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RESOLUTION NO. 23-78

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

**RESOLUTION TO ACKNOWLEDGE GENERAL RELEASE REGARDING
LITIGATION MATTER KNOWN AS *McGINN V. EL PASO COUNTY, CO, ET AL.*,
U.S. DISTRICT COURT CASE NO. 2022-CV-01387-WJM-MDB**

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1), 30-11-103, and 30-11-107(1), the Board of County Commissioners of El Paso County, Colorado, has the legislative authority to make all contracts and do all other acts in relation to the property and concerns of the County, when deemed by the Board to be in the best interests of the County and its inhabitants; and

WHEREAS, there is a pending litigation matter involving El Paso County, Colorado, which is captioned *McGinn v. El Paso County, Colorado, et al.*, U.S. District Court Case No. 2022-CV-01387-WJM-MDB; and

WHEREAS, the Parties desire by means of the Settlement Agreement ("Agreement") attached as Exhibit A to resolve the dispute between the Parties, which will provide payment to Plaintiff in the total amount of \$45,000.00 and which the Parties agree will resolve all disputes between them without an admission of liability or fault; and

WHEREAS, the Agreement and consideration provided in the Agreement to Plaintiff is the proper means to reach full and final resolution of all claims made by Plaintiff, including any and all subrogation claims; and

WHEREAS, it is necessary that the Agreement be approved by the Board;

NOW, THEREFORE, BE IT RESOLVED, the Board of County Commissioners approves and ratifies the Agreement in the litigation matter known as *McGinn v. El Paso County, Colorado, et al.*, U.S. District Court Case No. 2022-CV-01387-WJM-MDB.

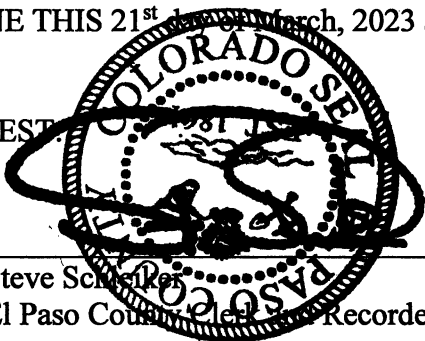
BE IT FURTHER RESOLVED that Cami Bremer, duly elected, qualified member and Chair of the Board of County Commissioners, or Carrie Geitner, duly elected, qualified member and Vice-Chair, is appointed and authorized on behalf of the Board, to execute all additional documents that are reasonable and necessary to complete the transaction described herein.

DONE THIS 21st day of March, 2023 at Colorado Springs, Colorado.

ATTEST:

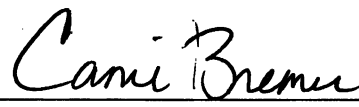
By:

Steve Schleiker
El Paso County Recorder



BOARD OF COUNTY COMMISSIONERS
EL PASO COUNTY, COLORADO

By:


Cami Bremer, Chair

GENERAL RELEASE

RECITALS

1. JUNIPER MCGINN and any and all of her heirs, personal representatives, executors, administrators, attorneys, successors, and assigns are hereinafter collectively referred to as "RELEASOR."
2. The County of El Paso County, the El Paso County Sheriff's Office, and any of their current or former entities, officials, officers, employers, successors, assigns, employees (former and present), volunteers, agents, servants, insurers, self-insurers, and reinsurers, if any, are hereinafter collectively referred to as "RELEASEES."
3. RELEASOR and RELEASEES are collectively referred to as "the Parties."
4. RELEASOR filed a complaint in the United States District Court for the District of Colorado under case number 22-cv-01387-WJM-MDB, hereinafter referred to as the "Claim" or the "Civil Action." The Civil Action arose from RELEASOR'S alleged treatment at the El Paso County Criminal Justice Center on June 2, 2020. The factual allegations and claims made by RELEASOR in the Civil Action were and continue to be denied and disputed by RELEASEES.
5. RELEASOR has decided to enter into this General Release on the terms set out in these RECITALS and the RELEASE below, and to reach a complete resolution of any claims arising out of, or related to, the Claim, or alleged in or relating to the Claim, as well as any and all claims of any kind RELEASOR may have against RELEASEES occurring up to the date of the execution by RELEASOR of this General Release for damages and/or injuries of any kind, known and unknown, foreseen and unforeseen. For the purpose of this General Release, all of the claims asserted in the Claim and all other actual or potential claims or disputes among the Parties up to the date of the execution of this General Release, shall be referred to hereafter collectively as the "Claims."
6. In entering into this General Release, RELEASEES expressly deny any legal liability and wrongdoing. RELEASEES enter into this agreement for the sole purpose of avoiding the costs of further litigation that would necessarily be paid with taxpayer funds and that would likely exceed the costs of this General Release.
7. Upon the execution of this General Release and Settlement Agreement ("General Release"), RELEASOR agrees to dismissal, with prejudice, of the Claim

against all remaining Individual County Defendants, each party to pay their own costs and attorney's fees.

