

CITY OF OAKLAND



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December 5, 2023

HONORABLE CITY COUNCIL
Oakland, California

Subject: *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
(Department of Transportation – Dangerous Condition of Public Property)

President Fortunato Bas and Members of the City Council:

Pursuant to Section 401 of the Charter, the City Attorney has prepared and requests your approval of a resolution authorizing compromise and settlement of the City of Oakland's cross-complaint against Gallagher & Burk, Inc. in the above-entitled lawsuit, for Gallagher & Burk's payment to the City of One Hundred Eighteen Thousand Dollars and Zero Cents (\$118,000.00).

Plaintiffs Lynne McDonald (McDonald") and David Barr allege that on May 12, 2018 at approximately 9:30 a.m., McDonald was riding a bicycle on Grizzly Peak Boulevard in the southbound lane, approximately 400 yards south of the intersection with Lomas Cantadas. McDonald crashed near a large pothole and suffered serious injuries, including incomplete quadriplegia. Plaintiffs sued the City for dangerous condition of public property and Gallagher & Burk, Inc., the City's paving contractor, for negligence. The City filed a cross-complaint against Gallagher & Burk, alleging that it is obligated to defend and indemnify the City from Plaintiffs' claims. Gallagher & Burk subsequently settled any claims Plaintiffs have against the City by virtue of Gallagher & Burk's negligence. Plaintiffs' complaint against the City is ongoing.

The City has determined to settle its claim for litigation defense fees and costs against Gallagher & Burk, and any other claims remaining in its cross-complaint against Gallagher & Burk, for the amount of One Hundred Eighteen Thousand Dollars and Zero Cents (\$118,000.00), payable to the City.

The City Council authorized settlement of this case in Closed Session on Thursday, November 2, 2023 (moved by Councilmember Janani Ramachandran and seconded by Councilmember Treva Reid - 7 Ayes, 1 Excused – Councilmember Carroll Fife).

Respectfully submitted,

A handwritten signature in black ink that reads "Barbara J. Parker". The signature is written in a cursive, flowing style.

BARBARA J. PARKER
City Attorney

Assigned Attorney:
Kevin P. McLaughlin
3312743v1