



## Agenda Item

Item:	23
File No:	B2009-1
Resolution / Ordinance Title:	Resolution authorizing compromise settlement in the amount of forty-five thousand dollars (\$45,000) of that certain lawsuit filed in the United States District Court, Middle District of Florida, Tampa Division, entitled Eleanor Smith, Guardian, on behalf of Trevor Smith, an individual and, Donald Smith, an individual, v. Lowry Park Zoological Society of Tampa Inc., a Florida not for profit corporation and City of Tampa, a political subdivision of the State of Florida. Case No.: 8:07-cv-333-T-27TBM
Subject:	Resolution Authorizing Compromise Settlement - Eleanor Smith, Guardian, on behalf of Trevor Smith, an individual and, Donald Smith, an individual
Type of Request:	Resolution
Requested Meeting Date:	March 5, 2009
Staff Recommendation:	
Projected Cost:	\$45,000
Financial Impact Statement:	The City of Tampa has negotiated a compromise settlement in the amount of \$45,000
Index Codes:	PRA1015-04503
Background:	It was determined to be in the best interest of the City of Tampa to settle this personal injury case before trial
Meeting Date:	March 5, 2009
Department Head:	Chip.Fletcher@tampagov.net
Department:	City Attorney

Sponsor:	
Department 2:	
Department 3:	
Department 4:	
Administrator:	
Tracking Name:	Resolution Authorizing Compromise Settlement - Eleanor Smith

Dept. Head:		
Attorney	Chip.Fletcher	2/20/2009 12:43:06 PM
Finance	Bonnie.Wise	2/20/2009 4:16:11 PM
Chief of Staff	Darrell Smith	2/26/2009 2:18:05 PM
Mayor	Pam Iorio	2/26/2009 2:33:03 PM

RESOLUTION NO. 2009-\_\_\_\_\_

A RESOLUTION AUTHORIZING COMPROMISE SETTLEMENT IN THE AMOUNT OF FORTY-FIVE THOUSAND DOLLARS (\$45,000.00) OF THAT CERTAIN LAWSUIT FILED IN THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION, ENTITLED ELEANOR SMITH, GUARDIAN, ON BEHALF OF TREVOR SMITH, AN INDIVIDUAL AND, DONALD SMITH, AN INDIVIDUAL VS. LOWRY PARK ZOOLOGICAL SOCIETY OF TAMPA, INC. AND CITY OF TAMPA, PROVIDING AN EFFECTIVE DATE. CASE NO. 8:07-cv-333-T-27TBM.

WHEREAS, on or about September, 2006, the Plaintiff, Travis Smith and his brother, Donald Smith, visited Lowry Park Zoo, which is leased from the City of Tampa by the Lowry Park Zoological Society, Inc., and on said date, the Plaintiffs were subjected to discrimination by the Lowry Park Zoo because the grounds and facilities were inaccessible and did not meet the requirements of the American With Disabilities Act (ADA) for persons with disabilities, and

WHEREAS, as a result of said incident, Donald Smith and Travis Smith, Plaintiffs, instituted suit against the City of Tampa, Defendant, in the United States District Court, Middle District of Florida, Tampa Division, Case No. 8:07-cv-333-T-27TBM, seeking an injunction and attorney's fees against the City, and

WHEREAS, similar claims were made against the Co-Defendant, Lowry Park Zoological Society, Inc., which has possession of the facilities of the Lowry Park Zoo pursuant to a long term lease with the City of Tampa, and

WHEREAS, the City of Tampa is the owner of the underlying fee interest in the Lowry Park real property subject to the long term lease to the Lowry Park Zoological Society, Inc., and

WHEREAS, under applicable federal law, the owner (landlord), and tenant have joint and several liability for compliance with the Americans With Disabilities Act, and

WHEREAS, as a result of the said incident, an offer of settlement has been obtained by the Legal Department of the City of Tampa in the sum of Forty-Five Thousand Dollars (\$45,000.00) which would pay court costs, expenses, and attorney's fees of Plaintiffs counsel, no claim for monetary damages having been made by the named party Plaintiffs, said payments to settle all claims arising out of said incident, and,

WHEREAS, a similar offer of settlement has been made to the Lowry Park Zoological Society, Inc., which has agreed to make said payment, and

WHEREAS, the City of Tampa has placed the Lowry Park Zoological Society, Inc. on notice that its compromised settlement of the pending Federal Court lawsuit is without prejudice to its right to seek indemnity for its said payment from the Lowry Park Zoological Society, Inc., and

WHEREAS, although liability is expressly denied herein, the Legal Department, after investigation of the facts involved and taking into consideration that should a verdict be rendered in this case, it could exceed the sum offered in compromise settlement, the Legal Department recommends that said offer of compromise settlement be accepted, now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TAMPA:

Section 1. That the offer to settle and compromise all claims in that certain lawsuit in the United States District Court, Middle District of Florida, Tampa Division, brought by Eleanor Smith, Guardian, on behalf of Travis Smith, an individual, and Donald Smith, an individual, Plaintiffs, against Lowry Park and the City of Tampa, Defendants, Case No. 8:07-cv-333-T-27TBM, be accepted, and the proper officers of the City of Tampa are hereby authorized and directed to issue a voucher in the amount of Forty-Five Thousand Dollars (\$45,000.00), payable to the Law Firm of Ku & Mussman, P.A., and upon submission to the City of Tampa of a release to be approved by the Legal Department of the City of Tampa, said voucher to be paid from Account No. PRA 1015-04503 Settlement of Claims, Damages and Lawsuits.

Section 2. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY the City Council of the City of Tampa, Florida, on

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ATTEST:

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CITY CLERK/DEPUTY CITY CLERK

\_\_\_\_\_  
CHAIRMAN/CHAIRMAN PRO-TEM,  
CITY COUNCIL

PREPARED BY:

\_\_\_\_\_  
WILLIAM J. TERRY  
SR. ASSISTANT CITY ATTORNEY