RELEASE

Release, Covenant Not to Sue, Hold Harmless, and Indemnification

8. RELEASOR agrees irrevocably and unconditionally to release, discharge, and does release and forever discharge RELEASEES from any and all claims occurring up to the date of the execution by RELEASOR of this General Release for any and all damages, injuries, attorneys' fees, and/or costs pursuant to any federal or state statute, constitution, common law, or contract, or otherwise, known and unknown, foreseen and unforeseen, including but not limited to any claims for economic damages, non-economic damages, punitive damages, and/or those which may now or hereafter arise out of, or result in any way from, the Claim described in the recitals and/or the Claim, and/or which have or could have been made, as well as any and all matters relating thereto, and any and all consequences thereof. RELEASOR understands and is hereby informed that this release of claims includes rights and claims arising under the Post-Civil War Reconstruction Acts (42 U.S.C. §§ 1981-1988); the Freeman Retirement Income Security Act; the Employee Retirement Income Security Act; Title VII of The Civil Rights Act of 1964; the Family and Medical Leave Act ("FMLA"); the Colorado Anti-Discrimination Act, as amended ("CADA"); the Age Discrimination in Employment Act; the Americans with Disabilities Act, as amended; the Rehabilitation Act of 1973; the Employee Retirement Income Security Act ("ERISA"); any other federal statute; any state civil rights act; any state statute; any state statutory wage claim; any claim of retaliatory treatment; any claim of wrongful discharge against public policy; any claim in tort, contract, or for violation of the covenant of good faith and fair dealing; any claim seeking declaratory, injunctive, or equitable relief; any other claim of any type whatsoever, arising out of federal law, the common law of any state, any state statute, or local law; and any claims for any costs or attorneys' fees incurred.

9. RELEASOR understands and agrees that this General Release prevents any further claims against RELEASEES of any kind, whether arising from any and all incidents alleged in the Claim and Notices of Claims, or other incidents that occurred before the date of the execution by RELEASOR of this General Release. This includes any other class action arising out of these events to date or in the future.

10. RELEASOR represents and warrants that, other than that which is set forth in the Recitals to this General Release, she has not filed or caused to be filed, or asserted or caused to be asserted, any claim or charge against RELEASEES, in or with any court or agency, based on or related to the Claims or any other potential claim against RELEASEES, and agrees that she will not file any claim or charge against RELEASEES in or with any court or agency based on or related to the Claims or any other potential claim against RELEASEE related to events that occurred before the date of the execution by RELEASOR of this General Release.

11. Pursuant to the Medicare, Medicaid and SCHIPP Extension Act of 2007, RELEASOR hereby certifies and affirmatively represents as follows: (a) JUNIPER McGINN is not now receiving nor has she ever received Social Security Disability benefits; (b) JUNIPER McGINN is not now receiving nor has she ever received Medicare benefits; and (c) JUNIPER McGINN is not now nor has she ever been eligible for Medicare Benefits. In the event RELEASEES are subject to any claim or demand under such actual or purported benefit, assignment, lien, subrogation, or other right of substitution for such benefits, RELEASOR will defend, indemnify, and hold RELEASEES harmless from such claims or demands.

12. RELEASOR hereby declares and represents that, except as may be expressed in this General Release, no other person, firm, or corporation has received any assignment, subrogation, or lien, including but not limited to, medical lien, attorney lien, levy, or right of substitution arising out of alleged injuries or damages incurred from the incidents and/or the Claims or money constituting consideration in this General Release. In the event RELEASEES are subjected to claims by any person, firm, corporation, or entity under any actual or purported assignment, subrogation, or lien, including, but not limited to, medical lien, medical billing or obligation, attorney lien, levy, tax levy, or right of substitution arising out of alleged injuries or damages incurred from the Claims or money constituting consideration in this Settlement Agreement, RELEASOR will defend, indemnify, and hold RELEASEES harmless from any such claims or demands.

13. RELEASOR understands and agrees that she is solely responsible for all tax obligations, including all reporting and payment obligations she may have, that may arise as a consequence of this General Release and the monetary consideration provided to her pursuant to it. RELEASOR agrees that RELEASEES have provided no representation or advice as to how this consideration is to be characterized or allocated or as to the tax treatment or tax reporting or payment obligations for the monetary consideration set out herein.

14. RELEASOR further warrants that she fully realizes that she may have sustained unknown and unforeseen losses; costs; expenses; damages; liabilities; claims; bodily, personal, or psychological injuries; damage to property; or business losses, and the consequences thereof which may be at this time, heretofore, and hereafter unknown, unrecognized, and not contemplated by RELEASOR, which resulted or may/will result from the Claim, related and unrelated Notices of Claims, and all other incidents or matters before the date of execution of this General Release, and that no promise or inducement has been offered except as herein set forth, and that all agreements and understandings between the Parties are expressed herein and that this General Release was executed without reliance upon any statement or representation by RELEASEES, and that RELEASOR is legally competent to execute this General Release. RELEASOR accepts full responsibility and assumes the risk of any mistake of fact or law as to any damages, losses, or injuries, whether disclosed or undisclosed,

including any mistake in medical diagnosis or prognosis for any injuries, known or unknown, sustained as a result of the above-mentioned Claims and all matters incident and related thereto applicable to the Claims and any potential claims RELEASOR has or may have against RELEASEES before the date of the execution of this General Release.

