

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement is being entered into this ____ day of February, 2017, between the Board of Trustees of Adams State University (the "Board of Trustees") and Dr. Christopher Gilmer ("Gilmer").

RECITALS

WHEREAS, the Board of Trustees is the governing board of Adams State University (ASU), an institution of higher education in the State of Colorado, and

WHEREAS, Gilmer is employed by Adams State University, and

WHEREAS, Gilmer has asserted a grievance 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, and

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

OBLIGATIONS OF GILMER

1. RELEASE. Gilmer, including his successors, agents, assigns and estate (collectively "Gilmer"), hereby releases the State of Colorado, the Board of Trustees, Adams State University, President Beverlee McClure, 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 Gilmer may have or assert against the State of Colorado, the Board of Trustees, Adams State University, President Beverlee McClure, 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, without limiting the generality of the foregoing, any act or omission arising out of, or relating to Gilmer's employment with Adams State University or his resignation from employment. Gilmer specifically agrees that he relinquishes any right to file a grievance or to continue in any grievance process

provided by Adams State University. 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. Notwithstanding any provision of this Release and Settlement Agreement to the contrary, nothing in this agreement shall prevent Gilmer from filing a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) or Colorado Civil Rights Division (CCRD), however, in the event Gilmer files such a charge, Gilmer disclaims the right to seek or recover money damages from such a filing.

2. COVENANT NOT TO SUE. Gilmer further agrees and covenants that he 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, the Board of Trustees, Adams State University, President Beverlee McClure, 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 Gilmer's employment with Adams State University or his resignation from employment. Gilmer expressly waives any claims he may have under state or federal law alleging retaliation that arose prior to the effective date of this Release and Settlement Agreement.

3. CLAIMS UNDER 29 U.S.C. SECTIONS 621-634. Gilmer understands with respect to any rights or claims that he has or may have arising under the Age Discrimination in Employment Act, 29 U.S.C. 621, et seq., that all of those rights or claims are released by this Release and Settlement Agreement. Gilmer further understands that he may have a period of at least 21 days within which to consider this Release and Settlement Agreement. If he signs this Release and Settlement Agreement before the 21-day period has expired, Gilmer understands that he waives the remainder of the 21-day period to consider the agreement. He also understands that he has seven (7) days following his execution of this Release and Settlement Agreement to revoke the Release and Settlement Agreement. Gilmer understands that this Release and Settlement Agreement is not effective or enforceable with respect to the waiver or release of rights or claims under 29 U.S.C. 621, et seq. until after the seven (7) day period. If Gilmer elects to revoke this Release and Settlement Agreement with respect to his waiver of rights or claims arising under 29 U.S.C. 621, et seq. within the seven (7) day period, he must advise the Board of Trustees by delivering a written notice or revocation to the Colorado Attorney General. For the revocation to be effective, the notice must be received by the Colorado Attorney General no later than 5:00 p.m. on the seventh (7th) calendar

day after signing this Release and Settlement Agreement. Such revocation shall not affect waiver or release of any rights or claims not arising under 29 U.S.C. 621 et seq.

4. SOLE OWNER OF CLAIMS. Gilmer represents that he is the sole owner of all claims purported to be released hereby, and that he has not assigned or transferred any claim against the State of Colorado, the Board of Trustees, Adams State University, President Beverlee McClure, or any current and former employees, officials, agents and attorneys of each of those entities to any third party. Gilmer further represents and warrants that no third party is subrogated to his 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 his interest, the interest of any subrogee has been settled, compromised and extinguished. Gilmer 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.

5. ACKNOWLEDGMENT BY GILMER. Gilmer represents and acknowledges that he has been provided with all leave to which he may have been entitled under the Family and Medical Leave Act and that, with the payment contemplated in Paragraph 12 of this Agreement, he will have been paid all wages (including overtime) to which he was entitled under the Fair Labor Standards Act and any applicable state and local laws. Gilmer further represents that, as of the date of his resignation, he was not suffering from any work-related injury and that he has not failed to report any work-related injury he suffered during his employment with Adams State University.

