

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ 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,

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

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