

EMPLOYMENT CONTRACT

THIS CONTRACT, entered into by and between Beverlee J. McClure, Ed.D. ("Employee") and the STATE OF COLORADO, by and through the Board of Trustees for Adams State University (as applicable the "Board" or "Employer"), on this 11th day of May, 2015, witnesses that:

WHEREAS, the Employer wishes to employ Employee, and Employee wishes to be employed by the Employer, as President of Adams State University; and

WHEREAS, the Employer determines that this Contract is necessary to employ Employee in light of prevailing market conditions and competitive employment practices in other states; and

WHEREAS, the Employer has not more than six total employment contracts pursuant to C.R.S. § 24-19-104(1.5)(a), including this Contract;

NOW, THEREFORE, the Employer and Employee, in consideration of the promises and covenants herein, agree that:

1. Employment.

(a) The Employer hereby employs Employee as the President and chief executive officer of Adams State University (the "University"), and Employee hereby agrees to such employment, subject to the terms and conditions of this Contract and the ongoing general supervision and oversight of the Employer.

(b) The Employer shall provide, during the term of this Contract and subject to available funds, the following support in furtherance of Employee's performance of her duties as reasonably required by Employee during the term hereof, including but not limited to the following:

- Office space at Richardson Hall
- Computers and word processing hardware and software.
- Telephone and cell phone service.
- Residence located on campus.

- Staff to include a minimum of two (2) assistants, presently an Executive Assistant and an Assistant to the President for Communications, together with appropriate residential staff to conduct and host University functions, events and meetings.

Employer will use said equipment and facilities solely in the performance of her obligations under this Contract. Upon termination of this Contract, all said facilities, equipment, supplies, resources and related materials shall remain the property of the Employer.

2. Duties. As President and chief executive officer of the University, Employee shall perform such duties as are customarily performed by university presidents and as may be reasonably required by the Employer and applicable law, to effectuate and advance the role and mission of the University. Among others, these duties include:

a. Employee shall administer and direct the actions of the University and provide services, including, but not limited to, those responsibilities set forth in the *Trustee Policy Manual*, as may be amended (the “*Manual*”);

b. Employee shall administer and direct the University’s compliance with the State of Colorado Department of Higher Education Performance Contract and the achievement of the goals set forth in Addendum A to the Performance Contract;

c. Employee shall consistently communicate and administer the Employer’s strategic plan, as demonstrated by achievement of outcome measures identified by the Employer and agreed upon in writing by Employee; and

d. Employee shall engage in activities, including but not limited to the following, to represent and promote the interests and significance of the Employer and the University among the media, community, and other institutions:

i) Maintain and use memberships in public and private organizations, including social bodies, for the promotion, generation of resources, and support of the University;

ii) Engage in travel for official purposes, including, but not limited to, regular attendance at State of Colorado Department of Higher Education, legislative and other official meetings in the Denver metropolitan area;

- iii) Conduct and host official University functions, events and meetings for the service and advancement of the goals of the University; for example, hosting meetings, meals, entertainment, and other events and functions with faculty, staff, students, community leaders, donors, and others having business with the University. In engaging in such activities, Employee shall be required to reside at and regularly use the on campus residence provided to her by the Employer; and
- iv) Participate and maintain membership in professional organizations, conferences, conventions, courses, seminars and similar growth activities.

3. Best Efforts of Employee. Employee shall faithfully, industriously and with maximum use of experience and ability, devote her full-time effort to the performance of all of the duties that may be required by the express terms of this Contract. Such performance shall be rendered at the University and, when appropriate, at such other places as the Employer or Employee may deem appropriate for the interests or needs of the University. Upon written approval of the Chair of the Board, Employee may accept limited consulting assignments, provided such assignments do not interfere with the Employee's official duties or the operation of the University.

4. Term of Employment. This Contract shall commence July 1, 2015, and end on June 30, 2016 (the "Initial Term"). Following the Initial Term, in accordance with Colorado law, the Employer remains free to terminate this Contract without penalty if sufficient funds are not appropriated for the Contract. Upon successful completion of the Contract term described above, the Contract, upon mutual written consent of the parties, may be extended for one or more additional terms, subject to a written Amendment to this Contract.

