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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: Robinette Kelley v. Iowa State University, et al.
Case Nos. 4:17 CV 397 (S.D. Iowa) and 5771 LACL 139560 (Iowa District Court for Polk County)

Institutional Staff: Michael Norton, Brett Lohofener

Office of the Attorney General

Reviewed by (Print Name): _____

Reviewer's Signature: _____

Date: _____ Reviewed: Redacted:

Institution: Iowa State University

Institutional Head's Printed Name: Wendy Wintersteen

Institutional Head's Signature: W. Wintersteen

Date: 8-2-2018 Approve: Deny:

Board of Regents

Executive Director's Printed Name: Mark Braun

Executive Director's Signature: _____

Date: 8/2/18 Approve: Deny:

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into on the last date written below by and between Robinette Kelley ("Kelley") 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 to this Agreement collectively referred to herein as "the Parties").

RECITALS

WHEREAS, Kelley is the Plaintiff and the Released Parties are the Defendants in actions pending in the United States District Court for the Southern District of Iowa, Case Number 4:17 CV 397 and the Iowa District Court for Polk County, Case Number 5771 LACL 139560 ("the Lawsuits");

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 Lawsuits;

WHEREAS, the Parties acknowledge and agree that this Agreement does not constitute any 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 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 Plaintiffs' counsel of the payments identified in paragraph 4 below, the Parties will file a joint motion to dismiss the Lawsuits with prejudice, and it shall provide that each party will bear their own attorney fees and costs. If the applicable courts do not grant the joint motions to dismiss the Lawsuits with prejudice, this Agreement will have no effect.

2. **Kelley's Full and Comprehensive Release of Claims.** Kelley 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 Lawsuits. 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.; Title IX of the Education Amendments of 1972, 20 U.S.C. A§1681 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. Kelley 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. Kelley 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.

3. **Kelley's Covenant Not to Sue.** In consideration of the terms and conditions set forth in this Agreement, the sufficiency of which the parties acknowledge, Kelley 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 or other proceeding 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. **Payment.** As consideration for the terms and conditions set forth in this Agreement, the Parties agree that within thirty (30) days after the last date written below, the State of Iowa, on behalf of all Released Parties, will pay to Kelley the lump sum of \$73,723.33 without deduction or withholding made payable to Robinette Kelley and will pay to Kelley's attorneys, a lump sum of \$51,276.67 without deduction or withholding made payable to Newkirk Zwagerman, PLC. An IRS Form 1099 will be issued for to Kelley and to Newkirk Zwagerman, PLC respectively for each of these payments. Kelley acknowledges that this payment is in compromise of a dispute and that such payment is not to be construed as the State of Iowa or any of the Released Parties conceding the reasonableness of any attorneys' fees or costs, and is not to be construed as an admission of liability or wrongdoing on the part of the State of Iowa or any of the Released Parties, and that the State of Iowa and all Released Parties expressly deny any such liability or wrongdoing. Any payment made under this Agreement is subject to Iowa Code Chapter 8A.504. Kelley shall be solely responsible for any and all taxes 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.

5. **Full Satisfaction of Obligations and Liabilities.** Kelley agrees that the payment of the amount specified in above Paragraph 4 shall be deemed to fully comply and satisfy any of the obligations or liabilities to her from the Released Parties. Kelley further agrees she will not assert any claim to any payment or any other benefit to her or on her behalf from the same.

6. **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 Lawsuits so as to avoid the burden, expense, delay, and uncertainties of proceeding through a formal legal process.

7. **Representation of Kelley.** Kelley hereby represents and warrants that she (a) has authority to enter into this Agreement; (b) holds any and all possible claims free and clear of any liens and has not pledged or assigned such 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 Lawsuits 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. Kelley 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.

8. **Kelley Review.** Kelley acknowledges she was given a reasonable period of time to consider whether she wishes to enter into this Agreement and to be bound by its terms. By

signing this agreement, Kelley waives any argument that she did not have adequate or sufficient time to review and consider this Agreement, including but not limited to any applicable review times incorporated into the laws, statutes, and regulations detailed in above Paragraph 2. Kelley 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. Kelley represents that she has been advised to consult with an attorney prior to signing this Agreement and has done so. Kelley further represents that her decision to sign or not sign this Agreement is her own voluntary decision made with full knowledge of its terms.

9. **Counterparts.** This Agreement may be executed in counterparts. Faxed or e-mailed signatures will be deemed originals.

10. **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.

11. **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.

12. **Public Record.** The Parties agree that this Agreement is a public record under Iowa Code Ch. 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.

13. **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.

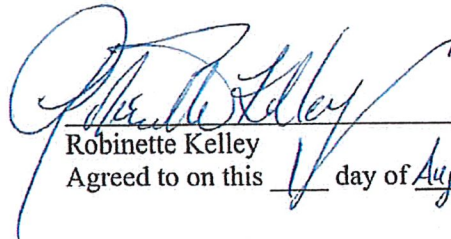
14. **Amendments.** None of the terms or conditions contained herein shall be altered, amended, waived or abandoned, except by prior written agreement of the Parties.

15. **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, Robinette Kelley 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.



Robinette Kelley
Agreed to on this 17 day of August, 2018.

Wendy Wintersteen, President
Iowa State University of Science and Technology
Agreed to on this ____ day of ____, 2018.

Approved as to legal form & content:




Thomas Newkirk
Attorney for Robinette Kelley
On this 1 day of Aug, 2018.

NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL THIS SEVEN (7) CALENDAR DAY PERIOD HAS EXPIRED.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Robinette Kelley 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.

Robinette Kelley
Agreed to on this ____ day of ____, 2018.



Wendy Wintersteen, President
Iowa State University of Science and Technology
Agreed to on this 31 day of July, 2018.

Approved as to legal form & content:

Thomas Newkirk
Attorney for Robinette Kelley
On this ____ day of ____, 2018.