

SETTLEMENT AND RELEASE

This Settlement and Release Agreement (“Agreement”) is made as of this 24th day of May, 2024, between the New Mexico State Ethics Commission (“Releasor”), and Dan Lewis, President of the City Council of the City of Albuquerque (“Releasee”). The Releasor or the Releasee may be referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, Releasor is an independent state agency created by Article V, Section 17 of the New Mexico Constitution, and has the authority to institute civil actions in district court if a violation of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 to -18 (1967, as amended through 2023), has occurred or to prevent a violation of the Governmental Conduct Act, *see* NMSA 1978, § 10-16-18(B) (2019), and further has a duty to “seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act,” *see* NMSA 1978, § 10-16-13.1 (2019);

WHEREAS, Subsection 10-16-4(B) of the Governmental Conduct Act provides that “[a] public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer’s or employee’s financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public”;

WHEREAS, Subsection 10-16-4(C) of the Governmental Conduct Act provides that “[n]o public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer’s or employee’s official act”;

WHEREAS, on April 15, 2024, Jeremy Farris, the Releasor’s Executive Director, sent a pre-litigation offer of settlement to the

Releasee, communicating the view of the Releasor's attorney staff that, based on publicly available information and information that the Releasee voluntarily provided upon request, Releasee had violated Subsection 10-16-4(C) by acquiring a financial interest when the Releasee had reason to believe that the new financial interest would be directly affected by the Releasee's official acts, *see* Ex. A, Ltr. from J. Farris, State Ethics Commission, to D. Lewis, City of Albuquerque City Council (Apr. 15, 2024);

WHEREAS, on April 18, 2024, Releasee responded to the April 15, 2024 settlement offer, representing that he "did not take an official action in furtherance of affecting or acquiring any personal financial interest" and, in exchange for the conclusion of this matter without "further findings or fine," offering to recuse "in all matters that come before the City Council relating to the Joint Air Quality Control Board, APANM or any of the members of APANM for as long as [he is] employed by APANM," *see* Ex. B, Ltr. from D. Lewis, City of Albuquerque City Council, to J. Farris, State Ethics Commission (Apr. 18, 2024); and

WHEREAS, Releasor State Ethics Commission approved this Agreement at a duly convened meeting on May 24, 2024, and authorized the Commission's Executive Director to enter the Agreement on the Commission's behalf.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter set forth, the Parties agree as follows:

1. Execution Date. As used in this Agreement, the "Execution Date" shall mean the date as of which the Agreement is fully executed.

2. Consideration. In consideration for Releasor State Ethics Commission's Release of claims against the Releasee as set forth herein:

(a) In his role as a City Councilor and City Council President of the City of Albuquerque City Council, Releasee will recuse from all matters relating to (i) the Albuquerque-Bernalillo County Air Quality Control Board, or any board that is a successor to that local board, created pursuant to the jurisdiction granted by NMSA 1978, Section 74-2-4 (2021); (ii) the Asphalt Pavement Association of New Mexico (“APANM”); or (iii) any of the members of APANM, for as long as APANM employs Releasee; *provided that* if Releasee is uncertain whether a matter before the Albuquerque City Council implicates a recusal obligation under either the terms of this Agreement or the provisions of the Governmental Conduct Act, before participating in the matter, Releasee may request an informal advisory opinion to that effect from Releasor pursuant to 1.8.1.9(B) NMAC.

(b) Within seven days of the Execution Date, Releasee shall provide to Releasor a list of all APANM members.

(c) Releasee shall provide Releasor with notice in writing of Releasee’s separation from APANM within ten (10) days of Releasee’s separation from APANM.

(d) Releasee stipulates that a breach of this Agreement by Releasee constitutes irreparable harm to Releasor and further subjects Releasee to liquidated damages in amount equal to two times the civil penalty provision for a violation of the Governmental Conduct Act.

(e) Releasee’s recusal obligations under this Agreement shall endure while and whenever Releasee serves as a City Councilor for the City of Albuquerque and also is employed by APANM.

3. Release. In consideration of satisfaction of the conditions set forth in Paragraph 2 and more fully contained herein, Releasor hereby releases, acquits, and forever discharges Releasee from any and all claims, demands, and damages, of whatever nature, actions and causes of action of any kind whatsoever, known or unknown, suspected or unsuspected,

which Releasor could have asserted as part of a lawsuit against the Releasee regarding the facts enumerated in paragraphs 1 through 25 of Exhibit A, attached hereto (“Released Claims”); provided, however, that the Released Claims shall not include claims to enforce this Agreement.

4. Final Settlement and Adequate Consideration. The Parties agree that Releasee’s satisfaction of the conditions set forth in Paragraph 2 of this Agreement shall represent final and full satisfaction and settlement of the Released Claims. It is the intent of the Parties to fully and effectively release the Released Claims. This Settlement Agreement is intended to have the broadest possible effect so that the allegations arising from the Released Claims be finally and forever put to rest. The Parties agree that the consideration noted in Paragraph 2 represents adequate consideration for this Settlement Agreement.

5. Construction. The terms, provisions, and conditions of this Agreement are the result of negotiations in good faith and at arm’s length between the Releasor and the Releasee, each of which has been represented by legal counsel of their own choosing. Accordingly, the terms, provisions and conditions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, without application of any rule of interpretation or construction suggesting that ambiguous or conflicting terms, conditions, or provisions shall be interpreted or construed against the Party whose legal counsel prepared the executed version of any prior drafts of the Agreement.