5. Compensation of Employee. For all services rendered by Employee under the provisions of this Contract, the Employer shall pay Employee an annual base salary of \$205,000.00, payable in equal monthly installments on the last day of each month during the term hereof, except for the month of June, in which case the payment is made the first

working day of July. All such base salary shall be subject to all deductions and withholdings required by law or by agreement of Employee.

6. Housing. The Employer shall provide Employee with a housing allowance of \$1,500.00 per month, payable in equal monthly installments on the last day of each month during the term hereof until such time as Employee is able to reside in the required on-campus residence.

7. Expenses. Subject to the expense reporting requirements herein, the Employer shall pay or reimburse Employee for reasonable and necessary business, travel and entertainment expenses, including membership expenses, such as memberships in the organizations mentioned in Sections 2(d)(i) and (iv) above, provided they are reasonably related to and actually incurred in the performance of her duties and responsibilities.

a. The Employer shall pay Employee upon full execution of this Contract, up to \$5,000 for actual documented moving expenses. This amount shall be reimbursed to the University by the Employee if she does not complete the Initial Term due to Employee's resignation.

b. The Employer shall provide a cellular phone to Employee to use for University business.

8. Vehicle. The Employer shall furnish Employee with a mutually agreed upon University owned or leased motor vehicle for her personal and official use.

a. The vehicle shall be maintained by the Employer, and all fuel for its official use shall be paid by the Employer.

b. The Employer shall procure and maintain, at its expense, motor vehicle insurance for the vehicle from an insurance company authorized to do business in the State of Colorado, including, but not limited to, coverage for bodily injury liability in the amount of \$300,000.00 effective regardless of any workers compensation coverage, medical payments coverage in the amount of \$50,000.00 and uninsured/underinsured motor vehicle coverage in the amount of \$1,000,000.00 combined limits.

c. The vehicle liability insurance policy shall include an endorsement naming Employee as an additional insured. A certificate of insurance and a copy of the declarations sheet, together with a copy of the policy endorsement naming the additional insured, shall be provided to Employee on or before delivery of the vehicle to Employee and on or before each renewal date of such policy thereafter.

d. The Employee shall be named as the loss payee on the medical and uninsured/underinsured liability coverages.

e. Employee shall be responsible for promptly notifying the insurance carrier and the University of any accident or loss and for cooperating in the filing of any insurance claim.

f. The Employer and Employee shall agree upon the applicable percentage of her personal use of the vehicle for tax reporting.

In lieu of the foregoing, the Employee may elect to use the Employee's personal motor vehicle and receive a mileage reimbursement for University related business consistent with the applicable Fiscal Rules described below. The Employee shall be responsible for all maintenance and insurance on her personal motor vehicle.

9. Expense Reporting. To assure accountability in the incurring of expenses and receipt of reimbursements for official functions and other business events, Employee shall maintain appropriate documentation in compliance with applicable law, including Employer's policies and procedures and the State of Colorado Fiscal Rules. Employee shall file periodic reports during each fiscal year, disclosing her allowances and expenses for the periods covered by such reports, and shall be subject to audit.

10. Insurance and Other Benefits. Employee shall be eligible to participate in the group insurance, retirement, and voluntary payroll deduction programs of the University on the same basis as other professional personnel as described in the *Adams State University Board of Trustees Bylaws*, as may be amended ("Bylaws") and the *Handbook for Professional Personnel*, as may be amended (the "Handbook").

11. Taxes. Employee agrees to be responsible for the payment of any taxes due on any and all compensation, allowances or benefits provided by the Employer to

Employee, other than salary and other compensation from which the Employer will be responsible for withholding taxes.

12. Leave. Employee shall receive the same sick leave, annual leave, administrative leave, and other leaves as other full-time professional personnel as described in the *Bylaws* and the *Handbook*.

13. Performance Reviews. Employee's performance shall be subject to annual review, and may be subject to expanded review, pursuant to the evaluation policies in the *Bylaws* and *Manual*, including, but not limited to, consideration of her levels of achievement of the duties set forth in this Contract and/or other objectives as determined by the Employer and agreed upon in writing by the Employee.

14. Salary Increase. In conjunction with the Employer's performance reviews of Employee, and following the completion of the first year of employment, Employee's base salary shall be reviewed and may be increased, but not decreased, at the sole discretion of the Employer. Any such increase shall not exceed 10% of the Employee's base salary. Following the successful completion of the Initial Term, the Employer may consider a deferred compensation plan should Employee meet previously written and agreed upon goals. If such deferred compensation is considered, and if the Contract is extended, the recommended level is 7% of base salary for each subsequent year of the Contract. All compensation paid to Employee shall be subject to all deductions and withholdings required by law or by agreement of Employee.

