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FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

*Barbara J. Parker*  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

RESOLUTION NO. 89996 C.M.S.

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**RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE CITY'S CROSS-COMPLAINT AGAINST GALLAGHER & BURK, INC. IN THE CASE OF LYNNE MCDONALD AND DAVID BARR V. CITY OF OAKLAND, CONTRA COSTA COUNTY, AND DOES 1 THROUGH 50, ALAMEDA COUNTY SUPERIOR COURT CASE NO. RG18931020, CITY ATTORNEY FILE NO. 32944, IN THE AMOUNT OF ONE HUNDRED EIGHTEEN THOUSAND DOLLARS AND ZERO CENTS (\$118,000.00) PAYABLE TO THE CITY OF OAKLAND (DEPARTMENT OF TRANSPORTATION – DANGEROUS CONDITION OF PUBLIC PROPERTY)**

**WHEREAS**, Plaintiffs Lynne McDonald (“McDonald”) and David Barr allege that on May 12, 2018, McDonald was riding a bicycle on Grizzly Peak Boulevard in the southbound lane, approximately 400 yards south of the intersection with Lomas Cantadas and crashed near a large pothole suffering serious injuries, including incomplete quadriplegia; and

**WHEREAS**, Plaintiffs sued the City of Oakland, alleging a claim for dangerous condition of public property, and sued the City’s paving contractor Gallagher & Burk, Inc., alleging a claim for negligence; and

**WHEREAS**, the City filed a cross-complaint against Gallagher & Burk, Inc., alleging that Gallagher & Burk, Inc. is obligated to defend and indemnify the City from Plaintiffs’ claims; and

**WHEREAS**, Plaintiffs settled their claims against Gallagher & Burk, Inc., including dismissing all claims Plaintiffs may have against the City by virtue of the negligence of Gallagher & Burk, Inc., thereby discharging any further duty of Gallagher & Burk, Inc. to indemnify the City and the Court found that the settlement constitute a good faith settlement; and

**WHEREAS**, the City continues to assert its claim that Gallagher & Burk, Inc. breached its contractual obligation to provide the City with a legal defense against Plaintiffs’ claims; and

**WHEREAS**, the City and Gallagher & Burk, Inc. have negotiated a fair and reasonable settlement of the City’s remaining claims Gallagher & Burk, Inc.; and

**WHEREAS**, Plaintiffs’ claims remain pending against the City; now, therefore, be it

**RESOLVED:** That the City Attorney is authorized and directed to compromise and settle the City's cross-complaint against Gallagher & Burk, Inc. in the case of Lynne McDonald and David Barr v. City of Oakland, Contra Costa County, and Does 1 through 50, Alameda County Superior Court Case No. RG18931020, City Attorney File No. 32944, for Gallagher & Burk's payment to the City of One Hundred Eighteen Thousand Dollars and Zero Cents (\$118,000.00); 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 05 2023

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND  
PRESIDENT FORTUNATO BAS

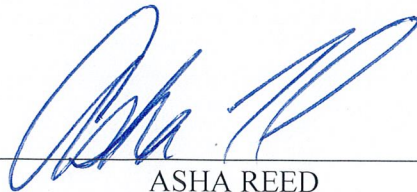
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NOES  $\phi$

ABSENT  $\phi$

ABSTENTION  $\phi$

ATTEST:



ASHA REED

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