

**RESOLUTION NO. 916**

**A RESOLUTION REPEALING RESOLUTION NO. 913 AND AUTHORIZING THE CITY ATTORNEY TO ENTER INTO A PROPOSED JOINT APPLICATION FOR APPROVAL OF SETTLEMENT AND A JOURNAL ENTRY OF JUDGMENT IN REGARD TO THE TORT CLAIM FILED BY GARY CLARK, AND DIRECTING THE CITY ATTORNEY TO PREPARE AND FILE THE NECESSARY DOCUMENTS TO EFFECTUATE SETTLEMENT, INCLUDING A JOURNAL ENTRY OF JUDGMENT FOR THE COURT'S APPROVAL, PURSUANT TO 51 O.S. § 158**

**WHEREAS**, on July 22, 2015, Gary Clark filed a tort claim against the City of Broken Arrow and by virtue thereof alleged that the City of Broken Arrow used deadly force against Gary Clark on or about August 18, 2014, in violation of 42 U.S.C. § 12132, Title II, Americans with Disabilities Act, 42 U.S.C. § 1983, Excessive Force in Violation of the Fourth Amendment and Negligence; and

**WHEREAS**, after reviewing the facts in this matter, the Council pursuant to Resolution No. 913 determined that settlement in this matter is proper in the sum of \$156,967.00; and

**WHEREAS**, the total settlement amount originally approved by City Council on April 5, 2016, pursuant to Resolution No. 913 consisted of the following: (1) one-hundred twenty-five thousand dollars (\$125,000.00) made payable to Gary Clark and Bryan & Terrill Law, PLLC; and (2) \$31,967.00 made payable to Oklahoma Health Care Authority; and

**WHEREAS**, on April 6, 2016, following the approval of Resolution No. 913, Susan Eads, Deputy General Counsel for the Oklahoma Health Care Authority advised the City of Broken Arrow and Mr. Clark the Oklahoma Health Care Authority lien was actually \$37,185.19, but reduced to a prorated amount of \$22,311.12 pursuant to Mr. Clark's lien reduction request to account for attorney fees and costs.

**WHEREAS**, following the Oklahoma Health Care Authority's reduction, the sum of \$156,967.00 in settlement consists of the following due to the Oklahoma Health Care Authority lien waiver of April 6, 2016: 1) \$134,655.88 made payable to Gary Clark and Bryan and Terrill Law, PLLC; and \$22,311.12 made payable to the Oklahoma Health Care Authority; and

**WHEREAS**, the sum of \$156,967.00 plus expenditure of no more than \$5,000.00 for an expert to review the Broken Arrow Police Department's Mental Health and Use of Force Policy is in settlement of all of Plaintiff's claims for damages, prejudgment interest, costs and attorney fees; and

**WHEREAS**, the City Council has determined that such resolution is a just reasonable settlement; and

**WHEREAS**, it is the desire of the Council to approve such settlement agreement by authorizing the City Attorney to prepare and file the necessary documents to settle this case, including a Journal Entry of Judgment which does not admit liability, but does represent a compromise settlement of the disputed claims.

**NOW, THEREFORE, BE IT RESOLVED** that Resolution No. 913 is hereby repealed in its entirety; and

**BE IT FURTHER RESOLVED** the City Attorney be, and is hereby directed to agree to entry of a judgment without admitting liability in the case of *Gary Clark vs. City of Broken Arrow, An Oklahoma Municipality*; and

**BE IT FURTHER RESOLVED** that the City Attorney is hereby directed to prepare and file the necessary documents, including a Joint Petition for Approval of Settlement and a Journal Entry of Judgment incorporating the terms of the settlement agreement in the amount of \$156,967.00, and to execute any and all necessary documents to effectuate this settlement for the Court's approval pursuant to 51 O.S. § 158.

**ADOPTED and APPROVED** by the Mayor of the Council of the City of Broken Arrow, Oklahoma this 19<sup>th</sup> day of April, 2016.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

REVIEWED as to for form and legality this 19th day of April, 2016.

\_\_\_\_\_  
Deputy City Attorney