

EXHIBIT E

Settlement Agreement and
Release Signed by

Sherry Bren (March 31, 2021)
and
Secretary Marcia Hultman
(April 1, 2021)

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made by and between Sherry Bren ("Bren"), Secretary Marcia Hultman, and the State of South Dakota, the State of South Dakota Department of Labor and Regulation, and the South Dakota Public Entity Pool for Liability, including without limitation, any of its predecessors, successors, affiliates, present or former officials, directors, officers, employees, independent contractors, agents, insurers, and reinsurers (collectively referred to as "the DLR").

SECTION I -- RECITALS

1.1 -- Bren has filed a complaint with the EEOC ("the Complaint"). In general, the Complaint alleges that the DLR discriminated against and wrongfully terminated Bren in violation of the ADEA. Bren has alleged that the violations were willful and that she was entitled to punitive damages and attorney's fees. Bren has also asserted, but not yet filed, a personal injury claim. The DLR denies the allegations.

1.2 -- The parties desire to fully and finally settle and resolve, for valuable consideration, any and all actual and potential claims, causes of action, and disputes that Bren and her attorney may have against the DLR. Accordingly, without any admission of liability, the parties have reached this agreement and compromise after considering the substantial expense and uncertainty of future litigation, trials, and appeals, and with the desire to resolve all pending or potential disputes and administrative matters in their entirety.

1.3 -- Therefore, without admitting the validity of, or any liability for, the claims asserted by Bren against the DLR and to resolve all disputes of Bren against the DLR, and in consideration of the following terms, conditions, covenants, and promises as set forth in this Settlement Agreement and Release, the parties have agreed as follows:

SECTION II -- SETTLEMENT AND PAYMENT

2.1 -- Payment by DLR. The DLR shall pay to Bren and her counsel the sum of Two Hundred Thousand Dollars (\$200,000.00), but not before Bren has executed and caused this Settlement Agreement and Release to be delivered to the DLR's attorneys and not before Bren has delivered to the EEOC a Request for Withdrawal of Charge of Discrimination. The parties agree that the payment shall be made as follows:

(a) Check payable to Bren for wages in the amount of \$75,000.00 less applicable state and federal taxes including applicable federal income tax withholding, FICA, and Medicare taxes in the amount of \$22,237.50 for a net wage payment of \$52,762.50; and

(b) Check payable to Bren for non-wages and personal injury damages in the amount of \$75,000.00 to be reported on a Form 1099; and

(c) Check payable to Johnson, Pochop, & Bartling Law Office trust account in the amount of \$50,000.00 for attorney's fees. Bren agrees that her name may be omitted from the check for \$50,000.00 and that it may be made payable to her attorney's trust account only. This amount will also be reported on a Form 1099.

The DLR makes no warranties or representations regarding how the Internal Revenue Service will treat any of the payments made pursuant to the Settlement Agreement and Release.

2.2 -- Tax Liability. Bren shall take full and complete responsibility for any and all tax liability which might be incurred as a result of her receipt of any settlement monies.

2.3 -- Full Release of Claims For Costs and Attorney's Fees. Bren and her counsel expressly agree and acknowledge that this Settlement Agreement and Release also resolves and settles Bren's claims for an award of costs and attorney's fees. Accordingly, Bren and her

counsel, Stephanie Pochop of Johnson, Pochop, & Bartling Law Office, release and waive Bren's claims for an award of costs and attorney's fees.

