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Routing/Review Approval of Personnel Settlement Agreement

Please sign/date where indicated below noting the approval or denial of the attached proposed Personnel Settlement Agreement. ****After signing, please return to the attention of BOR – General Counsel.**** If "denied," please return to BOR – General Counsel.

In the matter of: Elyn Fritz-Waters v. Iowa State University, et al.
Case No. LACV050531 (Story County)

Institutional Staff: Michael Norton, Heather Smith

Office of the Attorney General

Reviewed by (Print Name): Kayla Burkhusser Reynolds
Reviewer's Signature: Kayla Burkhusser Reynolds
Date: 4/5/19 Reviewed: Redacted: (none required)

Institution: Iowa State University
Institutional Head's Printed Name: Wendy Wintersteen
Institutional Head's Signature: Wendy Wintersteen
Date: 4-8-19 Approve: Deny:

Board of Regents

Executive Director's Printed Name: Mark J. Braun
Executive Director's Signature: Mark J. Braun
Date: 4/10/19 Approve: Deny:

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into on the last date written below by and between Elyn Fritz-Waters ("Fritz-Waters") and Iowa State University of Science and Technology ("the University"), on behalf of itself and the Board of Regents, State of Iowa ("the Board of Regents") and the State of Iowa, and their current and former successors, assigns, subsidiaries, divisions, affiliates, officers, directors, employees, agents, and representatives (the University, the Board of Regents, and the State of Iowa collectively referred to herein as "the Released Parties" and all parties collectively referred to herein as "the Parties").

RECITALS

WHEREAS, Elyn Fritz-Waters is the Plaintiff and the University is the Defendant in an action pending in the Iowa District Court for Story County, Case Number LACV050531 ("the Lawsuit");

WHEREAS, in the Petition, Fritz-Waters made claims against Defendant and sought damages;

WHEREAS, the Parties have a mutual interest in amicably resolving any and all disputes between them;

WHEREAS, the Parties have negotiated this Agreement in good faith to fully settle all differences between them including, but not limited to, those differences embodied in the Lawsuit;

WHEREAS, the Parties acknowledge and agree that this Agreement does not constitute an admission of wrong-doing or any admission of violations of applicable law, rule, or policy by either Party; and

WHEREAS, the Parties agree that the terms and conditions contained herein are fair, reasonable, and equitable and are the result of an arm's length negotiation between the Parties.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which are expressly incorporated by all reference as if fully restated herein, and in exchange for their mutual promises and for other good and valuable consideration and intending to be legally bound herein the Parties agree as follows:

1. **Dismissal with Prejudice**. The Parties stipulate that within five (5) business days of receipt by Plaintiff's counsel of the payments identified in Paragraph 5 below, the Parties will file a joint motion to dismiss the Lawsuit with prejudice, and the motion shall provide that each party will bear their own attorney fees and costs. If the Court does not grant the joint motion to dismiss with prejudice, this Agreement will have no effect.

2. **Fritz-Waters's Full and Comprehensive Release of Claims.** Fritz-Waters agrees, on behalf of herself and her heirs, executors, administrators, attorneys, and assigns, to hereby waive, release, and forever discharge the Released Parties, including their respective affiliates, successors, officers, directors, employees, agents, current and former students, and representatives, from any and all known or unknown actions, causes of action, claims, or liabilities of any kind that have or could be asserted against the Released Parties, involving any matter which occurred in the past up to the date of this Agreement or may have been raised in the Lawsuit. This full and comprehensive release of claims includes, but is not limited to:

- (a) Any claims arising from any alleged violation by the Released Parties of any federal, state, or local statutes, ordinances, or common laws, including, but not limited to, the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.; Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 2000e et seq.; the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; the Equal Pay Act, 29 U.S.C. § 206(d) et seq.; and the Iowa Civil Rights Act of 1965, Iowa Code Chapter 216. Fritz-Waters further waives her right to monetary or other recovery should any federal, state, or local administrative agency pursue any claims on her behalf arising out of or related to her employment with the University. Fritz-Waters further agrees to waive all rights to use any internal grievance or appeal procedure offered by the University with respect to any matter arising out of or related to her employment with the University.
- (b) Claims, actions, causes of action or liabilities arising under any other federal, state, municipal, or local statutes, law, ordinance, or regulation; and/or
- (c) Any other claim whatsoever including, but not limited to: claims for severance pay, sick pay, unpaid wages, unpaid bonuses, unpaid time off, claims based upon breach of contract, breach of the covenant of good faith and fair dealing, wrongful termination, defamation, interference with contract, intentional, and/or negligent infliction of emotional distress, fraud, tort, personal injury, invasion of privacy, violation of public policy, negligence, and/or any other common law, statutory, or other claim whatsoever arising out of or relating to her employment with the University.

Notwithstanding the above, it is agreed and understood that the releases contained in this paragraph do not cover any claims which by law Fritz-Waters cannot waive and any claims to enforce the terms of this Settlement Agreement and Release.

