

## RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement is made as of this 10<sup>th</sup> day of November, 2008, (notwithstanding the actual date of execution) by and between CRAIG D. BUCKLEY ("Plaintiff"), and BRAD KEADLE and JERRY COPLEY, ("Defendants") and the Office of Risk Management.

WHEREAS, Plaintiff filed a civil lawsuit entitled *Craig D. Buckley v. Brad Keadle and Jerry Copley*, in the United States District Court for the District of Colorado, Civil Action No. 06 CV 01483-DME-MJW (the "Litigation") asserting claims for damages arising from allegations of constitutional violations arising from an incident that occurred on or about July 31, 2004, (the "Incident").

WHEREAS, the parties wish to avoid the uncertainties and expense of litigation and to settle, and compromise on the terms set forth herein below, any and all claims that might be asserted in any litigation or any claim otherwise arising from or relating to the Incident.

WHEREAS, the parties acknowledge that the promises and covenants contained herein are good and valuable consideration for all parties' execution of this Agreement; and

NOW, THEREFORE, in consideration of the foregoing promises, the parties hereby agree and covenant as follows:

1. SETTLEMENT PAYMENT. The Office of Risk Management, on behalf of the Defendants, shall pay to Paul Grant the sum of TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00) (the "Settlement Payment"), in full and final settlement of any and all claims Plaintiff has with respect to the Incident. The source of funds for the Settlement Payment shall be the State Risk Management Fund established pursuant to C.R.S. §24-30-1510 (2008). Plaintiff and his counsel will each complete and provide to the State of Colorado an I.R.S. form W-9 "Request for Taxpayer Identification Number (TIN) Verification" for proper reporting of the Settlement Payment to the IRS on Form 1099 by the State. The settlement amount will be charged against Agency AAA, Fund 100, Appropriation Code 11L-326. The Settlement Payment shall be paid within thirty (30) days following execution and final approval of this Agreement by the State Controller, as set forth in Paragraph 16 below.

2. RELEASE. Plaintiff for himself and his heirs, successors, assigns, agents, and representatives, including legal representatives, hereby releases, acquits, and forever discharges Defendants, their agents, successors, heirs, and representatives, including legal representatives, from any and all claims, demands, causes of action, and obligations, whether asserted or unasserted, whether matured, unmatured, or wholly inchoate, and whether known or unknown, arising from or related to the Litigation. Plaintiff agrees to execute a Stipulated Motion to Dismiss With Prejudice upon the receipt and distribution of all settlement funds and/or assist Defendant by whatever means necessary in obtaining a Court order dismissing the Litigation.

3. NO ADMISSION OF LIABILITY. This Agreement is entered only for the purposes of avoiding litigation and does not constitute an admission of liability or evidence of any wrongdoing or omission of any kind. This 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 or enforce its terms.

4. **PORTIONS OF SETTLEMENT PAYMENT WITHHELD.** Pursuant to C.R.S. §24-30-202.4 (2008), the State Controller may offset the Settlement Payment by any debts owed by Claimants to State agencies under the vendor offset interception 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; and (e) 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.

5. **REPORTING AND TAX TREATMENT OF SETTLEMENT PAYMENT.** It is expressly intended and understood that the Settlement Payment represents settlement of Plaintiff concerning the Litigation and is not wages. Notwithstanding such intent and understanding, Plaintiff agrees that the State of Colorado may file such tax forms and reports reflecting the Settlement Payment that they deem necessary or appropriate, including but not limited to a Form 1099, with taxing authorities. The State shall issue a Form 1099 in the amount of settlement funds to Paul Grant, and to Craig D. Buckley. In the event any part of the Settlement Payment is determined to be taxable, Plaintiffs will be solely responsible for any tax liability arising therefrom, including any interest or penalty assessed. In the event that any claim is ever asserted against the State of Colorado to satisfy a tax liability arising from Plaintiff's failure to pay any tax owed on the Settlement Payment, Plaintiff agrees to defend, indemnify, and hold Defendants and the State of Colorado harmless on such claim, including any interest or penalties, within 30 days after notification from Defendants that a taxing authority has asserted a tax claim, or such longer period as specified by the taxing authority. Plaintiff agrees that neither the Defendants and/or the Office of Risk Management, nor the Office of the Colorado Attorney General has made any representations or given any legal opinion concerning the tax treatment of the Settlement Payment, and Plaintiff is expressly not relying on any such representation or opinion. Plaintiff has sought and received such tax opinions and advice as he deems necessary from attorneys and/or tax advisors of his choice.

6. **OPEN RECORDS REQUIREMENTS.** This Release and Settlement Agreement is not confidential. The Plaintiff understands and agrees that the State of Colorado and its agencies and departments are bound by applicable public disclosure laws, including, without limitation, the provisions of C.R.S. § 24-72-101, *et seq.* (2008) (Colorado Open Records Act), as presently or subsequently amended, and that the State entities may be required to disclose this Release and Settlement Agreement in its entirety if requested to do so under such statutes. The Release and Settlement Agreement will not hold the State of Colorado, or its administrators, officers, agents, or employees, liable for release of public records under such statutes.

