

**RESOLUTION NO. 47-18**

**A RESOLUTION RESCINDING RESOLUTION 13-16 REGARDING THE  
APPOINTMENT OF CARE' McINNIS AS MUNICIPAL COURT JUDGE AND  
AUTHORIZING THE MAYOR TO SIGN A RELEASE AGREEMENT**

RECITALS:

On April 20, 2016 the City Council adopted Resolution 13-16 appointing Care' Mcinnis as Municipal Court Judge in and for the Grand Junction Municipal Court for a term of four (4) years.

The City of Grand Junction and Municipal Court Judge Care' Mcinnis have jointly agreed to part ways and pursuant to Resolution No. 13-16 her appointment will end on August 15, 2018.

The Staff and City Council wish to thank Judge Mcinnis for her years of service and wish her the best in her future endeavors. As City Council looks to fill the Municipal Judge's seat, the opportunity to explore and evaluate the operation processes and procedure of the City's Municipal Court will be made to ensure the continued success of such a vital component of Grand Junction's governmental structure.

As such, The City Council by and with this Resolution hereby rescinds Resolution 13-16. The recission of Resolution 13-16 as provided herein is and shall be in accordance with the attached release agreement, which the City Council does authorize and direct Mayor Traylor Smith to sign.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

Resolution 13-16 is rescinded and of no further effect and Mayor Traylor Smith is authorized and directed to sign the attached release agreement relating to ending the appointment of Care' Mcinnis as Municipal Court Judge.

PASSED and ADOPTED this 18<sup>th</sup> day of July 2018.



Barbara Traylor Smith  
President of the City Council

ATTEST:



Wanda Winkelmann  
City Clerk



## RELEASE

### **READ CAREFULLY BEFORE SIGNING**

This Release, made on the day indicated below, by Care McInnis (hereinafter referred to as the "Claimant") and the City of Grand Junction (hereinafter referred to as the "City") and its assigns, all current and former employees, servants, agents, contractors, current and former elected and appointed officials, members, successors, predecessors, attorneys, insurance carriers, and self-insurance pool(s) (hereinafter referred to jointly as "Releasees"), as follows, to wit:

WHEREAS, Claimant and City are desirous of resolving any issues between them related to the Claimant's employment, the Claimant's separation from her employment and the ending of her appointment as Municipal Judge in and for the City;

NOW, THEREFORE, the Claimant for the following described consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby **REMISE, RELEASE AND FOREVER DISCHARGE** the Releasees, together with all other persons, firms and corporations, whomsoever, of and from any and all actions, claims and demands, which exist as of the date of this Release, whatsoever, which Claimant now has or may hereafter have, of any kind, including all actions, claims and demands arising out of Claimant's employment with City, the separation of Claimant from her employment and her appointment as Municipal Judge with the City and any other claim(s) involving Releasees to any degree.

### **CONSIDERATION TO THE CLAIMANT**

The consideration to the Claimant is as follows:

1. Claimant will be on paid administrative leave starting on the 8<sup>th</sup> day after this Release is executed by Claimant and not revoked until August 15, 2018. Claimant's employment and appointment will end at 5:00 P.M. on August 15, 2018. While on paid administrative leave Claimant shall not perform any duties on behalf of or related to the City nor take any action as a City employee. Should Claimant prepare and submit to the City a short letter regarding her separation, it will be included in her City personnel file.
2. The City shall cause to be paid to Claimant the total sum of one hundred sixty-five thousand two hundred dollars (\$165,200.00) plus accrued but unused leave in accordance with City policy. Of that \$165,200.00, one check will be issued to Claimant in the gross amount of forty-five thousand two hundred dollars (\$45,200.00) plus the amount of accrued but unused leave in accordance with City policy; the net amount of the check will be less all deductions and withholdings, which shall be calculated on the Claimant's W-4 and other deductions Claimant has directed and are on file with the City.<sup>1</sup> Further, deducted from the total payment will be \$11,041.57 which represents Claimant's "buy in" to the City's retiree health insurance benefit program. Notwithstanding Claimant's separation, Claimant will be a vested participant in the City's retiree health insurance

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<sup>1</sup> Claimant acknowledges she has been paid all wages to which she is legally entitled and this payment includes all accrued but unused leave to which Claimant is entitled.

benefit program on the first of the month following receipt of the payment. Claimant's portion of Retiree Health premiums would be, unless the program is amended, not more than 33% per year until 2030. In addition to paying the above percentage of premiums, the Claimant would also be required to pay the full cost of any premium increases over 4% per year. The City's share of any premium increases is capped at 4% increase per year. Since the Claimant has single health insurance coverage now, only single coverage would be extended to her under the Retiree Health program. The remaining one hundred and twenty thousand dollars and no cents (\$120,000.00) will be issued to Claimant and her attorney's jointly. Both checks will be sent to Claimant in care of Claimant's attorneys at Claimant's attorney's address.