SECTION III -- RELEASES

3.1 -- Release In Full. In consideration for the payment described in Paragraph 2.1 and the promises and releases contained herein, Bren, together with her heirs, beneficiaries, personal representatives, executors, administrators, successors, attorneys, and assigns (collectively the "Releasers"), hereby waives, releases, and forever discharges the DLR, its successors, attorneys, assigns, affiliated entities; its present, future, and former officials, employees, agents, shareholders, officers, independent contractors, directors, insurers, and reinsurers (hereinafter also referred to collectively as "Released Parties"), from any and all of Releasers' causes of action, potential causes of action, suits, claims in law and equity, disputes, liabilities, obligations, rights, damages, demands, personal injuries, attorney's fees, and costs, including each and every right of payment for damages Bren may now or hereafter have against Released Parties arising from any act or occurrence up to the present time, including, but not limited to, any matter, claim, cause, thing, loss, or damage, which has been alleged by Bren, or that could have been alleged or claimed by Bren, in the Complaint, or which in any way results from, arises out of, or pertains to Bren's employment with or cessation of employment from the DLR, Bren's claims of ADA violations, harassment, retaliation, and wrongful discharge, or any other event occurring prior to the execution of this Settlement Agreement and Release.

3.2 -- Additional Release. This Settlement Agreement and Release shall also include, but is not limited to, claims arising out of any alleged violation of any federal, state, or local laws prohibiting deprivations of constitutional rights, retaliation, and/or discrimination based on race, sex, age, religion, disability, national origin or sexual orientation, and sexual harassment,

including without limitation Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), the Employee's Retirement Income Security Act (ERISA), the Fair Labor Standards Act (FLSA), the Equal Pay Act (EPA), the South Dakota Human Relations Law, the South Dakota Equal Pay Act, the South Dakota Wage and Hour Statute, the Sioux Falls City Ordinances, including but not limited to 21 ½ -3(7), or the Civil Rights Acts of 1964 and 1991, as amended, and any claims under common law alleging tort or contract violation, including, but not limited to claims for emotional distress. This Settlement Agreement and Release is for any relief or benefit, no matter how denominated, including, but not limited to, a release in full for claims for physical or mental injury, pain and suffering, prejudgment interest, compensatory damages, punitive damages, insurance coverage, benefits, premiums, loss or reduction of earning capacity, medical expenses, or attorney's fees and costs.

3.3 -- Covenant Not to Sue. Bren also agrees and covenants not to file a lawsuit or further administrative complaint against the released parties to assert any claim with respect to her employment with the South Dakota Department of Labor, her treatment while employed therein, the cessation of her employment, Bren's alleged underpayment of wages and bonuses, and Bren's claims of ADEA violation, harassment, retaliation, and wrongful discharge which occurred prior to the execution of this Settlement Agreement and Release. Any lawsuit or administrative complaint filed in violation of this Settlement Agreement and Release by Bren or by anyone else on behalf of Bren shall automatically constitute a breach of this Settlement Agreement and Release.

3.4 -- Release of Joint Tortfeasors. This Settlement Agreement and Release hereby discharges and releases not only the persons or entities specifically named herein as discharged

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and released, but also in like manner and to the same extent all other persons and entities classified as joint tortfeasors under SDCL §§ 15-8-11 through 15-8-22. It is intended by the parties to completely bar any right of action against any such joint tortfeasors whether or not named herein, and vest in the persons and entities specifically named herein as released and discharged all rights to contribution from any such joint tortfeasor not specifically named herein.

3.5 -- Release of Unknown Damages. Bren agrees as further consideration and inducement for this compromise settlement that it shall apply to and cover the unknown and unanticipated consequences of injuries now known and also to all unknown and unanticipated injuries and damages resulting from employment with or the cessation of employment from the South Dakota Department of Labor.

3.6 -- Full and Knowing Waiver. Bren understands and acknowledges that she has expressly waived all of her rights under this Settlement Agreement and Release. Bren further acknowledges that she understands the legal effect of this Settlement Agreement and Release, and that she has consulted her attorney regarding the legal effect of this Settlement Agreement and Release.

3.7 -- Right to Consult with Attorney. Bren acknowledges that she has a right to consult with an attorney or any other advisor, counselor or consultant of her choosing prior to signing this Settlement Agreement and Release and that she is hereby advised in writing to consult with an attorney prior to executing this Settlement Agreement and Release. By her signature below, Bren acknowledges having exercised this right to her full satisfaction.