6. Warranty of Capacity to Execute Settlement Agreement. The Parties represent and warrant that each has the right and authority to execute this Agreement and freely and voluntarily enter into this Agreement. Further, the Parties represent and warrant that the execution of this Agreement violates no law, rule, agreement or instrument by which it may be bound or to which they are a party.

7. Entire Agreement. The Parties acknowledge and agree that:
(a) no promises, representations, or agreements have been made in

connection with this Agreement other than those set forth herein, and that they intend this to be the final and binding settlement and release of all of Releasor's Released Claims against Releasee, on the terms set forth herein, whether or not they have been previously asserted or articulated; and (b) except as expressly stated in this Agreement, none of the Parties has made any promise, statement, or representation of law or fact that has been relied upon by any of the other such signatories in entering into this Agreement.

8. Termination Provisions. Releasor may terminate or enforce this Agreement in the event that the Releasing Parties fail to perform in accordance with Paragraph 2 of this Agreement.

9. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of New Mexico.

10. Severability. If, after the effective date hereof, any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable and shall be unenforceable between the Parties only to the extent of such prohibition or ineffectiveness without invalidating the remainder of the provision or of this Agreement.

11. Amendment. This Agreement shall not be modified or amended except in writing signed by the Parties.

12. Effective Date. This Agreement shall become effective on the Execution Date, immediately upon execution by the Parties.

13. Effective in Counterparts. To expedite the conclusion of this matter, the Parties agree that this Agreement may be executed by electronic signature and further may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. By so proceeding, the Parties further agree that the Agreement shall be and is binding upon each of them, just as if the Agreement had been executed otherwise. Faxed or scanned and emailed

copies of manually executed signature pages to this Agreement shall be enforceable without the need for delivery of an original signature.

14. Fees and Costs. Each Party agrees to pay its own fees and costs associated with this matter, if any.

15. Notices. All notices, requests, demands or other communications required or contemplated hereunder or relating hereto shall be in writing and forwarded by U.S. Mail or by hand, with a copy by email, and addressed as follows:

(a) If to Releasor State Ethics Commission:

Executive Director
State Ethics Commission
800 Bradbury Dr. Ste. 215
Albuquerque, NM 87106
jeremy.farris@sec.nm.gov


(b) If to Releasee:

Dan Lewis
City Council President
City of Albuquerque City Council
P.O. Box 1293
Albuquerque, NM 87103
danlewis@cabq.gov

By: 
Jeremy Farris, Executive Director, State Ethics Commission,
on behalf of the New Mexico State Ethics Commission

May 28 2024

(Date)

By: 

Dan Lewis

_____ May 2, 2024

(Date)



STATE ETHICS COMMISSION

Jeremy Farris, Executive Director
800 Bradbury Drive Southeast, Suite 215
Albuquerque, NM 87106
505.490.0951 | jeremy.farris@sec.nm.gov

Hon. William F. Lang (Chair)
Jeffrey L. Baker
Stuart M. Bluestone
Hon. Celia Castillo
Hon. Dr. Terry McMillan
Ronald Solimon
Dr. Judy Villanueva

Jeremy D. Farris, Executive Director

April 15, 2024

Via electronic mail only

Dan Lewis

City of Albuquerque City Council President and Councilor, District 5
10423 La Canada Dr. NW
Albuquerque, NM 87114
danlewis@cabq.gov



Dear City Council President Lewis:

Thank you for your April 5, 2024 response to my April 3, 2024 request for information. *See Ex. 1, Ltr. from D. Lewis to J. Farris (Apr. 5, 2014).* In what follows, I write: (i) to answer your questions about the State Ethics Commission's work; (ii) to summarize my understanding of the facts; (iii) to explain why the facts likely establish a violation of Subsection 10-16-4(C) of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2023); and (iv) considering the information you voluntarily provided upon request, to offer a proposed settlement agreement in lieu of further action, subject to the Commission's approval.

Answers to your questions

In your April 5, 2024 correspondence, you ask to whom I sent my April 3, 2023 request for information. *See Ex. 1, at 2.* I sent the letter only to yourself and to your assistant, Giselle Alvarez.

Second, you ask about the origin of my request for information. *See Ex. 1, at 2.* NMSA 1978, Section 10-16G-13(C) (2019) makes confidential the identity of individuals who provide to the Commission or its director communications that pertain to alleged violations of New Mexico's ethics laws.

Third, you ask which State Ethics Commissioners gave approval for the Commission staff to investigate this matter. *See Ex. 1, at 1.* Under NMSA 1978, Section 10-16-18(B) (2019), the Commission may file a civil action to enforce the Governmental Conduct Act. Sections 1.8.1.10 through 1.8.1.12 of the New Mexico Administrative Code authorize the Commission's director to investigate potential violations and, if the violations are substantiated, to seek the Commission's authorization to file a civil enforcement action.

Last, you ask what provisions of the Governmental Conduct Act the Commission's staff is investigating. *See Ex. 1, at 1.* While your conduct might implicate the provisions of Sections 10-16-3 and 10-16-4, this letter has a more limited focus. For the reasons set forth below, I believe the facts establish a single violation of Subsection 10-16-4(C).