3. To the extent that Claimant properly directs all verbal inquiries from prospective employers to only the Human Resources Director, and the Human Resources Director receives the request, the Human Resources will take reasonable steps for he/she or his/her designee to respond to any verbal inquiries about Claimant by verifying that Claimant was employed by the City, Claimant's job title and Claimant's date of first appointment as Municipal Judge and date of separation. This provision does not affect the City's response to a written reference inquiry accompanied by a signed authorization by Claimant or any request under state law.
4. Because no special assessment related to Claimant's 2018 performance evaluation has been completed, no records regarding it will be placed in Claimant's official personnel file.

#### **CONSIDERATION TO THE RELEASEES**

1. The execution of this Release by Claimant and her agreement to the provisions contained herein.
2. Claimant will not apply for or in any manner seek employment in any position or otherwise work in any capacity for the City.
3. Claimant warrants that she has not filed or submitted any lawsuits or administrative charges with the EEOC or CCRD against the City. Claimant warrants that through this settlement she has been fully compensated for any claims she alleges and/or she may have and recognizes such contentions are strongly disputed and contested by the City. Claimant acknowledges that the City denies that it owes Claimant any consideration and she recognizes that there is a bona fide dispute between herself and the City. Claimant acknowledges that by accepting the consideration described above she is waiving any right to further compensation and damages, attorney fees or court costs and agrees that she has been fully compensated (other than for the paid administrative leave and retiree benefits provided above)
4. Claimant waives any right to any hearing or other process under the City's Personnel Policies and/or Charter and/or state/federal law related to the separation of her employment and the ending of her appointment.

5. Claimant separates her employment effective 5 pm on August 15, 2018.

#### **WARRANTY OF CLAIMANT CONCERNING CONSIDERATION RECEIVED**

Claimant warrants as follows:

No promise or agreement not herein expressed has been made to the Claimant; that in executing this Release Claimant is not relying upon any statement or representation made by the parties hereby released or said parties' agents and servants concerning any matter or thing, but is relying solely upon her own judgment and knowledge and that of her attorney; that the above described consideration is received by the Claimant in full settlement and satisfaction of all the aforesaid claims and demands, whatsoever, whether said claims be in tort, contract, by statute or otherwise; including but not limited to, any claims based upon Title VII, 42 USC §1983, the Americans with Disability Act, the First, Fourth, Fifth or Fifteenth Amendments, the Fair Labor Standards Act, the Family Medical Leave Act, the Colorado Anti Discrimination Act, Colorado state statutes and CRCP 106; that it is Claimant's clear intention to fully and forever release Releasees from any and all claims, even if there may presently exist a mistaken belief on the part of the Claimant as to the present nature and extent of her claims through the date of the execution of this agreement; that a portion of the consideration provided to Claimant hereunder is being provided for Claimant's voluntary assumption of the risk that Claimant's injuries or damages, if any, may worsen or increase or give rise to new legal claims for relief or claims for further damages in the future; that this Release was arrived at in good faith, at arms length and after negotiation; that the above mentioned consideration is received by Claimant in full settlement and satisfaction of any claims which Claimant may have for attorney's fees or costs; that the Claimant is over the age of 18 years and legally competent to execute, appreciate and fully understand this Release; that no claims for loss of consortium exist; AND THAT BEFORE SIGNING AND SEALING THIS RELEASE, CLAIMANT HAS FULLY INFORMED HERSELF OF ITS CONTENT AND MEANING, HAS HAD HER LEGAL COUNSEL EXPLAIN THE MEANING AND LEGAL SIGNIFICANCE OF EACH AND EVERY PROVISION HEREOF AND HAS EXECUTED THIS RELEASE WITH FULL KNOWLEDGE AND UNDERSTANDING THEREOF.

The Claimant further warrants that there are no assignees, subrogees or other third parties who have a right to participate in this settlement or receive any of the consideration provided hereunder. Claimant agrees to indemnify, defend and hold forever harmless the Releasees of and from any and all further claims, demands or causes of action which may be made against the Releasees by any person, firm or corporation acting for the Claimant or asserting a derivative claim from the Claimant.

The Claimant further warrants that she has not received benefits or payments from Medicare or Medicaid related to matters covered or relevant to this Release.

## **NO ADMISSION OF LIABILITY**

Claimant and the City acknowledge that Claimant and the Releasees each deny liability or wrongdoing on their part and that this Release is not to be construed, in any way, as an admission of liability, but is only a settlement done for economic reasons.

## **INCOME TAX CONSEQUENCES**

Claimant warrants that no opinions or statements have been made to her by any Releasee, or any Releasee's agents or agent or employee, relating to any income tax consequences of the payments made under this Release. Claimant agrees to indemnify, defend and hold harmless the Releasees from any and all claims with respect to the income tax consequences of the payment made under this Release asserted by any taxing authority, including the United States Government or its Internal Revenue Service.