3.8 -- Waiver of Claims Under the Age Discrimination in Employment Act.
Notwithstanding anything in this Agreement to the contrary, Bren understands this voluntary waiver releases the DLR of any and all claims under the Age Discrimination in Employment Act

and that as it relates to any age discrimination claims, she has been given twenty-one (21) days to sign this Agreement after it has been received in order to consider all its' terms fully. This Agreement shall be fully enforceable from the date of Bren's signature on it, except as it relates to the waiver of any age discrimination claims. The waiver of any age discrimination claims may be revoked by Bren in writing to the DLR any time within seven (7) days following her execution of this Agreement and the waiver of age discrimination claims, if any, shall not become effective or enforceable until expiration of this seven (7) day period. Should Bren revoke this waiver during this revocation period, this entire Agreement shall be deemed null and void. This waiver does not apply to rights or claims under the Age Discrimination in Employment Act that may arise after the date the waiver is executed. If Bren desires to revoke this Agreement, revocation may be made by a written revocation delivered to the the DLR at its place of business within such 7-day revocation period.

3.9 -- Indemnification. Bren agrees that the \$75,000 wage payment set forth in Paragraph 2.1 above will be reported on a W-2; the \$75,000 payment for non-wages and personal injury damages shall be reported on a Form 1099; and the \$50,000 payment for attorney's fees shall be reported on a Form 1099. Bren is solely responsible for payment of all federal, state and local tax obligations or assessments due on any amounts paid under this Agreement except for the South Dakota Department of Labor's portion of Medicare and FICA/FUTA taxes due on those settlement proceeds designated as wages. Bren shall be solely responsible for all applicable federal, state and local tax obligations, including but not limited to income, FICA, or Medicare taxes assessed on attorney fee or non-wage damages as set forth in Paragraph 2.1 above. The DLR will not be responsible for any applicable federal, state or local taxes assessed on attorney fees or non-wage damages.

Bren acknowledges and agrees that neither the DLR nor its counsel have made representations to her regarding any tax consequences relating to this Settlement Agreement and Release. Bren shall hold the DLR harmless and indemnify it for any claims, demands, deficiencies, levies, assessments, executions, judgments, recoveries, or actions by the Internal Revenue Service, any other taxing authority, or any governmental entity (1) alleged to have been sustained or due on account of this settlement and the payment set forth in paragraph 2.1, (2) pursuant to claims made under any federal or state tax laws, or (3) that the DLR may be required to pay as a result of not withholding from the payment specified in paragraph 2.1 above. Bren shall indemnify and hold the DLR harmless for any costs, expenses or damages sustained by the DLR by reason of any such claims or actions, including any amounts paid by the DLR as taxes, attorney's fees, costs, deficiencies, levies, assessments, fines, penalties, interest, or otherwise.

Bren further acknowledges and agrees that there is no other person or entity that has any interest in the matters released herein or arising from the injuries and claims of the Bren alleged to have been sustained, including but not limited to any hospital or medical lien or other subrogation right, and that she has not assigned or transferred to any person or entity all or any portion of the matters released herein. Bren shall hold the DLR harmless and indemnify it for any claims or actions by any other person or firm whomsoever alleged to have been sustained, including all attorney's fees, costs and disbursements incurred as a result of such claim or action.

3.10 -- Bren's Agreement to not Seek Future Employment at the South Dakota Department of Labor and Regulation or Associated State Entities. As additional consideration for the Settlement Agreement and Release, Bren agrees that her employment with the Department of Labor is terminated effective March 26, 2021, and that she will not seek future employment with the Department of Labor and Regulation or State of South Dakota or attempt

to re-apply for any position with the Released Parties. Bren agrees that the the DLR shall be entitled to assert this agreement as an absolute defense to any claim by Bren based upon a failure to employ, hire, or rehire Bren.