7. **WARRANTIES AND REPRESENTATIONS.** Plaintiff represents and warrants that he has not assigned or transferred any claim arising from or related to the Litigation to any third party and that no third party has been subrogated to his interest in claims purported to be released hereby, or, if any third party has been subrogated to Plaintiff's interest, the interest of any subrogee has been settled, compromised, and extinguished. Plaintiff agrees to defend and indemnify the Defendants, and the State of Colorado and to hold them harmless against the claims of any assignee or subrogee to claims purported to be released hereby that may hereafter be asserted.

8. **INTEGRATION**. This Release and Settlement Agreement constitutes the entire agreement of the parties regarding the subject matter hereof. 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.

9. **BINDING EFFECT**. This Release and Settlement Agreement shall inure to the benefit of, and be binding upon, the heirs, successors, assigns and legal representatives of the parties and any third party beneficiaries.

10. **GOVERNING LAW**. This Release and Settlement Agreement is entered into in Colorado, and shall be governed by the laws of the State of Colorado.

11. **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.

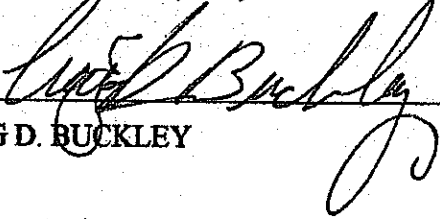
12. **SEVERABILITY**. If any provision of this Release and Settlement Agreement should be declared to be unenforceable, the remainder of this Release and Settlement Agreement shall continue to be binding upon the parties.

13. **COSTS**. The parties agree that each shall bear their own costs, if any.

14. **ADVICE OF COUNSEL**. This Release and Settlement Agreement, has been entered into voluntarily by the parties, without duress and after Plaintiff had the opportunity to consult with legal counsel of his choosing, read and understood this agreement and obtained full knowledge of its legal significance. Plaintiff further understands and agrees that this Release and Settlement Agreement shall be forever binding and that no cancellation, recession, or modification of, or release from the terms of this Release and Settlement Agreement shall be made based upon any mistake of fact or of law.

15. **EXECUTION IN COUNTERPARTS**. This Release and Settlement Agreement may be executed in counterparts, each of which shall have full force and effect upon execution by all parties to this Release and Settlement Agreement, but which together shall constitute a single instrument.

16. **EFFECTIVE DATE/CONTROLLER APPROVAL**. This Release and Settlement Agreement shall not be deemed valid until it shall have been approved by the State Controller or his designee, as provided by Section 24-30-202(1), C.R.S. (2008).

  
\_\_\_\_\_  
CRAIG D. BUCKLEY

STATE OF <u>Colorado</u>	) ) ) SS. [REDACTED]	
COUNTY OF <u>Boulder</u>		

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of November, 2008,  
by CRAIG D. BUCKLEY.

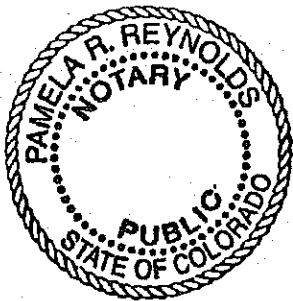
WITNESS my hand and official seal.

My commission expires: 11-13-11

[SEAL]

[REDACTED]

[Signature]  
Notary Public



COLORADO STATE PATROL

BY: \_\_\_\_\_  
Colonel Mark V. Trostel, Chief, or his designee

State of Colorado

BY: [Signature]  
David McDermott, State Controller or his designee

Date: 11-25-08

State of Colorado

BY: [Signature]  
Rich Gonzales, Executive Director or designee,  
Department of Personnel and Administration

Date: 11-21-08

STATE OF _____ )		
COUNTY OF _____ )	ss.	

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2008,  
by CRAIG D. BUCKLEY.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary Public

COLORADO STATE PATROL

BY: Col. Mark V. Trostel  
Colonel Mark V. Trostel, Chief, or designee

State of Colorado

BY: \_\_\_\_\_  
David J. McDermott, C.P.A., State Controller or designee

Date: \_\_\_\_\_

State of Colorado

BY: \_\_\_\_\_  
Rich Gonzales, Executive Director or designee,  
Department of Personnel and Administration

Date: \_\_\_\_\_

APPROVED AS TO FORM:

<p>JOHN W. SUTHERS Attorney General</p> <hr/> <p><i>Patrick L. Sayas</i></p> <p>PATRICK L. SAYAS Assistant Attorney General Litigation &amp; Employment Law Section 1525 Sherman Street, 5th Floor Denver, CO 80203 (303) 866-5240 Attorneys for Defendants</p>	
<p>PAUL GRANT, ATTORNEY AT LAW</p> <hr/> <p><i>Paul Grant</i></p> <p>PAUL GRANT P.O. Box 2720 Parker, CO 80134</p> <p>Counsel for Plaintiff</p>	