

CITY OF OAKLAND

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December 21, 2004

**HONORABLE CITY COUNCIL**  
Oakland, California

President De La Fuente and Members of the City Council:

**Subject: City of Oakland v. Muller & Caulfield, et al.  
Alameda County Superior Court Case No. 2002054084  
(Plaza Building Litigation)**

Pursuant to §401 of the Charter, and the action of the Council at its December 7, 2004 closed session, the City Attorney has prepared and requests your approval of a resolution authorizing compromise and settlement of the above-entitled action as follows:

- The Foundation's claims will be settled through a payment of \$400,000 from Hensel Phelps Construction Company and two of its subcontractors to the City, which will be passed through to the Foundation;
- the City will pay the Foundation \$100,000;
- the City will assign its claims against the designers and inspectors to the Foundation, which will then prosecute those claims at its own expense;
- the City and the Foundation (who currently rent office space from each other) will mutually forgive past rent owing, which has a net value to the Foundation of about \$95,000;
- the City, Hensel Phelps, and its subcontractors will receive full releases.

This settlement arises out of defects in seismic strengthening work and the City's 2000 sale of the Plaza Building to the East Bay Community Foundation. The settlement is recommended to avoid the risk of exposure to substantial litigation expenses and damages should the matter continue to be litigated and tried.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "John A. Russo", written over a horizontal line.

JOHN A. RUSSO  
City Attorney

OAKLAND CITY COUNCIL

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

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RESOLUTION No. \_\_\_\_\_ C.M.S.

WES/csa

**RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO SETTLE THE CASE OF CITY OF OAKLAND V. MULLER & CAULFIELD (PLAZA BUILDING LITIGATION), ALAMEDA COUNTY SUPERIOR COURT CASE NO. 2002-054084, OUR FILE NO. X01892, ON THE TERMS OUTLINED BELOW. THIS CASE INVOLVES CLAIMS FOR BREACH OF CONTRACT AND CONSTRUCTION DEFECTS ARISING OUT OF THE SALE OF THE PLAZA BUILDING (CEDA)**

**RESOLVED:** That the City Attorney is authorized and directed to settle the case of City of Oakland v. Muller & Caulfield, et al., Court Case No. 2002-054084, City Attorney's File No. X01892, on the following terms:

- Hensel Phelps Construction Company and two of its subcontractors will make a payment to the City of \$400,000 which will be passed through to the East Bay Community Foundation;
- the City will pay the East Bay Community Foundation \$100,000;
- the City will assign its claims against the designers and inspectors to the East Bay Community Foundation, which will then prosecute those claims at its own expense;
- the City and the East Bay Community Foundation will mutually forgive past rent owing each other, which has a net value to the East Bay Community Foundation of approximately \$95,000;
- the City, Hensel Phelps, and its subcontractors will receive full releases.

**FURTHER RESOLVED:** That the City Attorney is authorized and directed to take whatever steps necessary to effect the settlement; and be it

**FURTHER RESOLVED:** That the sum of One Hundred Thousand Dollars (\$100,000.00.) be payable to the East Bay Community Foundation and its attorney, Edwin Thomas.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BRUNNER, CHANG, DE LA FUENTE, MAYNE, NADEL, REID, QUAN, and WAN  
NOES-  
ABSENT-  
ABSTENTION-

ATTEST: \_\_\_\_\_  
CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California