

**VILLAGE OF DOWNERS GROVE**  
**Report for the Village**  
**9/1/2020**

<b>SUBJECT:</b>	<b>SUBMITTED BY:</b>
Resolution authorizing execution of a settlement agreement between the Village and Carissa Smith	Enza Petrarca Village Attorney

**SYNOPSIS**

A resolution has been prepared authorizing execution of a settlement agreement and release between the Village of Downers Grove and Carissa Smith.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2019-2021 include *Steward of Financial Sustainability*.

**FISCAL IMPACT**

The settlement amount is \$9,600, which will be paid from the Risk Fund.

**RECOMMENDATION**

Approval on the September 1, 2020 Consent Agenda.

**BACKGROUND**

Carissa Smith filed a lawsuit in the United States District Court against the Village, Case No. 18 CV 5649 claiming wrongful termination pursuant to the Uniformed Services Employment and Re-Employment Act (USERRA) seeking recovery for said damages. Following discovery, the Village and the individual Defendants filed a motion for summary judgment as to all claims. That motion was granted on March 26, 2020. *Smith v. Village of Downers Grove, et al.*, 2020 WL 1491177, U.S. Dist. LEXIS 53146. Plaintiff filed a timely notice of appeal, at which point, this matter was referred for mediation under the auspices of the Seventh Circuit Mediation attorneys. As a result of this mediation, the parties have agreed to fully and completely resolve all matters of dispute between them. Upon approval of the settlement agreement, Ms. Smith's case against the Village will be dismissed.

**ATTACHMENTS**

Resolution  
Settlement Agreement

**RESOLUTION NO. \_\_\_\_****A RESOLUTION AUTHORIZING EXECUTION OF A  
SETTLEMENT AGREEMENT AND RELEASE BETWEEN  
THE VILLAGE OF DOWNERS GROVE AND CARISSA SMITH**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Settlement Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Carissa Smith ("Smith"), for the settlement and release of her claim concerning Case No. 18 CV 5649, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_

Village Clerk

D. Plaintiff filed a timely notice of appeal, at which point, this matter was referred for mediation under the auspices of the Seventh Circuit Mediation attorneys.

E. As a result of this mediation, the parties have agreed to fully and completely resolve all matters of dispute between them.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties as follows:

**Section 1. Dismissal of Appeal.** Promptly upon the execution of this Agreement, Plaintiff will file a motion pursuant to F.R.A.P. 42(b) to dismiss this action with prejudice and with each side bearing her or its respective costs and attorneys' fees.

**Section 2. Settlement Payment.** Within thirty (30) days of the date of this Agreement, the Village will pay Plaintiff the sum of NINE THOUSAND SIX HUNDRED (\$9,600.00) DOLLARS in full and complete settlement of any and all claims Plaintiff may have or had arising out of her employment with the Village. Said payment, shall be made as follows: (a) \$3,264.00 to Plaintiff's attorney Christopher Cooper, by way of a 1099 and (b) \$6,336.00 to Plaintiff by way of a 1099. Plaintiff and her attorney waive any right, claim or entitlement to attorneys' fees under 42 U.S.C. § 1988, USERRA, or any other fee shifting law.

**Section 3. No Admission of Liability.** The parties acknowledge that the settlement of this claim shall not be construed as an admission of liability or of any illegal or improper conduct on the part of the Village or its employees. The Village is making this settlement payment solely to avoid the expense of continuing litigation, its assessment that the amount of the settlement is less than the anticipated cost of defending Plaintiff's appeal and in furtherance of the goal of judicial economy.

**Section 4. Release.** Plaintiff, on the advice of counsel, understands and agrees that in consideration of the settlement entered pursuant to this Agreement, and the settlement payment made by the Village, Plaintiff hereby releases and forever discharges all claims she had against the

8/20/2020


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Village, the Village's present and past officers, agents, and employees, including, but not limited to the individuals named in Plaintiff's complaint and the individual past and present members constituting the corporate authorities of the Village. THIS IS A COMPLETE RELEASE.

**Section 5. Entire Agreement; Sole Authority.** This Agreement constitutes the entire agreement between the parties and shall be construed and interpreted in accordance with Illinois law and the terms contained herein shall not be construed against a party merely because that party was the principal draftsman.

Plaintiff also represents and warrants that no other person or entity has any interest in the proceeds of this settlement.

**Section 6. Cooperation.** The parties will cooperate to take any additional actions which are consistent with and may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

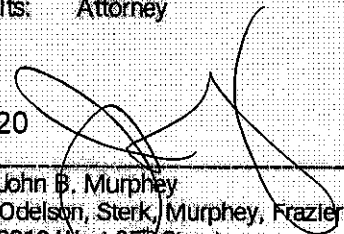
  
8-20-2020  
Carissa Smith Village of Downers Grove

By: \_\_\_\_\_  
Its: Attorney

APPROVED AS TO FORM:

 8-20-2020

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