BOARD OF COUNTY COMMISSIONERS SARPY COUNTY, NEBRASKA

RESOLUTION AUTHORIZING CHAIR TO SIGN SETTLEMENT AGREEMENT WITH ONSRI CLARK

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the Sheriff's Department had imposed disciplinary action on employee Onsri Clark; and,

WHEREAS, Onsri Clark appealed the discipline imposed to the Sarpy County Personnel Policy Board; and,

WHEREAS, the parties mutually wish to resolve the issues pending before the Personnel Policy Board and an Agreement has been proposed, a copy of which is attached hereto; and,

WHEREAS, in consideration of the terms and condition in said Agreement, Onsri Clark will withdraw the appeal pending before the Personnel Policy Board and release Sarpy County from any and all claims or causes of action regarding to the matter on appeal.

NOW, THEREFORE BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the Settlement Agreement with Onsri Clark, a copy of which is attached hereto, is hereby approved and the Chair and Clerk are hereby authorized to execute said Settlement Agreement on behalf of Sarpy County.

BE IT FURTHER RESOLVED that the County Attorney and any other necessary county agents are authorized to take such action as may be needed to fully perform said Agreement.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 6th day of December 2016.

Attest

SEAL

Sarpy County Board Chairman

County Clerk
SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and is effective this 6th day of December, 2016 by and between Onsri Clark ("Clark") and the County of Sarpy ("County").

WHEREAS, Clark desires to resign from her employment from the Sarpy County Sheriff's Department effective November 4, 2016;

WHEREAS, Clark and the County desire to settle, resolve, and dispose of certain issues related thereto in order to avoid further expense, inconvenience, and uncertainty.

NOW, THEREFORE, in consideration of the mutual promises and commitments below, Clark and the County, agree as follows:

1. Non-Admission. This Agreement shall not be construed as an admission of liability or wrongdoing by Clark, the County or any other individual or entity.

2. Resignation. Clark hereby resigns, effective as of November 4, 2016. The parties agree that Clark's separation from employment shall be treated as a resignation and shall not be construed as retirement or otherwise. Clark agrees to execute all necessary paperwork in furtherance of the terms of this paragraph.

3. Separation Compensation. In consideration of Clark's acknowledgements and agreements set forth in this Agreement, the County agrees to pay Clark, within 30 calendar days of execution of this Agreement, the compensation due and owing to her, as detailed in this Section. All payments made to Clark pursuant to this Section shall be subject to withholding for all applicable federal, state, social security and other taxes. For purposes of retirement contributions, the effective date of Clark's retirement is August 17, 2016.

   a. Wages: The County shall pay Clark the equivalent of 448 hours in wages, which corresponds to the wages she would have received if she worked eight hours per regular working day (Monday-Friday) from August 18, 2016 through November 4,
2016. Her hourly rate for this period of time was $26.7903; therefore, the County shall pay Clark $20,002.054.

b. Sick leave: The County shall pay to Clark the value of her sick leave, earned and calculated as of November 4, 2016. Per the Agreement between the County of Sarpy and, The Fraternal Order of Police, Sarpy Lodge No. 3, Law-Enforcement – Non-Sworn (FY 2015-2018), Section 4(F), Clark is entitled to one-fourth the value of her sick leave. As of November 4, 2016, Clark’s sick leave balance was calculated to be 48.37 hours; therefore, the County shall pay Clark 12.0925 sick leave hours at her hourly rate of $26.7903, for a total of $323.96.

c. Vacation leave: The County shall pay to Clark, the value of her vacation leave, earned and calculated as of November 4, 2016. As of November 4, 2016, Clark’s vacation leave balance was calculated to be 29.538 hours; therefore, the County shall pay Clark 29.538 hours at her hourly rate of $26.7903, for a total of $791.33.

d. Both the County and Clark agree that at separation, Clark was paid for two floating holidays. Therefore, no further compensation is required for those hours.

c. Both the County and Clark agree that as of November 4, 2016, Clark did not have any compensatory time; therefore, no compensation is required for compensatory time.

4. Insurance. Clark acknowledges that she is not entitled to remain on the health insurance plan as a “retiree.” Clark acknowledges that she is not a participant on the County’s health insurance, therefore, she is not entitled to elect COBRA coverage for her health insurance. For purposes of COBRA coverage for either the Employee Assistance Program or the County’s Dental Insurance, the parties agree that Clark’s separation date is August 17, 2016.