15. The Parties understand and agree that this General Release constitutes a public record as defined by C.R.S. § 24-72-202 (a)(1), and as such is open for inspection by any person in accordance with the laws of the State of Colorado.

Consideration

16. RELEASEES agree to pay RELEASOR the amount of \$45,000 (the "Settlement Amount"). Payment shall be disbursed in the form of a check payable to KILMER & LANE TRUST ACCOUNT and to be paid on a W-9 basis within fourteen (14) days of approval by public vote of this General Release by the Board of County Commissioners of El Paso County. The Parties agree that the settlement proceeds are being paid to RELEASOR as payment for alleged, but disputed, claims of non-pecuniary damages, penalties, and attorneys' fees in exchange for her settlement and release of claims against RELEASEES, and no payment is being made to RELEASOR because of a separation from employment. RELEASEES will not withhold any taxes from the payment and make no representation and take no position as to the taxability or non-taxability of the payment.

17. The Parties agree that Consideration for this General Release is as set forth herein and includes the above Settlement Amount which shall be full and final payment for all Claims released herein and all Claims that might have been asserted in any state or federal judicial or administrative forum up to the date of execution of this General Release, including any claims for attorneys' fees and costs. It is further understood that payment of said Consideration is not to be construed in any way as an admission of liability on the part of the RELEASEES. The RELEASEES herein expressly deny legal liability for any alleged economic and non-economic damages, and affirmatively assert that this Settlement Agreement is entered for the sole purpose of avoiding extraordinary costs of litigation, as described in paragraph 6 above.

18. RELEASOR stipulates to the dismissal with prejudice of the Civil Action against the COUNTY, each party to pay their own costs and fees, upon payment of the Settlement Amount.

Conditions Precedent

19. The Parties each understand, acknowledge, and agree that the terms described in this General Release are contingent upon satisfaction of each of the following conditions precedent: (1) approval by public vote of this General Release by the Board of County Commissioners of El Paso County, and (2) dismissal of the

individually named Defendants as described in paragraph 7. If any one or more of the conditions precedent are not satisfied in accordance with the terms of this General Release, then this General Release is terminated and all terms and conditions of this General Release are null, void, and unenforceable.

Voluntariness, Denial of Liability, Entire Agreement

20. RELEASOR has carefully read the above and foregoing General Release, knows the contents thereof, and has signed the same as her own free and voluntary act and after having the opportunity to have the same explained by counsel. RELEASOR expressly states that she has been advised of her right to consult additional professionals of her choice, including physicians, lawyers, and accountants, regarding any and all known and unknown, foreseen and unforeseen, damages, losses, injuries, costs, losses of services, expenses, liabilities, claims, and the consequences thereof, of whatever kind and nature, that RELEASOR may have incurred or will incur, whether suspected or unsuspected before the date of the execution of this General Release. RELEASOR further expressly understands and agrees that the signing of this General Release shall be forever binding and no rescission, modification, or release of RELEASOR from the terms of this General Release will be made for any mistake.

21. It is expressly understood and agreed that the acceptance of the above-mentioned Consideration is in full accord and satisfaction of the disputed Claims and that payment of said sum is not to be construed in any way as an admission of liability on the part of RELEASEES; on the contrary, RELEASEES specifically deny any wrongdoing, misconduct or liability on account of said Claim or any matters related or incidental thereto, or otherwise.

22. RELEASOR understands and agrees that all agreements and understandings between the Parties, including the RECITALS AND RELEASE and other sub-parts set forth herein, constitute this General Release, and that the terms of this General Release are contractual and not mere recitals.

23. This General Release cannot be modified except by a writing signed by the Parties.

24. This General Release shall be construed and interpreted in accordance with the laws of the State of Colorado.

25. RELEASOR agrees to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this General Release.

26. RELEASOR certifies that she has fully read and understands the foregoing Settlement Agreement and hereby affixes her signature as her own free and voluntary act.

IN WITNESS THEREOF on behalf of RELEASOR,


JUNIPER MCGINN

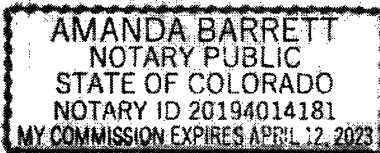
STATE OF COLORADO)
) ss.
COUNTY OF El Paso)

SWORN TO AND SUBSCRIBED by JUNIPER MCGINN, RELEASOR, this
15 day of March, 2023.

WITNESS my hand and official seal.

My commission expires: April 12, 2023.

[SEAL]




Notary Public

I, ANDREW McNULTY, as the attorney for JUNIPER MCGINN, have reviewed the within General Release with my client and have explained each and every term, condition, limitation, and obligation set forth herein to JUNIPER MCGINN and believe that she is competent and understands the same, and I further signify my approval of and agreement with the form of the within General Release by my signature below.

Date: March 16, 2023


ANDREW McNulty, ESQ.