

Release and Settlement Agreement

Pursuant to the Court-ordered mediation, and as a result thereof, the parties hereto agree and state as follows:

1. **Releasing Parties.** Marla Grothoff, her heirs, and any and all individuals or entities acting through, by, in, or on account of her interests, are referred to herein as the "Releasing Parties." The Releasing Parties filed or caused to be filed a lawsuit currently pending in the United States District Court for the Western District of Missouri, Central Division, bearing case number 04-4290-CV-C-WAK (the "Lawsuit").

2. **Released Parties.** The State of Missouri, and each and every one of its current and former elected officials, other officers, employees, agents, actors or contractors, in both their individual and official capacities, as well as each and every agency, division, department, commission, board or other element, aspect or subdivision of any kind, including but not limited to the Office of the Attorney General (hereafter AGO) and the Department of Social Services, and any of its or their current and former officers, employees, agents, actors or contractors, whether or not individually identified in the Lawsuit, are referred to herein as the "Released Parties."

3. **General Release.** The Releasing Parties do hereby release, acquit, and forever discharge the Released Parties of all and from any and all liability, claims, actions, causes of action, demands, rights, damages, costs, interest, loss of service, expenses, and compensation whatsoever, whether or not now known or contemplated, which the Releasing Parties now have, or which may hereafter accrue, based on or arising out of conditions, incidents or occurrences that took place prior to the date of this Agreement. The Releasing Parties specifically acknowledge that they are forever barred from filing suit against any Released Party based on any claim that arose, or with regard to

which any relevant fact occurred, prior to the date of this Agreement.

4. **Underlying Facts and Circumstances.** The Parties agree that, if this matter were tried, the following evidence would be adduced: (a) that beginning July 1, 2003, some but not all of the duties that previously had been handled by the Department of Social Services, Division of Child Support Enforcement (hereinafter, "DSS-DCSE"), were transferred by the State Legislature to the AGO; (b) that Grothoff was one of sixteen attorneys that would be terminated by DSS-DCSE as a result of this transfer of duties; (c) that Grothoff applied for a position with the AGO; (d) that the key duties Grothoff had been performing for the DSS-DCSE were not among those being transferred to the AGO; (e) that as of May 2, 2003, Grothoff was assigned to handle only 7 of the 1,893 cases that were being legislatively transferred to the AGO; (f) that Grothoff's supervisor at DSS-DCSE ranked the sixteen attorneys to be terminated by DSS-DCSE and he ranked Grothoff in the lowest group of attorneys and gave her a negative review; (g) that the Recruiting Committee Chair, following interviews with the sixteen attorney applicants from DSS-DCSE, recommended to the Attorney General that twelve of the former DSS-DCSE attorneys be hired to perform the legislatively transferred duties; (h) that Grothoff was not one of the twelve attorneys recommended for hire by the AGO; and, (i) that at no time did the Attorney General consider the applications for employment of the four DSS-DCSE attorneys, including Grothoff, not recommended for hire at the AGO by the Recruiting Committee Chair. The Parties further agree that, if this matter were tried, the following evidence would be adduced: (a) that Grothoff graduated from the UMC law school in 1988 and was hired as a legal counsel in the Division of Legal Services, Department of Social Services in 1988; (b) that in January 1999, Grothoff became an administrative hearing officer in the Division of Legal Services; (c) in 1990 Grothoff's supervisors nominated her for State Employee of the Year and the National Victory Award; (d) that in 1992, Grothoff was promoted to Managing Attorney for the

Child Support Hearings Unit; (e) that in 1998 plaintiff became Legal Counsel in the Division of Child Support Enforcement, handling unique and out of the ordinary cases different from a typical staff attorney in the Division; and, (f) some of Grothoff's supervisors at the Department of Social Services have been complimentary of her work. Neither the fact of this Settlement and Release Agreement, nor any actions taken by the parties hereto or any of them, either previous to or in connection with this Agreement or the mediation which led to it, shall be deemed or construed to be an admission of the truth or falsity of any matter pertaining to any claim or defense alleged in the pleadings filed on behalf of the parties in the Lawsuit, or an acknowledgment by any of the parties hereto of any liability to the other parties or to any person for any other claim, demand, or action, and all liability is expressly denied by the each of the parties.

5. **Scope of Agreement.** This Agreement embodies the entire agreement and understanding of the parties with respect to the subject matter contained herein. The parties hereby declare and represent that no promise, inducement, or agreement not herein expressed has been made, and the parties acknowledge that the terms and conditions of this Agreement are contractual and not a mere recital.

6. **Consideration.** The Treasurer of the State of Missouri will issue a check payable to Ms. Grothoff ^{and her attorney, C. M. M. M.} in the amount of twenty-six thousand (\$26,000) dollars to be allocated evenly on a monthly basis for 52 months 2 days of creditable service from July 1, 2003 through November 2, 2007, for the purpose of the computation of retirement benefits. If as a natural consequence of the above payment (\$26,000 allocated evenly on a monthly basis for 52 months 2 days) plaintiff accrues sick leave benefits, sick leave benefits will be added to her existing sick leave balance. Said payment shall not result in the accrual of any other benefits. Ms. Grothoff agrees that she will not represent or claim that she was ever employed by the AGO or as an Assistant Attorney General for

the State of Missouri nor will she at any time in the future seek or accept any manner of employment of any type or variety with the Department of Social Services or the AGO.

7. **Dismissal of the Lawsuit.** The Parties will submit this Agreement to the Court for its approval. Contemporaneously with their execution of this Agreement, the parties hereto shall also execute a Stipulation of Prejudicial Dismissal (the "Stipulation"), which will be filed in the United States District Court for the Western District of Missouri, Central Division, following approval of the Agreement by the Court and upon issuance of a confirmation letter by MOSERS that plaintiff has received the above described creditable service, thereby causing the dismissal of the Lawsuit with prejudice.

8. **Waiver of Attorney's Fees, Costs and Expenses.** It is agreed between and among the parties to this Agreement that no party to the Lawsuit is or shall be considered or asserted to be a "prevailing party" within the meaning of any statute, rule, or other provision of law which is or may be in any way applicable hereto in connection with the Lawsuit. All parties to this Agreement agree that no party is entitled to, and all parties hereto expressly waive any claim for attorneys fees, costs or expenses related to the Lawsuit or the resulting Court-ordered mediation, or the negotiation, preparation or execution of this Agreement. The signature of counsel for the Releasing Parties below constitutes his, her or its express waiver of any claim he, she or it may have directly against any Released Party for such fees, costs or expenses.

9. **Court Costs.** The parties agree that each party is responsible for their own court costs in the Lawsuit.

10. **Non-Assignment.** Ms. Grothoff hereby represents, acknowledges, and warrants that she has not at any time heretofore assigned to any other person or entity all or any portion of any claim or potential claim whatsoever that she may have existed against any Released Party.

11. **Binding Effect.** The persons signing this Agreement represent that they have read this Agreement and fully understand its provisions, and declare that they are of legal age and that they have relied solely upon their own judgment without influence of anyone in making this Agreement. This Agreement shall be binding upon, and inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties hereto.

12. **Preparation of Documents.** This Agreement is the joint work product of the parties hereto and, in the event of any ambiguity herein, no inference shall be drawn against a party by reason of document preparation.

13. **Further Execution.** Each party hereto shall execute any and all documents as are necessary or desirable to consummate the transactions contemplated hereby.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

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