Factual background

Based on the investigation of the Commission's staff and your correspondence, I understand the relevant facts to be as follows.¹

1. On November 21, 2022, Mountain View Neighborhood Association, Mountain View Community Action, and Friends of Valle del Oro filed Petition 2022-03 in the Albuquerque-Bernalillo County Air Quality Control Board ("AQCB") to amend Title 20, Chapter 11 of the New Mexico Administrative Code ("NMAC"). *See* Pet., AQCB Pet. No. 2022-03 (Nov. 21, 2022) (Dkt. #1). The petition sought stringent air-quality regulations to address health, environment and equity impacts of air pollution for overburdened communities in Bernalillo County. *See generally id.*
2. On January 4, 2023, the AQCB agreed to hold a public hearing on the proposed regulatory change. *See* Order Granting Request for Rulemaking Hr'g, AQCB Pet. No. 2022-03 (Jan. 4, 2023) (Dkt. #5).
3. On February 7, 2023, Albuquerque Asphalt, Inc., Black Rock Services LLC, and Mountain States Constructors, Inc., and the Asphalt Pavement Association of New Mexico ("APANM") entered an appearance and became parties to the rulemaking hearing related to Petition 2022-03. *See* Am. Entry of Appearance, AQCB Pet. No. 2022-03 (Feb. 7, 2023) (Dkt. #11); *see also generally* 20.11.82.21 NMAC.²
4. On February 13, 2023, HF Sinclair Asphalt Company LLC entered an appearance and became a party to the rulemaking. *See* Entry of Appearance, AQCB Pet. No. 2022-03 (Feb. 13, 2023) (Dkt. #15).
5. According to APANM's filing with the Secretary of State, the APANM board of directors is (or was recently) comprised of Robert Wood, Benny Roybal, Gilbert Clemente, Robert Caldwell, Ryan Brown, and Patrick Shaw. Ex. 2, New Mexico Secretary of State Corporations Division filing for APANM (accessed Apr. 8, 2024). Also, according to that filing, David Otoski is (or was recently) APANM's treasurer. *See id.* Furthermore, Cory Peyton is or was APANM President, and, according to documents that you attached to your April 5, 2024 correspondence,

¹ This summary of the facts is based on the investigation of the Commission's staff to this point. If you believe I have misapprehended the facts in any way, please let me know.

² While you say that "APANM is not a party before the board or a party to any of the subsequent litigation," Ex. 1, at 2, the entry of appearance at AQCB Pet. No. 2022-03 Docket Entry #11 suggests APANM, by having a lawyer enter an appearance on its behalf, was as party to the rulemaking hearing, even if APANM's affiliate member businesses ultimately submitted comment.

Cory Peyton is likely also on the APANM board. *See id.*; *see also* Ex. 1, at 5 (noting Cory Peyton’s “leadership on the board”).

6. Several of the APANM officers and directors are also officers and directors of other parties to the rulemaking hearing related to AQCB Petition 2022-03. Robert Wood is the President of Albuquerque Asphalt, Inc. *See* Ex. 3, New Mexico Secretary of State Corporations Division filing for Albuquerque Asphalt, Inc. (accessed Apr. 8, 2024). Until some point in December 2023, Robert Caldwell was the President of Black Rock Services, LLC. *See* Ex. 4, Robert Caldwell, *LikinedIn* [LinkedIn profile], at 4, retrieved April 8, 2024, from <https://www.linkedin.com/in/robert-caldwell-6020a91a>; *see also* Testimony of Robert Caldwell, at 1, AQCB Petition No. 2022-03 (Nov. 17, 2023) ([Dkt. #189.12](#)). David Otoski is the President, Chairman of the Board, and Registered Agent for Mountain States Constructors, Inc. *See* Ex. 5, New Mexico Secretary of State Corporations Division filing for Mountain States Constructors, Inc. (accessed Apr. 8, 2024). Cory Peyton is employed by HF Sinclair Asphalt Company, LLC. *See* Ex. 1, at 6.
7. On June 26, 2023, the AQCB initially set a rulemaking hearing on Petition 2022-03 for October 23-26, 2023. *See* Order setting Date for Formal Rulemaking Hearing, AQCB Pet. No. 2022-03 (June 26, 2023) ([Dkt.# 85](#)).
8. The rulemaking hearing was ultimately reset and held on December 4-11, 2023. *See* Final Order and Statement of Reasons for Adoption of Regulation Concerning Health Environment and Equity Impacts, at ¶ 28, AQCB Pet. No. 2022-03 (Dec. 19, 2023) ([Dkt. #241](#)).³
9. On October 13, 2023, you announced you were introducing two pieces of legislation that address the AQCB. “The legislation proposes a limited moratorium on the current board’s rulemaking authority and proposes repealing and replacing the Air Quality Control Board ordinance.” *See* [City Councilor Dan Lewis Introducing Legislation to Create New Air Quality Control Board](#) (Oct. 13, 2023). These two pieces of legislation were Resolution 23-176 (the moratorium) and Ordinance 23-88 (the repeal-and-replace).

³ Following the hearing, the AQCB issued a final order requiring a higher standard of analysis and control technology for sources of air pollutants in and within one mile of overburdened communities within Bernalillo County. *See* Final Order and Statement of Reasons for Adoption of Regulation Concerning Health Environment and Equity Impacts, at ¶ 1, AQCB Pet. No. 2022-03 (Dec. 19, 2023) ([Dkt. #241](#)). Several parties have appealed the rule pursuant to NMSA 1978, § 74-2-9(A) (1992). *See, e.g.*, Notice of Appeal, *City of Albuquerque Env’t Health Dep’t v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, A-1-CA-41669 (Jan. 26, 2024); Notice of Appeal, *Albuquerque Asphalt, Inc., et al. v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, A-1-CA-41673 (Jan. 26, 2024); Docketing Statement, *Nat’l Tech. & Eng’g Sols., et al. v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, A-1-CA-41666 (Feb. 26, 2024).