3. **Fritz-Waters's Covenant Not to Sue.** In consideration of the terms and conditions set forth in this Agreement, the sufficiency of which the parties acknowledge, Fritz-Waters agrees, promises, and covenants that neither she, nor any person, organization, or any other entity acting on her behalf will file, charge, claim, sue, cause, or permit to be filed, charged, or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief, or other) against the Released Parties, including their respective affiliates,

successors, officers, directors, employees, agents, current or former students, and representatives, whether in their individual capacity or official capacity, involving any matter which occurred in the past up to the date of this Agreement, including any continuing effects thereof, or otherwise involving any claims, demands, causes of action, obligations, damages, or liabilities which are the subject of this Agreement.

4. **Full and Comprehensive Release of Potential Claims against Fritz-Waters; Covenant Not to Sue.** The Board of Regents, the University, and the State of Iowa, on behalf of themselves and the Released Parties, hereby covenant, promise, and agree that in consideration of the terms of this Agreement, they waive, fully release, and forever discharge Fritz-Waters of and from any and every claim, demand, and cause of action of whatsoever nature which they now have, or may in the past have had, including, but not limited to, any and every claim, demand, and cause of action arising out of Fritz-Waters's duties and obligations related to her employment with the University. The Board of Regents, the University, and the State of Iowa covenant, promise, and agree that neither they, nor any person, organization, or any other entity acting on their behalf will file, charge, claim, sue, cause, or permit to be filed, charged, or claimed, any actions for damages or other relief (including injunctive, declaratory, monetary relief, or other) against Fritz-Waters involving any matter which occurred in the past up to the date of this Agreement, including any continuing effects thereof, or otherwise involving any claims, demands, causes of action, obligations, damages, or liabilities which are the subject of this Agreement. Notwithstanding the above, it is agreed and understood that the releases contained in this paragraph do not cover any claims which by law the University cannot waive and any claims to enforce the terms of this Settlement Agreement and Release.

5. **Payment.** As consideration for the terms and conditions set forth in this Agreement, the Parties agree that the State of Iowa, on behalf of all Released Parties, will pay Fritz-Waters a total gross settlement amount of Twenty-Seven Thousand, Five Hundred Dollars (\$27,500) ("Settlement Amount"). The Settlement Amount shall be paid between May 1, 2019 and May 31, 2019. The Settlement Amount is more fully described as follows:

- (A) The State of Iowa shall pay a portion of the Settlement Amount in the amount of Fifteen Thousand, One Hundred and Sixty-Six Dollars and Sixty-Eight Cents (\$15,166.68) in compromise of Fritz-Waters' claims for non-wage compensatory damages, which includes:
 - i. a check payable to Fritz-Waters in the amount of Fifteen Thousand, One Hundred and Sixty-Six Dollars and Sixty-Eight Cents (\$15,166.68), without deduction or withholding. The State of Iowa will issue Fritz-Waters an IRS Form 1099-MISC for this amount.
- (B) The State of Iowa shall pay a portion of the Settlement Amount in the amount of Three Thousand, One Hundred and Sixty-Six Dollars and Sixty-Six Cents (\$3,166.66), less required withholdings and deductions for applicable taxes, but not subject to withholding for IPERS, in settlement and compromise of Fritz-Waters' claim for lost wages.

- (C) The State of Iowa shall pay to Hedberg & Boulton, P.C., a portion of the Settlement Amount in the amount of Nine Thousand, One Hundred and Sixty-Six Dollars and Sixty-Six Cents (\$9,166.66) for payment of attorneys' fees and litigation expenses. This payment will not be subject to withholding taxes at the time it is tendered. The State of Iowa shall cause an IRS Form 1099-MISC to be issued to Hedberg & Boulton, P.C., reporting this payment.

Elyn Fritz-Waters agrees to provide counsel for the University with a completed IRS Form W-4 and a completed IRS Form W-9 for her counsel.

The Parties agree and understand that any payment made under this Agreement is subject to Iowa Code Chapter 8A.504.

6. **Tax Liability.** Fritz-Waters shall be solely responsible for any and all taxes payable or owed by her that may be due with respect to this payment and shall hold the State of Iowa and the Released Parties harmless and indemnify them from any liability thereon.

7. **Full Satisfaction of Obligations and Liabilities.** Fritz-Waters agrees that the payment of the amount specified in above Paragraph 5 shall be deemed to fully comply and satisfy any of the obligations or liabilities to her from the Released Parties. Fritz-Waters further agrees she will not assert any claim to any payment or any other benefit to her or on her behalf from the same.

8. **No Admission of Liability.** This Agreement is not, and shall not in any way be, construed as an admission of any of the Parties that any of the Parties violated any federal, state, or local laws. The Parties have entered into this Agreement for the sole purpose of resolving the Lawsuit so as to avoid the burden, expense, delay, and uncertainties of proceeding through a formal legal process.