3.11 -- Reference Inquiry. In the event of any reference inquiry regarding Bren, the DLR will supply only:

- a. Bren's dates of employment;
- b. Bren's final salary;
- c. Bren's title; and
- d. That Bren voluntarily ended her employment with the Department of Labor and Regulation.

SECTION IV -- WARRANTIES

4.1 -- Capacity of Bren. Bren represents and warrants to the DLR that she has the full power, capacity, and authority to enter into this Settlement Agreement and Release, and that no portion of any claim, right, demand, action, or cause of action that Bren has or might have had arising out of the acts, events, transactions, and occurrences referred to herein have been assigned, transferred, or conveyed to any person or entity not a party to this Settlement Agreement and Release, by way of subrogation, operation of law, or otherwise. Bren further represents and warrants that no releases or settlement agreements are necessary or need to be obtained from any other person or entity to release and discharge completely any of the claims of the Releasers.

4.2 -- Full and Final Release. Bren represents and warrants that she understands and agrees that this Settlement Agreement and Release shall act as a full and final release of all claims of every nature and kind whatsoever as set forth in Section III.

4.3 -- Binding on the Parties. The parties represent and warrant to each other that they understand that if the facts upon which this Settlement Agreement and Release are based are different from the facts now believed to be true, this Settlement Agreement and Release will remain binding and effective and the parties expressly accept and assume the risk of such possible differences and agree that this Settlement Agreement and Release shall remain binding and effective, notwithstanding such potential differences.

4.4 -- Voluntary Action by Bren. Bren acknowledges that she has entered into this Settlement Agreement and Release freely, knowingly, and voluntarily. It is further understood and agreed that this Settlement Agreement and Release was reached and agreed to by the parties in order to avoid the expense and uncertainties of potential litigation. Bren warrants and states that she was not induced to enter this Settlement Agreement and Release by any representation from any Released Party regarding the nature and extent of the liability or financial responsibility of any Released Party or regarding the nature or extent of Bren's alleged damages.

4.5 -- Remedies in the Event of a Breach. Bren represents and warrants that she understands and accepts that if she breaches any provision of this Settlement Agreement and Release, she agrees to return the full settlement payment described in provision 2.1 to the DLR and she agrees to indemnify the DLR against all liability, costs and expenses, including reasonable attorneys' fees, related to such breach.

SECTION V – DENIAL OF LIABILITY

5.1 -- The DLR's Denial of Liability. The DLR denies any and all allegations set forth in the Complaint. Bren expressly represents and warrants that she understands and agrees that this Settlement Agreement and Release is a compromise of disputed claims, and that the exchange of consideration by virtue of this Settlement Agreement and Release and any other acts, omissions,

or statements by the parties are not to be construed as an admission of liability of any party for any claims or defenses, with liability being expressly denied. Bren hereby represents and warrants that she understands and agrees that neither this Settlement Agreement and Release nor anything contained in this Settlement Agreement and Release shall be interpreted or construed as an admission of liability by the DLR.

SECTION VI – NON-DISPARAGEMENT AGREEMENT

6.1 -- Non-disparagement. The parties and their attorneys further agree not to communicate any disparaging information about the State of South Dakota and the Department of Labor and Regulation or their elected officials, former officials, employees, former employees, or agents, or Bren, in relation to Bren's employment with the Department of Labor and Regulation, resignation/retirement, and this action, either verbally or in writing, in any public forum, including but not limited to any traditional media outlets, or social media forums such as Facebook, Twitter, SnapChat, Instagram, or similar form of social media, or by way of blogs, audio/video casts, podcasts, or any other internet websites, and/or other mass public digital communications of any kind except for the underlying facts regarding her employment, acknowledgement that the action has been resolved, and the specific terms of the settlement as stated in this Settlement Agreement and Release. Disparagement means the publication of false statements that are derogatory of another's property, decisions, business, or governance, or the act or an instance of unfairly castigating or detracting from the reputation of someone or something.

