

SEPARATION, SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Separation and Release Agreement (the "Agreement") is made and entered into by and between Clay County, Missouri (the "County") and Nicole Brown ("ACA").

WHEREAS, ACA and the County are parties to an Employment Agreement entered into on October 15, 2018, (the "Employment Agreement");

WHEREAS, ACA has made claims of pervasive sexual harassment, gender discrimination and retaliation by Commissioner Jerry Nolte including but not limited to (1) harassing ACA because of her gender; (2) providing ACA's private personnel information to a third party who then used that information to stalk ACA, (3) after ACA made a formal written complaint of discrimination and harassment on behalf of herself as well as other employees, threatening ACA with insubordination and making retaliatory complaints against her; (4) intimidating the ACA with retaliatory acts that threatened legal action; (5) publicly demeaning ACA's work in an attempt to discredit her; and (6) posting information about the ACA on social media to incite harassment from the community.

WHEREAS, ACA wishes to resign from her position as Assistant County Administrator on or before **December 31, 2020** ("Resignation Date");

WHEREAS, the County wishes to accept ACA's resignation as Assistant County Administrator on or before **December 31, 2020**, and to waive the four-week working notice period required by **Section VI.A.** of the Employment Agreement; and

WHEREAS, ACA and the County wish to set forth the terms and conditions of ACA's separation from employment, and to resolve any disputes and claims which ACA could potentially have arising from her employment with the County and the ending of that employment, as well as resolve any disputes and claims which the County could potentially have arising from ACA's employment with the County.

NOW THEREFORE, in consideration of the release and other promises contained in this Agreement, the Parties agree as follows:

A. The County's Agreements

Subject to the terms and conditions contained herein, and provided that ACA executes and does not revoke this Agreement as set forth in **Section F** hereto, the County agrees to provide ACA with the following:

1. Neutral Reference: In response to inquiries from prospective employers, the County agrees to direct such inquiries to its Human Resources Manager and to provide information limited to ACA's dates of employment, position held, and last rate of pay. A brief statement, attached as **Exhibit A**, to be printed on County letterhead and kept in ACA's employment file, shall also be provided. No other information will be provided.
2. Media Inquiries: In response to any inquiries by news or media organizations regarding ACA's employment ("Media Inquiries"), the Commission will issue the statement attached as **Exhibit A**. The County shall provide ACA with notice of all Media Inquiries via e-mail.
3. Salary Continuation: The County agrees to continue to pay the ACA her regular salary consistent with the County's payroll practices through the end of the 2020 calendar year.
4. Severance Pay and Consideration for Settlement of all Claims: The County agrees to provide ACA with three months of severance pay in accordance with **Section VI.A.3.** of her Employment Agreement, and to also pay consideration for settlement of the ACA's claims of harassment and retaliation in the amount of \$50,000.00, for a gross payment in the amount of **\$79,124.42** ("Severance Payment"). The Severance Payment shall be paid as a lump sum payment. The ACA will be provided a 1099 from the County for this payment. This severance payment shall be made no later than 14 days after the ACA's notice of resignation.
5. Health Benefits: The County agrees to pay the employer's share of ACA's and her qualified beneficiaries' health insurance premiums through December 2020. Such coverage will be provided in accordance with the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). After December 31, 2020, ACA will be solely responsible for the cost of continuing health coverage for herself and her qualified beneficiaries.
6. Unused Vacation and Sick Time: The County agrees to pay no less than one-hundred percent of ACA's accrued but unused vacation pay, and no less than twenty-five (25) percent of ACA's accrued but unused sick time, subject to applicable withholdings and deductions. The payout of these accruals shall be made no later than 14 days after the ACA's notice of resignation.
7. Personnel Files: The County agrees to keep and maintain confidentiality of the ACA's personnel file and employee information in accordance with County policies and Missouri law, R.S. Mo. § 610.021(13).