15. Worker Compensation. Employee shall be an employee of Employer for the purpose of worker compensation coverage.

16. Termination. This Contract may be terminated by any of the following conditions:

a. Mutual Agreement. This Contract may be terminated by mutual agreement of the parties.

b. Discharge for Cause. Throughout the term of this Contract, Employee shall be subject to discharge for good and just cause ("Cause"), which is defined as:

i) Fraud, misappropriation, embezzlement, or acts of similar

dishonesty;

- ii) Use of illegal drugs or excessive use of alcohol or drugs in the workplace;
- iii) Intentional and willful misconduct that would subject the Employer to criminal or civil liability;
- iv) Breach of Employee's duty of loyalty to the Employer or University;
- v) A material violation of any law, rule, regulation, constitutional provision or policy of the Employer or the University, or local, state, or federal law, which reflects adversely upon the University;
- vi) Insubordination or deliberate refusal to follow the Employer's reasonable instructions to the Employee; or
- vii) Any material breach by Employee of the duties, terms and conditions set forth in this Contract, or the refusal or unwillingness to perform such duties in good faith and to the best of Employee's abilities.

If Employer believes that Cause exists under any of the definitions above, Employer shall provide Employee with written notice thereof and 30 days to remedy the alleged Cause. Any written notice under this subsection shall describe the material elements of the alleged violation, breach or failure to perform constituting Cause and shall advise the Employee that if she fails to remedy the violation, breach or failure to perform within 30 days of the notice, Cause for termination of the Contract will exist.

c. Death of Employee. This Contract shall automatically terminate upon the death of Employee.

d. Resignation by Employee.

- i) Employee may resign from her employment under this Contract for any reason by giving at least sixty (60) days advance, written notice of her intent to resign to the Chair of the Board. If the Employee resigns

before the end of the Initial Term, the Employee shall be liable on a pro-rata basis for reimbursement to Employer of the costs in conducting the presidential search to hire the Employee. The Employee's liability shall be reduced 8.333% (1/12) for each month of employment and the total amount of the presidential search is acknowledged to be \$77,000.

ii) Employee may resign immediately for "Good Reason," in which case Employee shall not be liable for reimbursement to Employer of the costs spent by Employer in conducting the search to hire the Employee. "Good Reason" means: (i) a reduction by the Employer without the Employee's consent in the Employee's position, duties, responsibilities, necessary resources, or status with the Employer that represents a substantial adverse change from her position, duties, responsibilities, or status; (ii) a material breach of this Contract by the Employer; or (iii) the Employer requiring Employee to take any action, or refrain from taking any action, that is improper, imprudent, or unreasonable, such as an act or omission that would violate an applicable statute, rule, regulation, ethical standard, or contractual obligation.

e. Non-Appropriation. After the Initial Term, pursuant to § 24-19-104(1.5)(a)(II), C.R.S., the Employer may terminate this Contract without penalty if sufficient funds are not appropriated to support this Contract. After the Initial Term, those portions, if any, of the term of this Contract falling in subsequent fiscal years, and for which there are not present cash reserves pledged irrevocably for purposes of payment of the obligations of this Contract, shall be contingent upon future appropriation by the Employer of sufficient funds for purposes of payment of the obligations of this Contract for any such future fiscal year. In the event such appropriation is not made in any fiscal year, this Contract shall thereupon terminate and each party shall be released from its obligations hereunder.

Notwithstanding the foregoing, if this Contract is terminated for Cause by the Employer or without Good Reason by the Employee, then the Employee shall be entitled to receive her

base salary to the extent such amount has accrued through the termination date, plus all accrued vacation pay, retirement benefits and expense reimbursement due pursuant to this Contract. If this Contract is terminated without Cause by the Employer or for Good Reason by Employee, then the Employee shall be entitled to receive her base salary through the term of the Contract then in effect, in one lump sum, plus all accrued vacation pay, retirement benefits and expense reimbursement due pursuant to this Contract, subject to the limitations of §§ 24-19-101 *et seq.*, C.R.S.