9. **No Reemployment.** Fritz-Waters tendered her resignation from employment with the University effective February 7, 2017. Fritz-Waters agrees not to seek or accept employment with the University at any time in the future.

10. **Representation of Fritz-Waters.** Fritz-Waters hereby represents and warrants that she (a) has authority to enter into this Agreement; (b) holds any and all claims free and clear of any liens and has not pledged or assigned those claims to any third party; (c) has not commenced or been subject to any bankruptcy or insolvency proceeding that affects or could affect her rights to accept payment and release claims under this Agreement; (d) has not received any promise of further consideration; (e) does not know of any other person who holds any rights to sue for the causes of action either asserted in the Lawsuit or the claims subject to the releases made hereunder; and (f) shall be solely liable for the reporting and payment of taxes due by her, if any, on the settlement amounts received hereunder. Fritz-Waters further agrees to indemnify and hold harmless each of the Released Parties from and against any and all claims, actions, causes of actions, demands, rights, damages, costs, losses of services, expenses, compensation, taxes, or property damages (including attorneys' fees, expenses, and costs of defense) which any

person, partnership, corporation, entity, association, agency, or other organization may bring against them alleging facts and circumstances that are contrary to, inconsistent with, or arising from the breach of, the representations and warranties of this paragraph.

11. **Fritz-Waters Review.** Fritz-Waters acknowledges she was given at least twenty-one (21) days to review and consider this Agreement in its entirety. Fritz-Waters understands that she may voluntarily waive this review period by signing and returning the Agreement prior to the expiration of twenty-one (21) days. The Agreement waives no rights or claims that may arise after its execution. Fritz-Waters further acknowledges that the terms of this Agreement were negotiated by her, through her legal counsel, over a sufficient period of time so that she now has carefully read and fully understands and accepts the terms contained in this Agreement and their legal effect. Fritz-Waters represents that she has been advised to consult with an attorney prior to signing this Agreement and has done so. Fritz-Waters further represents that her decision to sign or not sign this Agreement is her own voluntary decision made with full knowledge of its terms.

12. **Counterparts.** This Agreement may be signed in counterparts. Faxed or emailed signatures will be deemed originals.

13. **Governing Law and Venue.** This Agreement shall be governed by and construed under the laws of the State of Iowa. Each party consents to the personal jurisdiction of the state courts in Iowa with respect to any action seeking to enforce the terms of this Agreement.

14. **Severability.** Should a court of competent jurisdiction declare or determine any provision of this Agreement to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby. It is the Parties' intent that the part, term, or provision declared or determined to be illegal or invalid shall be deemed not to be a part of this Agreement.

15. **Public Record.** The Parties agree that this Agreement is a public record under Iowa Code Chapter 22. The Parties acknowledge that this Agreement is subject to Executive Order 85 and, as such, must be approved by the Executive Director of the Board of Regents and the President of the University, and be reviewed by the Iowa Attorney General, or his designee. This Agreement is not effective until it has received all necessary reviews and approvals. This Agreement will be posted on the Board of Regents' web page.

16. **Required Approvals.** The Parties acknowledge that the State Appeal Board must approve the payment of state funds pursuant to this Agreement. The Iowa Attorney General, or his designee, has reviewed and will recommend approval of this Agreement.

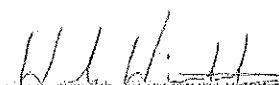
17. **Amendments.** None of the terms or conditions contained herein shall be altered, amended, waived, or abandoned, except by prior written agreement of the Parties.

18. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any and all prior agreements, discussions, or understanding between the Parties pertaining to the subject matter hereof.

**CAREFULLY READ THIS AGREEMENT. BY SIGNING BELOW YOU ARE
RELEASING ALL KNOWN CLAIMS. YOU HAVE A PERIOD OF TWENTY-ONE (21)
CALENDAR DAYS TO CONSIDER THIS RELEASE. IF YOU SIGN THIS
AGREEMENT, YOU WILL HAVE UP TO SEVEN (7) CALENDAR DAYS
FOLLOWING THE DATE YOU SIGN IT TO REVOKE YOUR SIGNATURE. THE
RELEASE SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL THIS
SEVEN (7) CALENDAR DAY PERIOD HAS EXPIRED.**


IN WITNESS WHEREOF, and intending to be legally bound hereby, Elyn Fritz-Waters and Iowa State University of Science and Technology, on its own behalf and on behalf of the Board of Regents and the State of Iowa, have executed the foregoing Settlement Agreement and Release.



Elyn Fritz-Waters
Agreed to on this 29 day of March, 2019.


Wendy Wintersteen, President
Iowa State University of Science and Technology
Agreed to on this _____ day of March, 2019.

4-8-19

Approved as to legal form and content:


Sarah Baumgartner
Attorney for Elyn Fritz-Waters
On this _____ day of March, 2019. April 4, 2019


Kayla Burkhiser Reynolds
Attorney for Iowa State University of Science and
Technology
On this 5 day of March, 2019.

April