6. OPEN RECORDS ACT AND OTHER RELEASES PROVIDED BY LAW. Gilmer 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, Adams State University is obligated to provide the requesting person a copy of this Release and Settlement Agreement. Gilmer agrees that he will not hold the State of Colorado, the Board of Trustees, Adams State University, or its administrators, officers, agents or employees liable for any information released in compliance with applicable law.

7. INTERNAL REVENUE SERVICE W-9 FORM. Gilmer will provide a fully executed and signed I.R.S. W-9 form to Adams State University prior to payment of any amounts under this Release and Settlement Agreement.

8. RESIGNATION. Gilmer agrees that he will voluntarily resign as of the on date he signs this Release and Settlement Agreement. Gilmer will submit a letter of resignation when this Release and Settlement Agreement is signed and will complete all applicable separation documents.

9. EMPLOYMENT REFERENCE. Gilmer agrees that so long as he directs a request for a job reference or other inquiry concerning his employment to the Director of Human Resources, Office of Human Resources, Adams State University will provide only 1) the reference letter in his personnel file signed by Arnold Salazar, the Chair of the Board of Trustees, which is attached to this Agreement as Exhibit A or 2) a neutral job reference containing only the following information: dates of employment, job title and/or a description of job duties, and rate of pay. Should Gilmer provide the name of any other employee or office of Adams State University as a reference, Gilmer will not hold the Board of Trustees or Adams State University liable in breach of this Agreement for any reference provided by that person or office.

10. NON-DISPARAGEMENT. Gilmer agrees that following the execution and effective date of this Release and Settlement Agreement, he will refrain from making any disparaging remarks about Adams State University and President Beverlee McClure.

11. MEDIATION STATEMENT. Gilmer agrees that he will release the statement prepared and jointly agreed upon at the mediation between Gilmer and President McClure, attached to this Agreement as Exhibit B.

12. SUBSEQUENT EMPLOYMENT WITH ADAMS STATE UNIVERSITY. Gilmer agrees that as a condition of this Release and Settlement Agreement, he has no right to reinstatement of his employment and that he will not seek or accept employment with Adams State University at any time in the future. Gilmer further agrees that should he seek reinstatement or employment with Adams State University, the university may refuse to reinstate or employ him without any resulting liability, and Gilmer agrees that he has no right or cause of action arising from the refusal.

OBLIGATIONS OF THE BOARD OF TRUSTEES AND ADAMS STATE UNIVERSITY

13. SETTLEMENT PAYMENT. Provided that the effective date of this agreement is prior to February 28, 2017, Adams State University will pay to Gilmer a lump sum in the amount of \$66,825.44. This payment is made in compromise of Gilmer's claims, and is not designated as wages, salary, or back pay. Adams State University will issue a Form 1099 to Gilmer on the payment. This lump sum includes any amounts owed to Gilmer for accrued sick leave and vacation leave. If

the effective date of this agreement is after February 28, 2017, the lump sum payment contemplated in this paragraph will be prorated based on the effective date.

14. REPORTING & TAX TREATMENT OF SETTLEMENT PAYMENT.

Adams State University or the State of Colorado (hereafter "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 Gilmer, including Forms 1099. The State makes no representation as to the taxability or non-taxability of these payments. Gilmer is liable for all tax consequences resulting from the payments. In the event any part of the payment received by Gilmer in this settlement is determined to be taxable, Gilmer will be solely responsible for any tax liability arising therefrom, including any interest or penalty assessed. In the event that any claim is asserted against the State or Adams State University to satisfy a tax liability arising from Gilmer's failure to pay any tax on the settlement payment, Gilmer agrees to defend, indemnify, and hold the State and Adams State University harmless on such a claim, including any interest or penalties, within 30 days after notification by the State or Adams State University that a taxing authority has asserted a tax claim, or such longer period as specified by the taxing authority. Gilmer agrees that the Board of Trustees, Adams State University, 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 Gilmer is expressly not relying on any such representation or opinion. Gilmer has sought and received such tax opinions and advice as he deems necessary from attorneys and/or tax advisors of his choice.