The parties further agree that any breach of this non-disparagement portion of this Agreement shall be subject to a temporary restraining order or permanent injunction, and will

pay Releasees' reasonable attorneys' fees incurred in seeking such relief if they are found to have breached this non-disparagement obligation under this Settlement Agreement and Release.

SECTION VII - GENERAL PROVISIONS

7.1 -- Attorney's Fees. Bren acknowledges and promises that she has waived and released any and all claims for attorney's fees and costs.

7.2 -- Entire Agreement. This Settlement Agreement and Release constitutes the entire agreement by the parties with respect to all of the matters discussed herein, and supersedes all prior or contemporaneous discussions, communications, or agreements, express or implied, written or oral, by or between the parties.

7.3 -- Binding On Successors. The provisions of the Settlement Agreement and Release shall be binding upon and shall inure to the benefit of the successors, assigns, heirs, beneficiaries, personal representatives, executors, and administrators of the parties.

7.4 -- No Amendment Without a Writing. Bren agrees that no amendment or modification of this Settlement Agreement and Release shall be binding or valid upon a party unless made in writing and signed by the party or a duly authorized representative of the party.

7.5 -- Severability. The paragraphs and provisions of this Settlement Agreement and Release are severable; if any paragraph or provision is found unenforceable, the remaining paragraphs and provisions will remain in full effect. At its option, the DLR or any of the Released Parties shall have the right to recoup any payments made to Bren under Paragraph 2.1 if any portion of this Settlement Agreement and Release is alleged by Bren or her agents to be unenforceable.

7.6 -- Further Assurances. Bren agrees to execute and deliver any and all other and additional instruments and documents and do any and all such other acts and things as may be

necessary to fully effectuate this Settlement Agreement and Release and carry out the terms and conditions set forth herein.

7.7 -- Headings. The section and paragraph headings in this Settlement Agreement and Release are for convenience and reference only, and shall not be deemed to alter or affect the provisions herein.

7.8 -- Signatures in Counterpart. The parties agree that this Settlement Agreement and Release may be executed in two or more counterparts, each of which when so executed shall be deemed an original, but all of which counterparts together shall constitute one and the same instrument.

7.9 -- Effective Date. This Agreement shall become effective upon the expiration of seven days following its execution by Bren unless timely revoked by Bren as provided in Section 3.8 above.

7.10 -- Applicable Law, Venue. All disputes between the parties arising from this agreement or otherwise should be construed and governed by South Dakota law, without regard to conflict of laws principles. The parties agree that the exclusive venue for any and all actions or claims arising from this Settlement Agreement and Release shall be brought before a state or federal court of competent jurisdiction in the State of South Dakota.

DATED: 03/31, 2021.

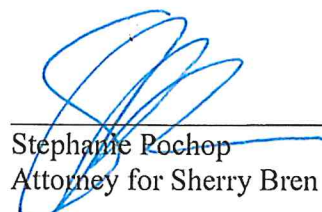
Sherry Bren
Sherry Bren *Signed Remotely*

Subscribed and sworn to before me
this 031 day of March, 2021.

Madison Berendes
Notary Public - South Dakota
My Commission Expires: 2/16/24



DATED: March 31, 2021.


Stephanie Rochop
Attorney for Sherry Bren

Subscribed and sworn to before me
this 31 day of March, 2021.

Madysen Berendes

Notary Public - South Dakota

My Commission Expires: 2/16/24



DATED: April 1, 2021.

SOUTH DAKOTA DEPARTMENT OF
LABOR AND REGULATION

By M. Hultman
Marcia Hultman

Its: Secretary DLR

Subscribed and sworn to before me
this 1st day of April, 2021.

Sarah Petrik

Notary Public - South Dakota

My Commission Expires: Jan. 23, 2026