

## **RELEASE AND SETTLEMENT AGREEMENT**

This Release and Settlement Agreement is being entered into between the Board of Trustees on behalf of Adams State University (the Board) and Beverlee McClure (McClure).

### **RECITALS**

WHEREAS, the Board is the governing body of and acts on behalf of Adams State University (ASU), an institution of higher education in the State of Colorado, and

WHEREAS, McClure is employed as the President of ASU, and

WHEREAS, McClure wishes to resign, and the Board is willing to accept McClure's resignation, and

WHEREAS, McClure has asserted and may in the future assert administrative, federal and/or state causes of action, at law or in equity, and

WHEREAS, the parties wish to avoid the expense and vagaries of litigation, and the parties are willing to settle their disputes on the terms set forth in this Release and Settlement Agreement without admissions of liability or wrongdoing,

IN CONSIDERATION of the mutual and unilateral covenants, obligations, promises, and warranties contained within this Release and Settlement Agreement, the parties agree as follows:

### **McCLURE OBLIGATIONS**

1. **RELEASE.** McClure, including her successors, agents, assigns and estate (collectively McClure), hereby releases the State of Colorado, ASU, the Board, the Trustees, and all current and former employees, officials, agents and attorneys of each of those entities from any and all claims, causes of action, liabilities, expenses and/or damages which McClure may have or assert against the State of Colorado, ASU, the Board, the Trustees, or any current or former employees, officials, agents and attorneys of each of those entities as a result of any acts by those entities or by any current or former employees, agents or attorneys of those entities which occurred prior to the effective date of this Release and Settlement Agreement, or omissions by those entities or any current or former employees, officials, agents or attorneys of those entities to perform acts which should have been performed prior to the effective date of this Release and Settlement Agreement, including any act or omission arising out of, or relating to McClure's

employment with the Board or her resignation from employment. Specifically, but not by way of limitation, it includes claims under:

- The Equal Pay Act.
- Title VII of the Civil Rights Act of 1964, as amended.
- The Americans with Disabilities Act of 1990, as amended.
- The Civil Rights Act of 1991.
- Any state civil rights act.
- Any claim of retaliatory treatment.
- The Genetic Information Nondiscrimination Act of 2008
- Any claim seeking declaratory, injunctive, or equitable relief.
- The Fair Labor Standards Act, as amended.
- The Post-Civil War Reconstruction Acts, as amended (42 U.S.C. §§ 1981-1988).
- The Rehabilitation Act of 1973, as amended.
- The Family and Medical Leave Act of 1993.
- Any state statute such as C.R.S. § 24-34-402.5.
- Any claim of wrongful discharge against public policy.
- Any claim under the Colorado Judicial System Personnel Rules.
- The National Labor Relations Act, as amended.
- The Age Discrimination in Employment Act of 1967, as amended.
- The Employee Retirement Income Security Act of 1974, as amended.
- Any other federal statute.
- Any state statutory wage claim.
- Any claim in tort, contract, or for violation of the covenant of good faith and fair dealing.

Without limiting the generality of the foregoing, this Release and Settlement Agreement applies to any and all matters asserted, or which could have been asserted, up to the effective date of this Release and Settlement Agreement. Nothing in this Release and Settlement Agreement prevents, or is intended to prevent McClure from filing a charge of discrimination with the Equal Employment Opportunity Commission or the Colorado Civil Rights Division, however in the event McClure files a charge of discrimination, she disclaims the right to seek or recover money damages from such a filing.

2. COVENANT NOT TO SUE. McClure agrees and covenants that she has not and will not sue, or assert any federal, state or administrative cause of

action, at law or in equity, whether before a court of law or an administrative agency, against the State of Colorado, ASU, the Board, the Trustees, or any current or former employee, official, agent, or attorney of each of those entities for any claims, causes of action, liabilities, expenses and/or damages arising out of any acts by any of them which occurred prior to the effective date of this Release and Settlement Agreement, or omissions by any of them to perform acts which should have been performed prior to the effective date of this Release and Settlement Agreement, including, without limiting the generality of the foregoing, any act or omission arising out of, or related to McClure's employment with the Board or her resignation from employment. McClure expressly waives any claims she may have under state or federal law alleging retaliation that arose prior to the effective date of this Release and Settlement Agreement.