15. WITHHOLDING OF SETTLEMENT FUNDS. Pursuant to C.R.S. 24-30-202.4 (as amended), the State Controller may withhold debts owed to 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) owed amounts required to be paid to the Unemployment Compensation Fund; (e) medical bills incurred by Gilmer paid in part or in full by Medicare or Medicaid; and (f) other unpaid debts owing to the State or any state agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

16. TIMING OF PAYMENT. The settlement proceeds, less any applicable withholding, will be paid to Gilmer as soon as practical and no later than fourteen days of the effective date of this Release or Settlement Agreement.

17. COVENANT NOT TO SUE. The Board of Trustees further agrees and covenants that Adams State University 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 Gilmer for any claims, causes of action, liabilities, expenses and/or damages arising out of those acts that were the subject of the mediation between Gilmer and President Beverlee McClure on January 30, 2017.

18. NO ADMISSION OF LIABILITY. The Board of Trustees, by entering into this Release and Settlement Agreement, does not admit to any impropriety, wrongdoing or liability of any kind whatsoever, but is entering into this Release and Settlement Agreement in compromise of disputed claims for compensatory damages and injunctive relief. 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 Board of Trustees, Adams State University, or any employees, officials, agents or attorneys of Adams State University. 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.

19. ACCEPTANCE OF RESIGNATION. Adams State University agrees to accept Gilmer's resignation.

20. EMPLOYMENT REFERENCE. All job references or other inquiries concerning Gilmer's employment that are directed to Director of Human Resources, Office of Human Resources, will result in Adams State University providing only 1) the reference letter in his personnel file signed by Arnold Salazar, the Chair of the Board of Trustees, which is attached to this Agreement as Exhibit A; or 2) a neutral job reference containing only the following information: dates of employment, job title and/or a description of job duties, and rate of pay.

GENERAL PROVISIONS

21. 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.

22. 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.

23. HEADINGS. The headings used in this Release and Settlement Agreement are for the convenience of the parties only. 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. ADDITIONAL ASSURANCES. This Release and Settlement Agreement is intended to be self-operative. Notwithstanding the foregoing, the parties agree that, at the reasonable request of the other party, they shall execute any further documents or instruments reasonably necessary to effectuate the transactions contemplated by 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 Gilmer's release of any and all claims arising out of his employment as set forth above under "OBLIGATIONS OF GILMER," 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 his or its own costs and attorney fees, if any.

27. EXECUTION IN COUNTERPARTS OR BY FACSIMILE OR ELECTRONIC MAIL. This Release and Settlement Agreement may be executed in counterparts or with signatures obtained via facsimile transmission or scan and electronic mail transmission, each of which shall have full force and effect upon execution by all parties to this Release and Settlement Agreement.

28. EFFECTIVE DATE/CONTROLLER APPROVAL. This Release and Settlement Agreement shall not be deemed valid until it shall have been approved and signed by the State Controller or such assistant as he may designate, as provided by Section 24-30-202(1), C.R.S. This provision is applicable to any agreement providing for payment of money by the State. The effective date of this Release and Settlement Agreement is the date that it is signed by the State Controller or his delegate.

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 of this case. The parties expressly understand and agree that signing of 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 Gilmer's employment and the separation from 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 this Release and Settlement Agreement was executed by them without reliance upon 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 therefore. 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.

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

31. ENFORCEABILITY. 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.

CAUTION: THIS IS A RELEASE. READ BEFORE SIGNING.

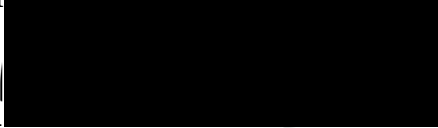
WHEREFORE, the parties agree to and do accept the terms of this Release and Settlement Agreement.

2-4-17
DATE


CHRISTOPHER GILMER

ADAMS STATE UNIVERSITY
BOARD

DATED: 02/06/2017

BY: 
Arnold Salazar
Chair

STATE OF COLORADO

DATED: _____

BY: LEANNE LOUNSBERRY,
designee State Controller

ADAMS STATE UNIVERSITY
BOARD OF TRUSTEES

DATED: _____

BY: _____
Arnold Salazar
Chair

STATE OF COLORADO

DATED: 2/9/17


BY: LEANNE LOUNSBERRY,
designee State Controller