10. On October 16, 2023, you introduced City of Albuquerque Resolution 23-176, establishing a moratorium for the Albuquerque-Bernalillo County Air Quality Control Board to act under Chapter 9, Article 5, Part 1 ROA 1994, the Joint Air Quality Control Board Ordinance, until February 1, 2024. Under the moratorium, the AQCB “shall have no authority to, and shall not make any regulation or standard to, address quality of life impacts absent scientific evidence that there is a nexus to air pollution by identifying the quantities and durations of air contaminants that may, with reasonable probability, cause injury; or adopt or amend a standard or regulation whereby the impact on industrial development is by design and not a consequence of preventing or abating air pollution by February 1, 2024.” *See* City of Albuquerque R-23-176, § 1.
11. On October 16, 2023, you introduced City of Albuquerque Ordinance 23-88, repealing Chapter 9, Article 5, Part 1 ROA 1994, the Joint Air Quality Control Board Ordinance, abolishing the current Albuquerque-Bernalillo County Air Quality Control Board, adopting Chapter 9, Article 5, Part 1 ROA 1994, the Joint Air Quality Control Ordinance, and creating a new Albuquerque-Bernalillo County Air Quality Control Board.⁴
12. On November 8, 2023, the City Council passed Resolution 23-176, as amended, and Ordinance 23-88, as amended, with you voting in favor. Both pieces of legislation were sent to Mayor Keller on November 15, 2023.
13. On November 17, 2023, several of the APANM members, including several members of APANM’s board of directors, presented testimony in opposition to the regulations that petitioners sought from the AQCB in Petition 2022-03. *See* Testimony of Robert Wood, at 2, AQCB Petition No. 2022-03 (Nov. 17, 2023) (Dkt. #189.10) (“The proposed new regulation is reckless, overreaching and was drafted without consideration to the consequences to our community I urge you to deny the proposed new regulation.”); Testimony of Robert Caldwell, at 4, AQCB Petition No. 2022-03 (Nov. 17, 2023) (Dkt. #189.12) (“If the proposed rule passes, as currently written, both businesses that I mentioned here today, which are small, locally owned businesses, will suffer. Approximately 100 jobs are at risk with us here alone.”); Testimony of David Otoski, AQCB Petition No. 2022-03 (Nov. 17, 2023) (Dkt. #189.16) (“Passing the proposed regulations could result in construction bans, negative impacts on economic development in the County. . . .”); Technical Testimony on behalf of HF Sinclair Asphalt Company,

⁴ It is noteworthy that part of Ordinance 23-88, as enacted, creates a procedure for AQCB determination of disqualification of an AQCB board member based on a conflict of interest, which extends beyond the recusal provisions of 20.11.82.14 NMAC. *See* Ordinance 23-88(F). This new provision, in part, likely would address concerns that APANM members—*viz.*, Albuquerque Asphalt, Inc., Black Rock Services, LLC, and Mountain States Constructors, Inc.—raised before the AQCB, when moving to disqualify AQCB member Kitty Richards for conflicts of interest. *See* Mot. to Disqualify Board Member Kitty Richards, AQCB Pet. No. 2022-03 (Feb. 6, 2023) (Dkt. #10).

LLC, et al., at Companies_00063, AQCB Petition No. 2022-3 (Nov. 17, 2023) (Dkt. #183) (discussing disproportionate economic impact of proposed rule on small businesses in Bernalillo County).

14. On November 22, 2023, Mayor Keller vetoed Resolution 23-176 and Ordinance 23-88. *See* Veto Message from Mayor Keller Delivered to Albuquerque City Council on November 22, 2023 for O-23-88 and R-23-176 (Nov. 22, 2023).
15. On November 28, 2023, you became aware of a public online advertisement for the Executive Director position for the APANM. *See* Ex. 1, at 2. As detailed in the job description, the APANM Executive Director will:
 - “Serve as a resource to the Board in developing and implementing strategies and policies consistent with the mission of the association.”
 - “Encourage positive relationships between the members, NMDOT leadership, local government leaders, and the public through effective communications.”
 - “Act as the organization’s primary spokesperson on all technical and policy matters.”
 - “Strategically promote APANM’s mission and increase public awareness of APANM and its services.”
 - “Establish working relationships with the leadership of Federal, State and local governments to foster open communication at all levels with the goals of effectively promoting the asphalt paving industry.”

See Ex. 1, at 5.

16. In researching the position, you realized that you knew one of the Association’s board members. *See* Ex. 1, at 2. This APANM board member is likely Robert Wood, based on the APANM board of directors and the documents that you attached to your April 5, 2024 correspondence. *See* Ex. 1, at 2, 6 (providing email correspondence between D. Lewis and Bob W.); Ex. 2, New Mexico Secretary of State Corporations Division filing for APANM (accessed Apr. 8, 2024) (listing Robert Wood as an APANM director).
17. On November 29, 2023, you spoke with one of the Association’s board members on the phone about the position and sent that member your resume and references. *See* Ex. 1, at 2, 6. Again, this APANM board member is likely Robert Wood, based on the APANM board of directors and the documents that you attached to your April 5, 2024 correspondence. *See* Ex. 1, at 2, 6 (providing email correspondence between D. Lewis and Bob W.); Ex. 2, New Mexico Secretary of State Corporations Division filing for APANM (accessed Apr. 8, 2024) (listing Robert Wood as an APANM director).