8. Legal Defense, Indemnification, and Representation: The County shall defend, save harmless and indemnify ACA against any tort, professional liability claim or demand, crime, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission which occurred in the performance of ACA's duties as Assistant County Administrator and prior to the Effective Date of this Agreement. ACA may request and the County, as determined by the Clay County Counselor ("County Counselor"), shall not unreasonably refuse to provide independent legal representation through legal counsel of ACA's choosing, as limited by any applicable insurance policies, and at the County's expense. The County may not unreasonably withhold approval. Legal representation provided by the County shall extend until a final determination of any legal action including any appeals brought by either party. The County shall indemnify ACA against any and all losses, damages, judgement, interest, settlements, fines, and court costs and other reasonable costs and expenses of legal proceedings, including reasonable attorney's fees incurred in employing legal counsel of ACA's choosing as limited by any applicable insurance policies.

9. Cooperation after Effective Date: In the event the ACA is requested to provide information and/or assistance to the County in connection with a State or County audit, investigation, and/or defense of any claims asserted against the County to which she may have relevant information, including but not limited to furnishing relevant information and materials to the County or the County Counselor, and providing testimony at depositions, trials, arbitration hearings, or other proceedings after the Effective Date of this Agreement, in addition to the reasonable costs and expenses in **Section B.6**, the County agrees to compensate the ACA at a daily rate of \$500.00 for such assistance or attendance, whether in person or virtually, for each day such assistance or attendance is requested.

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B.7
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10. Mutual Full and General Release of Liability: The County hereby knowingly and voluntarily releases and waives any and all claims, demands, or causes of action (collectively, "claims") known or unknown, suspected or unsuspected, that, as of the Effective Date, County or County's current and past commissioners, has or could have against the ACA. The County understands that it is releasing the ACA to the maximum extent permitted by law, from any liability which the County or the other Released Parties identified in Section B.1. may have or may have had for any conduct up to and including the date ACA signs this Agreement. This release includes a waiver (a giving up) of any legal rights or claims County or the other Released parties may have or may have had, including, but not limited to claims arising under 42 U.S.C. § 1983, 42 U.S.C. § 1988, the federal and/or state Constitution, all claims for retaliation or discrimination, all claims arising under County policy or practice, and all claims arising under any other federal, state or local statute, regulation, or the

common law, including any and all claims in tort or contract.

11. Unemployment Claims: The County agrees to not contest or dispute any claim for unemployment compensation made by the ACA after the Effective Date of this Agreement.

12. Training for Commissioners: The County agrees that all active County Commissioners shall attend at least two hours of live, in-person training encompassing one or more of the following topics on a yearly basis for five years from the Effective Date of this agreement: Sensitivity Training, Diversity & Inclusion Training, Unconscious Bias and Microaggressions in the Workplace Training, or similar training with the goal of building a culture of dignity, respect and tolerance.

13. Legal Fees and Expenses: The County agrees to pay all reasonable and verified legal fees and expenses incurred by ACA related to the negotiation, **consideration**, execution, and enforcement of this Agreement, within 30 days of submission.

14. Tuition Reimbursement: The County agrees to reimburse ACA for tuition and education expenses incurred through December 31, 2020 up to the IRS threshold for non-taxable fringe benefits (**\$5,250.00**).

B. ACA's Agreements

1. ACA agrees to resign from her employment on or before **December 31, 2020**.

2. Mutual Full and General Release of Liability: ACA hereby knowingly and voluntarily releases and waives any and all claims, demands, or causes of action (collectively, "claims") known or unknown, suspected or unsuspected, that, as of the Effective Date, ACA has or could have against the County and all of the County's current and past commissioners, current and former employees, insurers, attorneys, fiduciaries, agents, successors, assigns, and all other entities affiliated or related to the County, without limitation, exception, or reservation (collectively, the "Released Parties"). ACA understands that she is releasing the County and the other Released Parties, to the maximum extent permitted by law, from any liability which the County or the other Released Parties may have or may have had to County Administrator, at any time up to and including the date ACA signs this Agreement. This release includes a waiver (a giving up) of any legal rights or claims ACA may have or may have had, including, but not limited to claims of race, color, national origin, sex or gender, age, religious, disability or other protected class discrimination, harassment, or retaliation, arising under the Missouri Human Rights Act, Title

VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Act of 1991, 42 U.S.C. § 1981, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Americans with Disabilities Act, the Rehabilitation Act, the Family and Medical Leave Act, the Occupational Safety and Health Act, 42 U.S.C. § 1983, 42 U.S.C. § 1988, the federal and/or state Constitution, all claims for workers' compensation retaliation or discrimination, all claims arising under County policy or practice, and all claims arising under any other federal, state or local statute, regulation, or the common law, including any and all claims in tort or contract. Notwithstanding the foregoing, nothing herein is intended to be a release of any vested pension or retirement benefits, or the right to enforce this Agreement.

3. Transition and Consulting Period: ACA acknowledges that her employee access badge will be deactivated and she will no longer have unrestricted access to County facilities following the Resignation Date. ACA will provide a transition plan to the County Counselor for the purpose of assisting the County with its transition of ACA's delegated duties to appropriate personnel. All communication between the County and ACA shall be directed through the County Counselor.

4. Return of County Property: ACA agrees to return her employee access badge to the County Counselor on the Resignation Date. ACA further agrees to return all other County property as directed by County Counselor, including, but not limited to, all laptops, cellular phones, electronic devices, other County property, and/or the originals and all copies, summaries, and abstracts of all written, recorded, or computer-generated information which ACA has in her possession or control and which ACA has obtained in connection with her employment with the County on or before December 31, 2020 or as directed by the County Counselor.

5. Media Inquiries: In response to Media Inquiries, ACA shall, without comment, direct all Media Inquiries to the County Counselor.

6. Non-Interference: Nothing in this Agreement shall interfere with ACA's right to file a charge, cooperate or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission or any other federal, state or local regulatory or law enforcement agency. However, the consideration provided to ACA in this Agreement shall be the sole relief provided to ACA for the claims that are released by ACA in this Agreement, and ACA will not be entitled to recover and agrees to waive any monetary benefits or recovery against the County and/or the other Released Parties in connection with any such charge or proceeding without regard to who has brought such charge or complaint.

7. Agreement to Cooperate: ACA agrees that upon reasonable notice and without the necessity of the County obtaining a subpoena or court order, she will provide information and/or assistance to the County or its designee and will make herself available to the County at reasonable times and on a reasonable basis in connection with a State or County audit and the investigation and/or defense of any claims asserted against the County to which she may have relevant information; including but not limited to furnishing relevant information and materials to the County or the County Counselor, and providing testimony at depositions, trials, arbitration hearings, or other proceedings. ACA will be reimbursed for reasonable costs and expenses related to this Section, including, but not limited to mileage at the current standard IRS mileage rates, meals, and lodging as well as the compensation provided in **Section A.9**. The County agrees to indemnify and provide legal defense or representation to ACA as provided in **Section A.8**.

8. Adequacy of Consideration: ACA acknowledges that the County's waiver of the four-week working notice requirement as well as the additional payments and other promises provided by the County under this Agreement constitute adequate consideration for the execution of this Agreement, and further acknowledges that the benefits provided are in excess of the value to which ACA may otherwise be entitled under existing policies or practices of the County.

9. ACA's Acknowledgements: ACA acknowledges that as of the date she signed this Agreement, she: (1) has not suffered a work-related injury that has not been properly disclosed to the County; (2) has not exercised any actual or apparent authority by or on behalf of the County and/or any of the Released Parties that ACA has not specifically disclosed to the County; (3) to ACA's knowledge, has not entered into any agreements, whether written or otherwise, with any of County employees (current and former) and/or third parties without the County's authorization that could legally bind the County.

C. Eligibility for Rehire

The Parties agree ACA will remain eligible for rehire for employment positions for which she is qualified with Clay County.