3. **SOLE OWNER OF CLAIMS.** McClure represents that she is the sole owner of all claims purported to be released hereby, and that she has not assigned or transferred any claim against ASU or the Board to any third party. McClure further represents and warrants that no third party is subrogated to her interest in claims released hereby, including but not limited to insurers, parent companies or subsidiaries subrogated by reason of payment of costs or expenses, or, if any third party has been subrogated to her interest, the interest of any subrogee has been settled, compromised and extinguished. McClure agrees to defend and indemnify all persons and entities released hereby and hold them harmless against the claims of any assignee or subrogee to claims released hereby that may hereafter be asserted.

4. **CLAIMS UNDER 29 U.S.C. SECTIONS 621-634.** McClure understands that she is releasing all rights or claims that she has or may have arising under the Age Discrimination in Employment Act, 29 U.S.C. 621, et seq.. McClure further understands that she has had a period of at least 21 days to consider this Release and Settlement Agreement and that she has seven (7) days after executing this Release and Settlement Agreement to revoke the agreement to the extent that it releases rights or claims under 29 U.S.C. 621, et seq.. McClure understands that her waiver or release of rights or claims under 29 U.S.C. 621, et seq. is not effective until after the seven (7) day period. If McClure elects to revoke this agreement with respect to her waiver or release of rights or claims under 29 U.S.C. 621, et seq., she must deliver written notice of the revocation to the Colorado Attorney General. For the revocation to be effective, the Colorado Attorney General must receive the notice no later than 5:00 p.m. on the seventh (7th) calendar day after McClure signed this agreement. Such revocation shall not affect the release of any rights or claims other than those under 29 U.S.C. 621 *et seq.*

5. **OPEN RECORDS ACT AND OTHER RELEASES PROVIDED BY LAW.** McClure understands and agrees that upon a valid request made pursuant

to applicable public disclosure laws, including, without limitation, the provisions of Section 24-19-101, et seq., C.R.S. (post-employment compensation) and Section 24-72-101, et seq., C.R.S. (Open Records Act), all as presently or subsequently amended, ASU, the Board, and the Trustees are obligated to provide the requesting person a copy of this Release and Settlement Agreement. McClure agrees that she will not hold the State of Colorado, ASU, the Board, the Trustees or their administrators, officers, agents or employees liable for any information released in compliance with applicable law.

6. **INTERNAL REVENUE SERVICE W-9 FORM.** McClure and her attorneys shall provide fully executed and signed I.R.S. W-9 forms to the Board prior to any payment under this Release and Settlement Agreement.

7. **REPORTING AND TAX TREATMENT OF SETTLEMENT PAYMENT.** McClure and her attorneys understand and agree that the settlement payment identified in paragraph 13 represents the settlement of McClure's claims and is not wages. McClure and her attorneys understand and agree that the Board or the State of Colorado (collectively the State) will file such tax forms and reports reflecting the settlement payment that they deem necessary. Such forms include all appropriate reporting forms with the Internal Revenue Service and other state or federal taxing authorities on the amounts paid to McClure and her attorneys, including Forms 1099. The State makes no representation as to the taxability or non-taxability of these payments. McClure and her attorneys are liable for all tax consequences owed by McClure and her attorneys resulting from her or its payments. In the event any part of the payment is determined to be taxable to McClure or her attorneys, she or they will be solely responsible for any tax liability, including any interest or penalty assessed. In the event that any claim is asserted against the State, ASU, or the Board to satisfy a tax liability arising from McClure's failure to pay any tax on the settlement payment, McClure agrees to defend, indemnify, and hold the State, ASU, and the Board harmless on such a claim, including any interest or penalties, within 30 days after notification by the State, ASU, or the Board that a taxing authority has asserted a tax claim, or such longer period as specified by the taxing authority. McClure agrees that ASU, the Board, the Trustees, and the Office of the Colorado Attorney General have made no representations or given any legal opinion concerning the tax treatment of the settlement payment, and McClure is expressly not relying on any such representation or opinion. McClure has sought and received such tax opinions and advice as she deems necessary from attorneys and/or tax advisors of her choice.

