

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 90978 C.M.S.

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO ENTER INTO A PARTIAL SETTLEMENT IN THE CASE OF OAKLAND BULK AND OVERSIZED TERMINAL, LLC V. CITY OF OAKLAND, ALAMEDA COUNTY SUPERIOR COURT CASE NO. RG18930929, AND CITY OF OAKLAND V. OAKLAND BULK AND OVERSIZED TERMINAL, LLC, ALAMEDA COUNTY SUPERIOR COURT CASE NO. RG20062473, CITY ATTORNEY FILE NOS. X04624 AND X04624-1, BY WAIVING THE CITY'S POTENTIAL ENTITLEMENT TO BACK RENT DURING THE PERIOD OF THE PARTIES' LITIGATION, AGREEING TO PERFORM CERTAIN ADMINISTRATIVE STEPS TO MOVE THE PROJECT FORWARD, AND AGREEING TO ENGAGE IN FURTHER DISCUSSIONS RELATED TO POTENTIAL MODIFICATIONS OF THE GROUND LEASE IN EXCHANGE FOR A REDUCTION IN POST-JUDGMENT ATTORNEYS' FEES AND COSTS PAYABLE BY THE CITY (DEPARTMENT OF ECONOMIC & WORKFORCE DEVELOPMENT – BREACH OF CONTRACT)

WHEREAS, on February 16, 2016, the City entered into a ground lease with Oakland Bulk and Oversized Terminal, LLC (OBOT), to lease land for a potential bulk commodity shipping terminal at a parcel known as the West Gateway; and

WHEREAS, disputes arose between the City and OBOT regarding compliance with the ground lease. As a result of those disputes, OBOT sued the City in Alameda County Superior Court, Case No. RG18930929, and the City later sued OBOT, Alameda County Superior Court Case No. RG20062473; and

WHEREAS, on January 23, 2024 the Alameda County Superior Court entered judgment in favor of OBOT, and against the City, in Alameda County Superior Court Case Nos. RG18930929 and RG20062473. The City appealed the judgment, and the California Court of Appeal affirmed the judgment in an opinion issued on June 27, 2025. The City filed a petition for review with the California Supreme Court, which was denied on September 17, 2025, and remittitur issued from the Court of Appeal on that same date; and

WHEREAS, the City contended that it was entitled to a portion of the base rent due under the ground lease prior to September 17, 2025, and OBOT denied that the City was entitled to any back rent prior to September 17, 2025; and

WHEREAS, OBOT contended that it was entitled to approximately \$1,250,000 in post-judgment attorneys' fees and costs. The City acknowledged that OBOT was entitled to reasonable post-judgment attorneys' fees and costs, however the City disputed that OBOT was entitled to the full amount that it claimed; and

WHEREAS, construction and development of the terminal project was stayed during the appeal of the judgment, but is no longer stayed, and various administrative steps of the terminal project are moving forward. The City and OBOT seek to set timelines for various administrative steps to occur, and agree to confer regarding other aspects of the project; now, therefore, be it

RESOLVED: That the City Attorney is authorized and directed to compromise OBOT's claim for post-judgment attorneys' fees and costs, and the parties' dispute regarding back rent, by payment by the City of the amount of seven hundred thousand dollars and no cents (\$700,000.00); and be it

FURTHER RESOLVED: That the City agrees to perform the following additional items:

- (1) Issue estoppels for OBOT subtenants Oakland Global Rail Enterprise, LLC (OGRE) and Insight Terminal Solutions, LLC (ITS) by November 10, 2025 acknowledging that (a) the Ground Lease is unmodified and in full force and effect, (b) the Rent and other sums payable pursuant to the Ground Lease have been paid, and (c) the City is not aware of any defaults under the Ground Lease.
- (2) Provide a valid address for use in submitting permitting applications by November 7, 2025.
- (3) Issue OGRE a fence permit by November 7, 2025.
- (4) Provide OGRE with a refreshed version of the August 10, 2015 letter of support for the Surface Transportation Board (STB) by November 7, 2025.
- (5) Resume negotiations for a Rail Access Agreement with the Port of Oakland by November 14, 2025, and include OGRE principal Mark McClure in all pertinent discussions, and meet with Mark McClure regarding the Rail Access Agreement.
- (6) Enter into an administrative amendment to the ground lease with OBOT acknowledging that the West Gateway parcel (Berth 8) may be used for ship docking consistent with the existing U.S. Department of Transportation, Maritime Administration (MARAD) use at the Port of Oakland, and acknowledging that income from this MARAD ship docking use is treated as Annual Gross Tariff Revenues under the ground lease, by November 14, 2025.
- (7) Execute a right of entry (to also be signed by OBOT to indicate its consent) authorizing the Bay Area Toll Authority (BATA) the right to enter upon those portions of the West Gateway parcel identified by BATA (and reasonably approved by OBOT) for inspection and testing related to the potential West Oakland Link project by November 30, 2025. The City will also cooperate in obtaining and executing a right of entry authorizing the California Department of Transportation (Caltrans) the right to enter upon those portions of the West Gateway parcel identified by Caltrans for inspection and testing related to the potential West Oakland Link project upon request by Caltrans.
- (8) Upon OBOT's receipt of a fence permit, issued by the City, for the fence line separating the Rankox Logistics (truck parking lot) lease area and the area leased to OBOT, OBOT shall issue a prior written notice to the City, and the City shall

within five days initiate termination of the month-to-month lease with Ranokx Logistics currently located on the approximately two-acre area west of the West Gateway parcel.

(9) Dispose of soil samples by December 31, 2025 per the RAP/RMP SMET protocol, and OBOT will reasonably cooperate in that effort without any additional costs to OBOT.

(10) The City acknowledges that as of November 7, 2025, the rent credit in Section 2.2.2 of the ground lease remains in place; and be it

FURTHER RESOLVED: That the City and OBOT agree to meet and confer to discuss potential future agreements, subject to any necessary future Council approvals, on the following items:

- (1) A potential new minimum project schedule and milestones towards reaching the Minimum Project as defined in the ground lease.
- (2) Potentially restoring the nine-plus years of total lease time during which the City and OBOT were in litigation.
- (3) OBOT potentially not being required to pay rent for the railroad right-of-way under the ground lease, until such time as the City and Port execute a rail access agreement, and the same is provided to OBOT.
- (4) Improvements to the San Francisco Bay Conservation & Development Commission (BCDC) mitigation area located to the west of the West Gateway parcel; and be it

FURTHER RESOLVED: That the City Attorney is authorized and directed to take whatever steps may be necessary to effect said settlement.

IN COUNCIL, OAKLAND, CALIFORNIA,

DEC 02 2025

PASSED BY THE FOLLOWING VOTE:

AYES - BROWN, FIFE, GALLO, HOUSTON, RAMACHANDRAN, UNGER, WANG , AND
PRESIDENT JENKINS - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California