17. Other Provisions.

a. No modification of this Contract or of any covenant, condition or limitation herein shall be valid unless made in writing and duly executed by both parties. The parties further agree that the provisions of this Subsection may not be waived.

b. This Contract contains the entire agreement between the parties as to Employee's employment as President of the University and shall, as of the commencement date hereof, supersede all other agreements between the parties. The parties stipulate that neither of them has made any representations with respect to the subject matter of this Contract or any representations including the execution and delivery hereof, except such representations as are specifically set forth herein. Each party acknowledges that they have relied on their own judgment and counsel in entering into this Contract and that this Contract shall not be construed against the party drafting the Contract.

c. No waiver of any rights under this Contract will be valid unless set forth in writing signed by the party making the waiver. The failure of either party to insist upon strict performance of this Contract shall not be construed as a waiver.

d. This is a contract for personal and professional services, and the benefits of this Contract shall not be pledged or assigned in any way by Employee.

e. Subject to the provisions of Section 4 and Subsection 16.e. of this Contract, the Board covenants and agrees that it has sufficient funding to pay for all amounts due under this Contract for the Initial Term and that it will thereafter

include in its annual budget requests, or cause to be included in such annual budget requests, an amount for compensation which is sufficient, if appropriated, to pay for all amounts due under and pursuant to this Contract for each fiscal year covered by the term of this Contract.

f. The terms of this Contract are severable, and if any term or provision is declared by a court of competent jurisdiction to be illegal, void or unenforceable, then the remainder of this Contract shall continue to be valid and enforceable to the extent that it is capable of execution.

g. This Contract is subject to all provisions of state and federal law applicable to Employer, including, but not limited to, § 24-19-101, *et seq.*, C.R.S.; all policies, procedures, rules and regulations of the Employer and the University, including, but not limited to, the *Manual* and the *Handbook*, unless otherwise expressly provided herein; and all State of Colorado Fiscal Rules and similar rules and regulations promulgated pursuant to laws applicable to Employer, which laws, rules and regulations shall control in the event of any conflict with the terms and conditions of this Contract. In the event of any conflict with the *Manual* or the *Handbook*, this Contract shall be controlling.

h. At all times during the performance of this Contract, Employer and Employee shall strictly adhere to all applicable federal and state laws, rules and regulations that have been or may hereafter be enacted.

i. This Contract shall be interpreted and construed in accordance with the laws of the State of Colorado, which shall be the forum for any lawsuit arising from or incident to this Contract. The Employee and Employer hereby submit to the exclusive jurisdiction of any Colorado state or federal court in the United States of America sitting in Colorado where venue is appropriate for any legal action or proceeding arising out of or relating to this Contract.

j. The headings used in this Contract are for the convenience of the parties only and shall not have any legal effect whatsoever or, in any other way alter or modify the meaning or interpretation of this Contract.

k. Any notice required or permitted by this Contract may be delivered in person or sent by certified mail, return receipt requested, to the last address provided by the addressee to the other party, and if sent by mail, it shall be effective five (5) days after posting in a U.S. Mail Depository with sufficient postage attached thereto.


l. **This Contract shall not be deemed valid and effective until it has been approved by the University's Controller, or such assistant as he may designate.**

m. The Employee and Employer hereby represent and warrant to each other that the execution, delivery and performance of this Contract does not and will not conflict with, breach, violate or cause a default under any agreement, contract or instrument to which the Employee or Employer is a party, or any judgment, order or decree to which the Employee or Employer is subject, and neither the Employee nor Employer is a party to or bound by any employment agreement, consulting agreement, non-compete agreement, confidentiality agreement, non-disclosure agreement or similar agreement with any other person or entity that would adversely affect this Contract.

18. This Contract may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Contract below, on the date first written above.

EMPLOYEE:


Beverlee J. McClure, Ed.D.

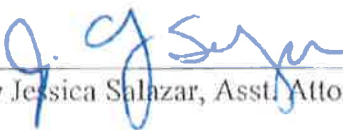
BOARD:

STATE OF COLORADO,
by and through the Board of Trustees
for Adams State University

By: 
Arnold Salazar, Chair, Board of Trustees

APPROVED AS TO FORM:
STATE OF COLORADO
Cynthia H. Coffman, Attorney General

APPROVED:
ADAMS STATE UNIVERSITY


By Jessica Salazar, Asst. Attorney General

By: 
Controller

Dated: 5/11/15, 2015