18. On November 31, 2023, you met with the APANM board of directors and discussed the terms of your prospective employment as APANM's Executive Director. *See* Ex. 1, at 2.
19. On December 4, 2023, and on the same date that the AQCB began its rulemaking hearing on Petition 2022-03, you moved to override Mayor Keller's vetoes of Resolution 23-176 and Ordinance 23-88. You voted for the motion, and the motion passed 6-3.
20. Resolution 23-176 and Ordinance 23-88 were published on December 5, 2023. Per the City's Charter, the ordinance abolishing the board would have purportedly effective on December 11, 2023.⁵
21. On or about December 5, 2023, during the AQCB hearing, you appeared before the AQCB to make public comment advising the AQCB that, in light of Resolution 23-176, it was your understanding that the AQCB's continued proceedings on Petition 2022-03 were illegal, and you asked the AQCB to cease and desist from rulemaking proceedings on Petition 2022-03. *See* Final Order and Statement of Reasons for Adoption of Regulation Concerning Health Environment and Equity Impacts, at ¶ 7, AQCB Pet. No. 2022-03 (Dec. 19, 2023) ([Dkt. #241](#)); *see also* New Mexico Environmental Law Center [[@nmelc](#)], Video of Dan Lewis's public comment before AQCB (Dec. 5, 2024), <https://www.instagram.com/reel/C0fhrJHLJ-2/>.
22. On December 13, 2023, you again met with the APANM board of directors. The board and you again discussed the terms of your employment as APANM's Executive Director. *See* Ex. 1, at 2, 5–6.
23. Following that meeting, on December 13 and 14, 2023, over email correspondence, you and Cory Peyton, on behalf of APANM, reached an agreement on employment terms. *See* Ex. 1, at 5–6.
24. On January 1, 2024, you formally assumed your role as the APANM Executive Director. *See* Ex. 1, at 6.

⁵On December 5, 2023, the AQCB filed a verified complaint and motion for a preliminary injunction to enjoin Resolution 23-176 and Ordinance 23-88. *See* Verified Compl. and Mot. for TRO & PI, *Albuquerque-Bernalillo Cnty. Air Quality Control Bd., et al. v. City of Albuquerque*, No. D-202-CV-2023-09295 (Dec. 5, 2023). Following the recusal or unavailability of all judges in the Second Judicial District Court, and the Supreme Court's appointment of the Honorable Francis J. Mathew, on February 1, 2024, the Court granted a preliminary injunction enjoining the enforcement of Resolution 23-176 and Ordinance 23-88, pending a resolution of a trial on the merits. *See* Order Granting Preliminary Injunctive Relief, *Albuquerque-Bernalillo Cnty. Air Quality Control Bd., et al. v. City of Albuquerque*, No. D-202-CV-2023-09295 (Feb. 1, 2024); *see also* Order, *In the Matter of the Designation of the Honorable Francis J. Mathew to Preside Over a Specified Case in the Second Judicial District Court*, No. 24-8500-DS (N.M. Sup. Ct., Jan. 8, 2024).

25. On January 26, 2024, several APANM members, including Albuquerque Asphalt, Inc., Black Rock Services, LLC and Mountain States Constructors, Inc. noticed an appeal of the AQCB rule. *See Notice of Appeal, Albuquerque Asphalt, Inc., et al. v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, A-1-CA-41673 (Jan. 26, 2024).

Your conduct likely violated NMSA 1978, Section 10-16-4(C) (2011)

Subsection 10-16-4(C) of the Governmental Conduct Act provides as follows:

No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.

NMSA 1978, § 10-16-4(C) (2011).

When a public officer participates in a matter that is likely to affect their own financial interest or acquires a financial interest that is likely to influence the public officer's exercise of their discretionary government authority, it is reasonable to conclude that the public officer is not using their official authority to exclusively benefit the public's interest. *See American Law Institute, Principles of the Law: Government Ethics*, Tentative Draft No. 4, § 302, cmt. (April 2023). Whether or not there is any corrupt intent, the mere appearance of a public servant being influenced by a private financial interest undermines public confidence in government. *See id.* Subsection 10-16-4(C) of New Mexico's Governmental Conduct Act warns against that appearance, creating a standard that is both prophylactic and objective. It is prophylactic in that it prohibits a public officer from acquiring a financial interest in circumstances under which a reasonable person would think that the new financial interest would directly affect the public officer's exercise of their discretionary government authority. It is objective in that it focuses on what the public officer "believes or should have reason to believe," and does not turn on the public officer's state of mind when acquiring a financial interest. § 10-16-4(C) (emphasis added).⁶

⁶ By virtue of being both prophylactic and objective, Subsection 10-16-4(C) therefore differs from other provisions of the Governmental Conduct Act, which impose heightened standards of proof (and correspondingly entail more severe penalties), including Subsection 10-16-4(A), which prohibits a public officer from taking an official act "for the primary purpose of directly enhancing" a financial interest, NMSA 1978, § 10-16-4(A) (2011), and Subsection 10-16-3(D), which prohibits a public officer from requesting or receiving "any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act," NMSA 1978, § 10-16-3(D) (2011). In contrast to those comparatively more serious statutory provisions, a violation of Subsection 10-16-4(C) does not require that a public officer either exchange an official act for a financial interest (including prospective employment) or even take an official act for the primary purpose to directly enhance a financial interest (again, including prospective employment). Rather, a violation of Subsection 10-16-4(C) requires a showing that the public officer "should have reason to believe" that their official act will directly affect a new financial interest (again, including prospective employment). § 10-16-4(C) (emphasis added).