5. References. In the event a current or prospective employer of Clark requests an evaluation or reference, the County may in response to such request disclose information regarding Clark’s dates and duration
of employment, pay rate and salary history, job description and duties, and attendance information. No further information shall be given.

6. Non-Disparagement. The County, defined for Non-Disparagement purposes as the County HR Department, all elected county officials, Sheriff, Chief Deputy Sheriff and any of Clark’s direct supervisors as of August 17, 2016, will not disparage Clark or Clark’s performance or otherwise take any action which could reasonably be expected to adversely affect Clark’s personal or professional reputation. Similarly, Clark will not disparage the County, defined for Non-Disparagement purposes as the County HR Department, all elected county officials, Sheriff, Chief Deputy Sheriff and any of Clark’s direct supervisors as of August 17, 2016, or otherwise take any action which could reasonably be expected to adversely affect the personal or professional reputation of the County as defined above.

7. Personnel File. Within thirty (30) calendar days of the date of this Agreement, the appropriate personnel form(s), certifying that Clark voluntarily resigned for personal reasons, effective November 4, 2016 shall be provided to Clark and accepted by the County. The County also agrees that all references to Clark’s Internal Affairs Investigation will not be documented in her personnel file.

8. Office of the Sheriff Memorandum. Within ten (10) business days after this Agreement is entered into between the parties, the County agrees to rescind the Memorandum regarding the termination of Onsri Clark dated 9/6/2016 sent from Captain M. Daganaar addressed to Chief Deputy County Attorney Tricia Freeman and distributed to certain defense counsel by email on 9/27/16. Further, the County agrees to send the rescission to the same recipients of the 9/27/16 e-mail. To the best of the County’s belief, no subsequent distributions have been made by the County regarding the same subject matter.

9. Mutual Release. As a material inducement to the parties to enter into this Agreement, the parties agree to release and forever discharge each other from any and all claims, actions, causes of actions, and suits of any nature whatsoever arising out of or in any way related to Clark’s
employment or separation from employment with the County that the
parties may have against each other. Along with her signature on this
Agreement, Clark shall withdraw the appeal of her termination, now
pending before the Sarpy County Personnel Policy Board, on or before
December 2, 2016. This provision shall not apply to the previously filed
pending Worker's Compensation claim filed by Clark and all matters
arising from or related to the pending Nebraska Equal Opportunity
Commission complaint. In addition, nothing in this paragraph shall
include claims related to unemployment insurance benefits.

No provision in this mutual release will prevent either party from
bringing a future claim as it relates to any violation of any of the
provisions in this Agreement.

10. No Representations. Except for representations made in this
agreement, County and Clark acknowledge that in executing this
Agreement each does not rely and has not relied on any representation
or statement by the other's agents, representatives or attorneys with
regard to the subject matter, basis or effect of this Agreement.

11. Attorney Review. Each party represents that such party has had the
advice and counsel of such party's own attorney, who has negotiated
this Agreement on such party's own behalf. Each party has carefully
read and fully understands all the provisions of this agreement and
each party is freely and voluntarily entering into this Agreement.

12. Construction. This Agreement shall be interpreted, construed and
governed by and under the laws of the State of Nebraska.

A. If any provision or clause of this Agreement is held to be invalid by
a court of competent jurisdiction, then such provision shall be
severed herefrom and such invalidity shall not affect any other
provisions of this Agreement, the balance of which shall remain and
have its intended full force and effect.

B. The headings and titles of this Agreement are for convenience
purposes only and are not intended to define, limit or construe the
contents thereof.
C. This agreement sets forth the entire understanding of the parties and supersedes all prior agreements, whether oral or written, pertaining to the subject matter hereof.

D. No provisions of this agreement shall be modified except by written instrument duly signed and acknowledged by each of the parties hereto.

E. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

The parties hereto have executed this agreement.

Onsri Clark

County of Sarpy Board Chair

Approved as to Form:

Steven M. Delaney
Reagan, Melton & Delaney, LLP
Attorney for Onsri Clark

Approved as to Form:

John Reisz
Deputy County Attorney