8. **WITHHOLDING SETTLEMENT FUNDS.** McClure understands that under section 24-30-202.4(3.5), C.R.S., the State Controller may withhold from the settlement payments any debts owed to the State agencies under the vendor offset intercept system for: (a) unpaid child support or child support arrearages, (b)

unpaid balance of tax, accrued interest and other charges specified in Article 21, Title 39, C.R.S., (c) unpaid loans due to the Student Loan Division of the Department of Higher Education, (d) any amount owed to the Unemployment Compensation Fund, and (e) medical bills McClure incurred in part or in full by Medicaid or Medicare, (f) any unpaid debts owed to the State or any state agency or department as a result of a final agency determination, an unappealed agency determination, a judicial determination, or a debt reduced to judgment as certified by the state controller.

9. **RESIGNATION.** McClure agrees that she will submit a letter of resignation to the Board effective March 31, 2018.

10. **PRESIDENT'S RESIDENCE.** McClure agrees that she will vacate the President's residence, Marvel House, on or before March 31, 2018. McClure further agrees that she has not and will not remove any university-owned furnishings, art, or other property from any area of campus.

11. **LAPTOP.** McClure agrees that on or before March 31, 2018, she will meet with ASU's Chief Information Officer or his appointee to inspect the laptop to identify and remove all ASU-related content from the computer.

12. **NON-DISPARAGEMENT.** McClure agrees that she will not make disparaging remarks regarding ASU as an institution; ASU's President, Cabinet, or Executive Council; and the Board of Trustees in their personal and official capacities.

### **THE BOARD'S OBLIGATIONS**

13. **SETTLEMENT PAYMENT.** The Board will pay McClure and her attorneys, King & Greisen, LLP, jointly a lump sum in the amount of \$250,000. The State Controller shall issue a Form 1099 to McClure and her attorneys on the payments. None of the payments made to McClure is designated as wages, salary or back pay.

14. **TIMING OF PAYMENT.** The settlement payments, minus any withholding, will be made to McClure and her attorneys within thirty days of the effective date of this Release and Settlement Agreement.

15. **RESIGNATION.** Notwithstanding the provision in paragraph 15d of McClure's employment contract, the Board will accept McClure's resignation effective March 31, 2018.

16. **TRANSFER OF VEHICLE TITLE.** The Board agrees that on or before March 31, 2018, it will transfer title of a 2015 Jeep, VIN 1C4RJFBG7FC820228, to McClure.

17. **LAPTOP.** The Board agrees that McClure may keep an ASU-provided laptop computer provided that on or before March 31, 2018, she meets with ASU's Chief Information Officer to inspect the laptop to identify and remove all ASU-related content from the computer.

18. **NON-DISPARAGEMENT.** The Board of Trustees, in their official capacities, agree that they will not disparage McClure.

### **GENERAL PROVISIONS**

19. **NO ADMISSION OF LIABILITY.** The parties acknowledge that entering into this Release and Settlement Agreement is not an admission by either party of any wrongful or improper actions, but rather reflects the parties' desire to resolve this matter amicably without additional expense or litigation. The parties agree that this Release and Settlement Agreement does not constitute evidence of or an admission of any liability, omission or wrongdoing of any kind by the State Agency, or any employees, officials, agents or attorneys of the State Agency. This Release and Settlement Agreement shall not be offered or received into evidence or otherwise filed or lodged in any proceeding against any party except as may be necessary to prove and enforce its terms.

20. **INTEGRATION.** The parties understand, acknowledge and agree that this Release and Settlement Agreement constitutes the entire agreement of the parties regarding the subject matter and transactions referred to herein. The parties understand, acknowledge and agree that the terms of this Release and Settlement Agreement are contractual in nature and not mere recitals. As such, the parties understand, acknowledge and agree that this Release and Settlement Agreement is fully integrated and supersedes all previous oral or written agreements of the parties.

21. **BINDING EFFECT.** This Release and Settlement Agreement shall inure to the benefit of, and be binding upon, the successors, assigns and heirs of the parties.

22. **GOVERNING LAW.** This Release and Settlement Agreement is entered into in Colorado, shall be governed by the laws of the State of Colorado, and shall be enforced in accordance with its terms only in the Colorado state courts.