The elements of a Subsection 10-16-4(C) violation are as follows: (1) the defendant is a public officer; (2) during the defendant's elected term as a public officer, the defendant acquired a financial interest; (3) at the time the defendant acquired the financial interest, the defendant "believes or should have reason to believe" that their official act(s) will directly affect their newfound financial interest. § 10-16-4(C) (emphasis added). Even without resort to further investigation, compelled process, or potential civil discovery, the above facts likely meet these elements.

I. You are a public officer.

As an elected City Councilor for District 5, you are a public officer under the Governmental Conduct Act. *See* NMSA 1978, § 10-16-2(I) (2011) (defining "public officer or employee" to mean "any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators").

II. You acquired a financial interest in prospective employment as the APANM Executive Director.

During your term of service as a City Councilor, you acquired a financial interest under the Governmental Conduct Act. The Act defines "financial interest" to include "any employment or prospective employment for which negotiations have already begun[.]" *See* NMSA 1978, § 10-16-2(F) (2011) (defining "financial interest" to mean "an interest held by an individual or the individual's family that is: (1) an ownership interest in business or property; or (2) any employment or *prospective employment for which negotiations have already begun*") (emphasis added). You began negotiations for the prospective employment of APANM Executive Director on or about November 29, 2023, or, at the latest, November 31, 2023. These negotiations continued through December 13 or 14, 2023, when you accepted an offer of employment and reached agreement over its terms.

III. When you acquired a financial interest in the APANM Executive Director position, you had reason to believe that your official acts as a City Councilor would directly affect that financial interest.

In your April 5, 2024 correspondence, you say that during the period that you negotiated the terms of your employment as the APANM Executive Director, you and the APANM board members with whom you negotiated did not discuss "the air quality board or [your] role as a City Councilor regarding the board." Ex. 1, at 2. This statement might reflect your view that, during the period in which you negotiated the terms of the APANM Executive Director position, you had no subjective belief that your official acts as a City Councilor regarding the board would directly affect your prospective employment as APANM Executive Director. That may well be true. Subsection 10-16-4(C), however, queries whether a public officer, upon acquiring a financial interest, believes "*or should have reason to believe*" that the officer's official act will

directly affect their new financial interest. § 10-16-4(C) (emphasis added). In other contexts, New Mexico courts have reviewed the phrase “knew or should have known” to include an objective standard of a “reasonable person” in the same position as the individual in question.⁷ Here, then, the application of Subsection 10-16-4(C) to your conduct turns not on whether you *believed* that your acts as City Councilor with respect to the AQCB would directly affect your prospective employment as APANM Executive Director, but on whether a reasonable person in your position *would have reason* to believe that those acts as City Councilor would directly affect your prospective employment.

Even without resort to further investigation and potential civil discovery, several facts already tend to establish that you had reason to believe that your official acts as a City Councilor with respect to the AQCB—including your sponsorship and votes for Resolution 23-176, Ordinance 23-88, and the motion to override Mayor Keller’s vetoes of that legislation—would directly affect the prospective employment.⁸ They include:

- As a matter of public record, APANM and several APANM members were parties to the rulemaking hearing, and several APANM board members were opposed to the proposed rule. By November 22, 2023, when Mayor Keller vetoed the Resolution 23-176 and Ordinance 23-88, the APANM board members had an interest in the rulemaking moratorium and an interest in the City Council overriding Mayor Keller’s veto.
- On November 29, 2023, when you contacted and submitted your application to an APANM board member (likely Robert Wood), Wood, as a matter of public record, had submitted testimony in opposition to the proposed rule in the AQCB rulemaking, and his

⁷ In *State v. Suazo*, 2017-NMSC-011, 390 P.2d 674, for example, the court reviewed the standard for second-degree murder which requires actual knowledge (“knows”) and differentiated it from an objective standard (“whether a reasonable person ‘should have known’”), explaining that the standard “should have known of the risk of his or her conduct without anything more” is “essentially a civil negligence standard.” *Id.* ¶ 39 (quoting also from Leo M. Romero, *Unintentional Homicides Caused by Risk-Creating Conduct: Problems in Distinguishing Between Depraved Mind Murder, Second Degree Murder, Involuntary Manslaughter, and Noncriminal Homicide in New Mexico*, 20 N.M. L. Rev. 55, 65 (1990), for the proposition that “[t]o say that a person should have known of the risk imposes a negligence standard based on an objective test of what the reasonable person would have known under the circumstances”). See also *First Nat’l Bank v. Diane, Inc.*, 1985-NMCA-025, ¶¶ 18–19, 102 N.M. 548 (determining in a legal malpractice case that whether an “attorney has reason to believe, or should have reason to believe that there could be adverse consequences” to the client and therefore should advise the client of those consequences, is analyzed as to whether, based on the facts in that case, “a lawyer possessing and exercising ordinary skill and capacity would have found it prudent” to so advise the client); *Martinez-Sandoval v. Kirsch*, 1994-NMCA-115, ¶ 21, 118 N.M. 616 (determining the discovery rule for the statute of limitations where the standard is “knew or should have known” begins running when an individual in the same position as the plaintiff, exercising due diligence, would have discovered the conduct forming the basis of a lawsuit). Whether a reasonable person “should have reason to believe” may be supported by circumstantial evidence. See *State v. Elmquist*, 1992-NMCA-119, ¶ 20, 114 N.M. 551 (determining that whether a defendant who shot at a building had “knowledge or reason to believe” a building was occupied may be proved by circumstantial evidence such as time of day, type of building, presence of vehicles, sounds from the building, and lights in the building).