D. No Admission of Liability

ACA acknowledges that this Agreement shall not in any way be construed as an admission by the County of any liability on the part of the County or any of the other Released Parties, and that all such liability is expressly denied by the County. Similarly, the County acknowledges that this Agreement shall not in any way be construed as an admission by ACA of any liability on her part, and that all such liability is expressly denied by ACA.

E. Voluntary Nature of Agreement and Advice of Counsel

The terms of this Agreement have been reached after negotiation, with consideration by and participation of all the Parties. The Parties represent that they are signing this Agreement only after reading it carefully and understanding its terms, as well as after review by their counsel. The Parties sign the Agreement voluntarily, of their own free will, without coercion or duress, and with full understanding of the significance and binding effect of the Agreement.

F. Consideration and Revocation Periods

ACA acknowledges that she received this Agreement on September 14, 2020 and has twenty-one (21) calendar days within which to consider and sign the Agreement, although ACA may sign and return the Agreement sooner if desired. ACA shall submit a signed original copy of this Agreement to the County Counselor (Lowell Pearson at Husch Blackwell, LLP, 235 E High St, Jefferson City, MO 65101). ACA may revoke the Agreement by delivering a written notice of revocation to the County Counselor (Lowell Pearson, at Husch Blackwell LLP 235 E High St, Jefferson City, MO 65101), within seven (7) calendar days after signing the Agreement. If no such written notice of revocation is provided, this Agreement will become effective on the eighth (8th) calendar day following the date ACA signs this Agreement ("**Effective Date**"). The County Counselor will deliver a copy of the fully executed Agreement to the County Clerk within a reasonable period following the Effective Date. Both acceptance and revocation will be considered timely if sent by U.S. Mail and postmarked within the time prescribed by this Section.

G. Tax Issues

ACA expressly acknowledges that no oral or written representation of fact or opinion has been made by the County or its attorneys regarding the tax treatment or consequences of any payment made under this Agreement. It is expressly understood that, to the extent any additional liability or responsibility exists for ACA's federal, state, and local income or other taxes, such liability or responsibility rests solely with ACA.

H. Binding Effect

This Agreement will be binding upon and inure to the benefit of ACA and her heirs, administrators, representatives, executors, successors and assigns, as well as the County and its Commissioners and assigns.

I. No Waiver.

The waiver by any Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

J. Governing Law

This Agreement will be interpreted and enforced in accordance with the laws of the State of Missouri without regard to conflict of law principles.

K. Enforcement and Breach.

Nothing in this Agreement shall preclude either party from seeking actual enforcement of the Agreement. In the event that either party breaches any provisions of this Agreement, the other party will be entitled to recover reasonable costs and attorneys' fees in any legal proceeding to enforce this Agreement. The Parties further acknowledge that, in the event of any dispute concerning this Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any party because of alleged authorship.

L. Headings

The headings and other captions in this Agreement are included solely for convenience of reference and shall not control the meaning and interpretation of any provision in this Agreement.

M. Severability

Should any provision of this Agreement be declared or determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remaining parts, terms and provisions shall continue to be valid, legal and enforceable, and will be performed and enforced to the fullest extent permitted by law.

N. Complete Agreement

This Agreement contains the entire agreement between ACA and the County, and shall supersede all prior agreements or understandings between the Parties on the subject matters of this Agreement, including but not limited to all prior employment agreements and amendments thereto. This Agreement cannot be altered, amended, or modified in any respect, except by a writing signed by ACA and the County.

O. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Any party may execute this Agreement by signing any such counterpart.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

10/5/20
Date


Nicole Brown

9/28/20
Date


Clay County Commissioner

Date

Clay County Commissioner

9/14/20
Date


Clay County Commissioner

Date

Clay County Counselor

Exhibit A

County Statement on Resignation of
Assistant County Administrator Nicole Brown

Nicole Brown submitted her resignation as Clay County Assistant County Administrator on November 2, 2020. The Commission accepts ACA Brown's resignation and is thankful for her many years of service to Clay County.