453,932.00, INCLUSIVE OF INTEREST THROUGH DECEMBER 31, 2002; PLUS INTEREST THEREAFTER AT \$35.48 PER DAY UNTIL PAID; THE OWNERS' COST OF LITIGATION; \$25,000 FOR REPLACEMENT OF PARKING LOT LIGHTING, AND LANDSCAPING REMOVED OR DAMAGED; AND \$20,000.00 IN LIEU OF A NON-EXCLUSIVE EASEMENT FOR SURFACE PARKING ON AN ABUTTING, SURPLUS PORTION OF CITY-OWNED PROPERTY.

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 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, the Project, in Resolutions No. 74840, 74852 and 74853, dated March 16, 1999, 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 98th Avenue, the City has negotiated a settlement of certain claims from property Owners, however impacted; and

WHEREAS, John C. Ying, and Ying Y. Wang, are the Owners of the real property located at 10 Hegenberger Road; and

WHEREAS, the City of Oakland having made certain changes to the traffic circulation patterns on 98th Avenue as a result of the widening of the Airport Roadway Project; and

WHEREAS, the City has negotiated a compromise and settlement of claims for the partial taking of real property and loss of abutter's rights for access to the property from 98th Avenue, as a result of traffic circulation changes caused by the widening and improvement of the 98th Avenue component, City proposes to settle the claim with the Owners for damages during construction parking lot lighting on the real property at 10 Hegenberger Road, Oakland, California and for the acquisition in fee of a portion of said property, including a permanent utility easement (attached as Exhibit "A") with the Owners, agreeing to release the claim in consideration of the following: an amount up to \$453,932.00 , inclusive of interest through December 31, 2002; plus Interest thereafter at \$35.48 per day until paid; the Owners' cost of litigation; \$25,000 for replacement of parking lot lighting, and landscaping removed or damaged; \$20,000.00 in lieu of a non-exclusive easement for surface parking on an abutting, surplus portion of City-owned property to mitigate loss of abutter's rights along 98th Avenue; 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 settlement of the Owners' claim and expenditure of project funds for the settlement as follows: an amount up to \$453,932.00 inclusive of interest through December 31, 2002; plus interest thereafter at \$35.48 per day until paid; the Owners' cost of litigation; \$25,000 for replacement of parking lot lighting, and landscaping removed or damaged; \$20,000.00 in lieu of a non-exclusive easement for surface parking on an abutting, surplus portion of City-owned property, 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 settle the eminent domain case including: execution of a Settlement Agreement and claims for damages to parking lot lighting with John C. Ying, and Ying Y. Wang, related to the real property at 10 Hegenberger Road, Oakland, California for the acquisition in fee of a portion of said property and a permanent utility easement in consideration of the following: an amount up to \$453,932.00 , inclusive of interest through December 31, 2002; plus Interest thereafter at \$35.48 per day until paid; the Owners' cost of litigation; \$25,000 for replacement of parking lot lighting, and landscaping removed or damaged; \$20,000.00 in lieu of a non-exclusive easement for surface parking on an abutting, surplus portion of City-owned property.

SECTION 2: The Settlement Agreement, 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, JAN 07 2003, 2003

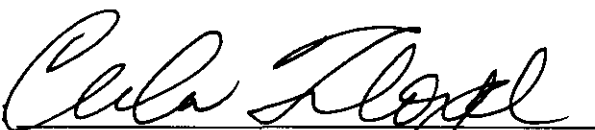
Passed By The Following Vote:

AYES- BROOKS, BRUNNER, CHANG, DE LA FUENTE, NADEL, QUAN, REID,
AND WAN. - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST 
CEDA FLOYD
City Clerk and Clerk of the Council
of the City Of Oakland, California

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 the Parcel as described in Deed 89-197852, recorded July 24, 1989, described as follows:

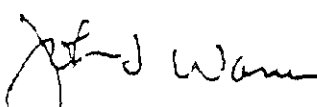
BEGINNING at the most easterly corner of said Parcel; thence along the northeasterly line of said Parcel $N30^{\circ}31'44''W$, 38.05 feet; thence from a tangent that bears $S61^{\circ}28'23''W$ and along a curve to the left with a radius of 832.00 feet, through an angle of $08^{\circ}56'44''$ and an arc length of 129.90 feet; thence $S52^{\circ}31'40''W$, 115.76 feet to the southeasterly boundary of said Parcel; thence along the southeasterly line of said Parcel $N63^{\circ}47'16''E$, 245.25 feet to the point of beginning.

CONTAINING 5,457 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. 044-5020-004-01



John T Warren, C-22062
12/9/98

Date
9/30/01

Expires



EXHIBIT A-1

City of Oakland
County of Alameda

LEGAL DESCRIPTION

30' UTILITY EASEMENT (UNDERGROUND)

An easement for utility purposes.

Real Property in the City of Oakland, County of Alameda, State of California, being a portion of the Parcel as described in Deed 89-197852, recorded July 24, 1989, described as follows:

BEGINNING at the most easterly corner of said Parcel; thence along the northeasterly line of said Parcel $N30^{\circ}31'44''W$, 38.05 feet to the TRUE POINT OF BEGINNING; thence from a tangent that bears $S61^{\circ}28'23''W$ and along a curve to the left with a radius of 832.00 feet, through an angle of $08^{\circ}56'44''$ and an arc length of 129.90 feet; thence $S52^{\circ}31'40''W$, 115.76 feet to the southeasterly boundary of said Parcel; thence along said southeasterly line $S63^{\circ}47'16''W$, 153.64 feet; thence $N52^{\circ}31'40''E$, 266.44 feet; thence from a tangent that bears $N52^{\circ}31'40''E$ and along a curve to the right with a radius of 862.00 feet, through an angle of $08^{\circ}52'33''$ and an arc length of 133.53 feet to the northeasterly boundary of said Parcel; thence along said northeasterly line $S30^{\circ}31'44''E$, 30.02 feet to the true point of beginning.

CONTAINING 9,681 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. 044-5020-4-01

John T. Warren

John T. Warren, C-22062

12/9/98

Date

9/30/01

Expires



EXHIBIT A-2