⁸ The Governmental Conduct Act defines “official act” as “an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority[.]” NMSA 1978, § 10-16-2(H).

company, Albuquerque Asphalt, Inc., had been an adverse party to the rulemaking proceedings.

- On November 31, 2023, when you first negotiated the terms of employment with APANM board members, at least two APANM board members and one APANM officer (namely, Robert Wood, Robert Caldwell, and David Otoski), as a matter of public record, had submitted testimony in opposition to the proposed rule in the AQCB rulemaking, and the respective companies of APANM board members (Albuquerque Asphalt, Inc., Black Rock Services, HF Sinclair Asphalt Company LLC, and Mountain States Constructors) had been adverse parties to the rulemaking proceedings. Accordingly, when you acquired a financial interest in employment as APANM Executive Director, you had recently taken official acts as a City Councilor that reasonably and foreseeably would have predisposed the APANM board members with hiring authority toward you.
- Furthermore, during the period in which you were negotiating the terms of your prospective employment as APANM Executive Director (namely, from November 31, 2023 through December 14, 2023), on December 4, 2023, you moved to override Mayor Keller's vetoes of Resolution 23-176 and Ordinance 23-88 and voted for that motion. Accordingly, *while* you were negotiating the terms of your prospective employment with APANM board members, you took an official act that was in the interest of APANM board members and, again, reasonably and foreseeably would have predisposed the APANM board members with hiring authority toward you.

Together, these facts support a reasonable belief that your official acts as City Councilor with respect to the AQCB would affect your prospective employment as APANM Executive Director. Considering their testimony in the rulemaking hearing, the APANM board members who hired you and with whom you negotiated the terms of your employment had an interest that the AQCB did not enact the proposed rule under consideration in Petition 2022-03 and had a corresponding interest in the moratorium on the AQCB rulemaking proceeding. There is a reasonable belief that your official acts regarding that moratorium would have predisposed those APANM board members in your favor and, thus, affected your prospective employment.

These facts also support a reasonable belief that your acts as City Councilor with respect to the AQCB would *directly* affect your prospective employment as APANM Executive Director. If you had applied for the position in, for example, November 2024, I doubt there would be a basis for a reasonable belief that your official acts would have *directly* affected the prospective employment. However, the facts are that you applied for the position: (i) not long after you had introduced and voted for a moratorium on the AQCB rulemaking proceeding; and (ii) shortly after APANM board members, who had hiring authority for the position, had introduced testimony in opposition to the proposed rule. Moreover, *while* you were negotiating the terms of your employment as APANM Executive Director, you sponsored and voted for a motion to override Mayor Keller's veto of the moratorium, an action that was in the interest of the APANM board members. Accordingly, the facts support a reasonable belief that your

State Ethics Commission

To: Dan Lewis

April 15, 2024

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official acts were in the interest of APANM board members who hired you and, thus, directly affected your prospective employment.

Settlement offer

Considering the information you voluntarily provided upon request, and to avoid expensive and potentially bruising civil litigation, I offer the following proposed settlement agreement in lieu of further action:

In exchange for your signature below, which signifies an agreement to the foregoing, and the payment of \$250.00, corresponding to the civil penalty for one violation of the Governmental Conduct Act, and upon a vote by the Commission to approve this proposed settlement agreement, the Commission will agree not to file a civil action seeking civil penalties, equitable relief, or other relief for the violation described in this agreement and for other violations that foreseeably stem from the facts described herein. The Commission will further agree that your violations were not knowing and willful, avoiding any potential criminal referral, and will state the same in any press release concerning this agreement. If approved by the Commission, this agreement also would be a public record under NMSA 1978, Section 10-16G-13(A) (2019). Again, at this point, the State Ethics Commission would have to approve this settlement agreement in order for it to be effective. If you agree to these terms, I will recommend that it do so.

Very truly yours,

/s/ Jeremy Farris
Jeremy Farris
Executive Director
State Ethics Commission

cc: William F. Lang, Chair, State Ethics Commission

I AGREE:

Dan Lewis



Search Information

Entity Details

Business ID#: **4924231** Status: **Active**

Entity Name: **ASPHALT PAVEMENT ASSOCIATION OF NEW MEXICO, INC.** Standing: **Good Standing**

DBA Name: **Not Applicable**

Entity Type and State of Domicile

Entity Type: **Domestic Nonprofit Corporation** State of Incorporation: **New Mexico**

Benefit Corporation: **No** Statute Law Code: **53-8-1 to 53-8-99**

Formation Dates

Date of Incorporation in NM: **06/18/2014** Date of Organization in NM: **Not Applicable**

Date of Formation in State of Domicile: **Not Applicable** Date of Authority in NM: **Not Applicable**

Date of Registration in NM: **Not Applicable** Management Type: **N/A**

Reporting Information

Report Due Date: **05/15/2024** Next Annual Meeting Date: **05/16/2023**

Suspension Expiration Date:

Period of Existence and Purpose and Character of Affairs

Period of Duration: **Perpetual**

Business Purpose: **EXCLUSIVELY FOR NON-PROFIT PURPOSES WITHIN THE MEANING OF SECTION 501 (C) (6) OF THE INTERNAL REVENUR CODE. THE SPECIFIC PURPOSE IS TO PROMOTE THE IMPROVEMENT AND ADVANCEMENT OF QUALITY ASPHALT PAVEMENT CONSTRUCTION**

Benefit Purpose: **Not Applicable**

Character Of Affairs: **The association was formed to promote and educated the use of quality methods and specification in the application of asphalt pavements. We provide training and technical assistance to agencys and contractors to insure the highest levels of design and installations.**

Outstanding Items

Reports:

Fiscal year End Date	Report Due Date	Extended Report Due Date	Reporting Year	Filing Fee	Penalty	Total
12/31/2023	05/15/2024		2023	\$10	\$0	\$10

Total No. of Records: 1 Page 1 of 1

Registered Agent:

No Records Found.