## **OLDER WORKER BENEFIT PROTECTION ACT AND AGE DISCRIMINATION AND EMPLOYMENT ACT**

While Claimant acknowledges that she has not asserted any such claims, she has nonetheless been advised that:

1. This Release does not apply to any claims that may arise after the effective date of this Release. The effective date is 7 days after the date this Release has been signed by Claimant;
2. Claimant has been and hereby is advised of Claimant's right to consult with legal counsel prior to executing this Release. Claimant acknowledges that she has been advised to so consult and that she has consulted legal counsel;
3. Claimant has 21 calendar days to consider this Release, although Claimant may choose to voluntarily execute it earlier; and,
4. Claimant has 7 calendar days following the execution of this Release to revoke it. Written notice of such revocation shall be provided to Marni Nathan Kloster at 7900 E. Union Ave, Suite 600, Denver, CO 80237 on or before 5 pm on the 7th calendar day.

## **CONFIDENTIALITY**

As part of the consideration to the Releasees, Claimant and her attorneys agree that the terms and conditions of this Release, the negotiations relating herein and the actual agreement shall be kept strictly confidential by them. Claimant and her attorney further agree not to disclose and/or discuss with any reporter for any print or electronic media nor post on social media or other public forum about Claimant's employment with, not to negatively talk about the Releasees or not to threaten future claims regarding the City and/or the Releasees related to Claimant's employment, complaints or separation therefrom. Claimant shall not release any information concerning the matters set forth above, arising out of or under or reflected by this

Release or the terms of this Release nor shall she discuss that information with any third party, except as follows:

1. Claimant may disclose the terms of this settlement to her attorneys, spouse, accountant, any income tax agency and Colorado Attorney Regulation, if she receives a request for such information from Attorney Regulation. Claimant shall instruct or request any person or entity to whom she discloses that the terms of this settlement are confidential and to keep such disclosures confidential.

2. Claimant may disclose the terms of this settlement to the extent required by order of court. If so ordered by a court, only the specific information so ordered will be disclosed. Claimant agrees that she will not take any action to invalidate this agreement or to apply to a court of law to set aside this provision of confidentiality.

3. The City will advise during its evaluation and vote on this matter as to the following and Judge McInnis may advise as to the following if contacted:

The City of Grand Junction and Municipal Court Judge Care' McInnis have jointly agreed to part ways and pursuant to Resolution No. 13-16 her appointment will end on August 15, 2018.

The Staff and City Council wish to thank Judge McInnis for her years of service and wish her the best in her future endeavors. As City Council looks to fill the Municipal Judge's seat, the opportunity to explore and evaluate the operation processes and procedure of the City's Municipal Court will be made to ensure the continued success of such a vital component of Grand Junction's governmental structure.

It is fully understood by Claimant that her confidentiality is an integral and contractually enforceable part of this Release. Further, Claimant hereby agrees that if she or her attorney should breach this Release and the City prevails in litigation based upon the breach the City is entitled to recover its reasonable costs and attorney fees and damages and liquidated damages in the amount of \$15,000 per breach. Further, should a breach of this provision occur by Claimant or her attorney prior to the settlement proceeds being paid, Claimant hereby warrants that the liquidated damages owed per breach may be deducted from the settlement proceeds prior to issuance.

#### **MISCELLANEOUS PROVISIONS**

This Release contains the entire understanding of the parties hereto with respect to its subject matter and supersedes all prior oral and written understandings and agreements between the parties.

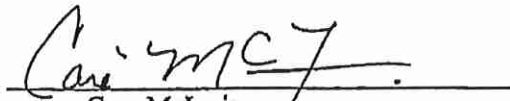
This Release shall be binding upon the Claimant, her heirs, administrators, personal representatives, assigns and subrogees, if any, as well as all other persons, firms or corporations acting on Claimant's behalf or asserting a derivative claim.

The Claimant and City agree that each shall bear her or its own costs, including attorney's fees related to this action.

The parties have participated and had an equal opportunity to participate in the drafting of this Release. No ambiguity shall be construed against any party based upon a claim that either party was a drafter.

This Release shall be construed and interpreted in accordance with the laws of the State of Colorado, without regard to its choice of law rules or principles.

Facsimiles shall suffice as originals. This agreement may be executed in counterparts.


  
Care McInnis

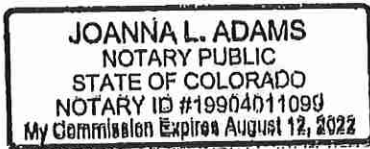
STATE OF COLORADO

COUNTY OF

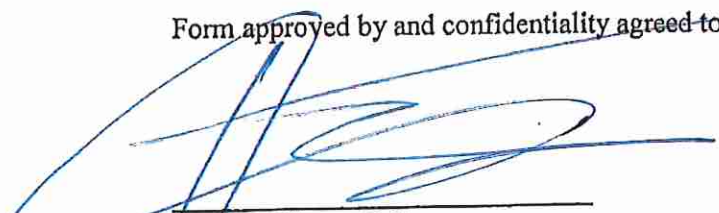
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) SS.  
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Subscribed and sworn to before me on this 27 day of June, 2018.  
Witness my hand and official seal.  
My Commission expires 8-12-22.

  
Notary Public



Form approved by and confidentiality agreed to by:

  
Elkus & Sisson, P.C.  
Attorney for Claimant

City of Grand Junction:

  
\_\_\_\_\_  
Mayor

7-18-18  
Date

Form approved by:

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Nathan, Dumm & Mayer P.C.  
Attorney for the City