23. **HEADINGS.** The headings used in this Release and Settlement Agreement are only for the convenience of the parties. As such, these headings shall not have any legal effect whatsoever or in any other way alter or modify the meaning or interpretation of this Release and Settlement Agreement.

24. **EFFECTUATION.** This Release and Settlement Agreement is intended to be self-operative. The parties agree, however, that at the reasonable request of the other party, they shall execute any further documents reasonably necessary to effectuate this Release and Settlement Agreement.

25. **SEVERABILITY.** If any provision of this Release and Settlement Agreement should be declared to be unenforceable, with the exception of McClure's release of any and all claims arising out of her employment as set forth above under "OBLIGATIONS OF McCLURE", then the remainder of this Release and Settlement Agreement shall continue to be binding upon the parties.

26. **COSTS.** The parties agree that each party shall bear her or its own costs and attorney fees, if any.

27. **EXECUTION IN COUNTERPARTS.** This Release and Settlement Agreement may be executed in counterparts or with signatures obtained via facsimile or scanned transmission, each of which shall have full force and effect.

28. **EFFECTIVE DATE/CONTROLLER APPROVAL.** This Release and Settlement Agreement shall not be valid until it is signed by the State Controller or his designee, as provided by section 24-30-202(1), C.R.S.. The effective date of this Release and Settlement Agreement is the date that it is signed by the State Controller or his designee.

29. **WARRANTIES.** The parties expressly warrant that they have carefully and completely read the terms of this Release and Settlement Agreement. The parties expressly warrant that they have had the opportunity to consult with counsel prior to executing this Release and Settlement Agreement, that they fully understand the terms of this Release and Settlement Agreement, and that they enter into this agreement knowingly and voluntarily, and without coercion, duress or undue influence. The parties expressly acknowledge that they believe the terms of this Release and Settlement Agreement are appropriate to reach a full and final settlement. The parties expressly understand and agree that once signed, this Release and Settlement Agreement shall be forever binding, and no rescission, modification or release of the parties from the terms of this Release and Settlement Agreement will be made for mistake or any other reasons. The parties represent that they are legally competent to execute this Release and Settlement Agreement and accept full responsibility and assume the risk of any mistake of fact as to any

damages, losses, or injuries, whether disclosed or undisclosed, sustained as a result of McClure's employment, any claim brought or which could have been brought, or any other matter between the parties occurring up to the effective date of this Release and Settlement Agreement. The parties further warrant and acknowledge that no promise or inducement has been offered except as set forth herein and that they executed this Release and Settlement Agreement without relying on any statement or representation by the persons or parties released or their representatives concerning the nature or extent of any damages or any legal liability.

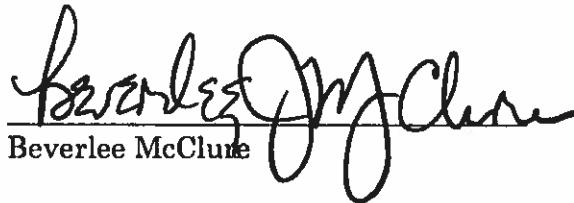
30. AMENDMENT. This Release and Settlement Agreement may not be amended except in a writing executed by all parties.

31. ENFORCEABILITY. The parties expressly acknowledge that this Release and Settlement Agreement shall be governed by the laws of the State of Colorado and shall be enforceable in accordance with its terms only in the state courts of Colorado.


**CAUTION: THIS IS A RELEASE. READ BEFORE SIGNING.**

WHEREFORE, the parties agree to and do accept the terms of this Release and Settlement Agreement.

3.27.18  
DATE

  
Beverlee McClure

3-27-18  
DATE

BOARD OF TRUSTEES OF THE ADAMS  
STATE UNIVERSITY  
  
Cleave Simpson,  
Chair



STATE OF COLORADO STATE  
CONTROLLER

3/28/18  
DATE

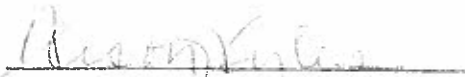


Robert Jaros, CPA, MBA, JD or designee

APPROVED AS TO FORM:



Meredith A. Munro  
Diane S. King  
King & Greisen, LLP  
Attorneys for McClure



Alison Faryl Kyles  
Colorado Attorney General's Office  
Attorneys for the Board