License:

No Records Found.

Contact Information

Mailing Address: **PO BOX 25546, Albuquerque, NM 87125**

Principal Place of Business in New Mexico: **4801 Lang Ave NE, Albuquerque, NM 87109**

Secondary Principal Place of Business in New Mexico:

Principal Office Outside of New Mexico: **Not Applicable**

Registered Office in State of Incorporation:

Principal Place of Business in Domestic State/ Country: **Not Applicable**

Principal Office Location in NM: **Not Applicable**

Registered Agent Information

Name: **BRIAN PAUL JOSES**

Geographical Location Address:

Physical Address: **4008 SILVERY MINNOW PLACE NW, Albuquerque, NM 87120**

Mailing Address: **PO Box 25546, Albuquerque, NM 87125**

Date of Appointment: **06/18/2014**

Effective Date of Resignation:

Director Information

Title	Name	Address
Director	Robert Wood	PO Box 66450, Albuquerque, NM 87193
Director	Benny Roybal	4505 West Second St., Espanola, NM 87532
Director	Gilbert Clemente	PO Box 19095, Albuquerque, NM 87107
Director	Robert Caldwell	103 Llano Del Sur SE, Albuquerque, NM 87105

Title	Name	Address
Director	Ryan Brown	4801 Lang Ave NE, Albuquerque, OK 87109
Director	Patrick Shaw	7420 Reading Ave SE, Albuquerque, NM 87105

Officer Information

Title	Name	Address
Executive Director	Brian Jones	4008 Silvery Minnow Place NW, Albuquerque, NM 87120 - 4740
President	Cory Peyton	PO BOX 26743, Albuquerque, NM 87125
Vice President	Paul Appel	PO BOX 16, Farmington, NM 87499
Treasurer	David Otoski	3602 PAN AMERICAN FWY NE #111, Albuquerque, NM 87107

Organizer Information

Not Applicable

Incorporator Information

Title	Name	Address
Incorporator	BRIAN P JONES	4008 SILVERY MINNOW PL NW, ALBUQUERQUE, NM 87120

Trustee Information

Not Applicable

Filing History



License History



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Entity Details

Business ID#: **1056431**Status: **Active**Entity Name: **ALBUQUERQUE ASPHALT.,
INC.**Standing: **Good Standing**DBA Name: **Not Applicable**

Entity Type and State of Domicile

Entity Type: **Domestic Profit
Corporation**State of Incorporation: **New Mexico**Benefit Corporation: **No**Statute Law Code: **53-11-1 to 53-18-12**

Formation Dates

Date of Incorporation in NM: **04/30/1980**Date of Organization in NM: **Not Applicable**Date of Formation in State of
Domicile: **Not Applicable**Date of Authority in NM: **Not Applicable**Date of Registration in NM: **Not Applicable**Management Type: **N/A**

Reporting Information

Report Due Date: **04/15/2026**Next Annual Meeting Date: **04/16/2024**

Suspension Expiration Date:

Period of Existence and Purpose and Character of Affairs

Period of Duration:

Business Purpose:

Benefit Purpose: **Not Applicable**

Character Of Affairs:

Outstanding Items

Reports:

No Pending Reports.

Registered Agent:

No Records Found.

License:

No Records Found.

Contact InformationMailing Address: **P O BOX 66450, Albuquerque, NM 87193**Principal Place of Business in New Mexico: **5012 Broadway Blvd SE, Albuquerque, NM 87105**

Secondary Principal Place of Business in New Mexico:

Principal Office Outside of New Mexico: **Not Applicable**

Registered Office in State of Incorporation:

Principal Place of Business in Domestic State/ Country: **Not Applicable**Principal Office Location in NM: **Not Applicable****Registered Agent Information**Name: **BRUCE W LOUGHRIDGE**

Geographical Location Address:

Physical Address: **5012 Broadway Blvd SE, Albuquerque, NM 87105**Mailing Address: **NONE**Date of Appointment: **04/30/1980**

Effective Date of Resignation:

Director Information

Title	Name	Address
Director	BRUCE W LOUGHRIDGE	1808 WESTDALE WAY NW, Albuquerque, NM 87114 - 5969

Officer Information

Title	Name	Address
President	ROBERT WOOD	4901 CREEK PLACE NW, Albuquerque, NM 87114
Vice President	BRIAN LOUGHRIDGE	10110 GUADALUPE TRAIL NW, Albuquerque, NM 87114
Vice President	JACKY SPENCER	8405 PALOMAR, Albuquerque, NM 87109
Vice President	DANIEL FISHER	9513 GIDDINGS AVE, Albuquerque, NM 87109
Secretary	BRIAN LOUGHRIDGE	10110 GUADALUPE TRAIL NW, Albuquerque, NM 87114
Treasurer	BRIAN LOUGHRIDGE	10110 GUADALUPE TRAIL NW, Albuquerque, NM 87114

Organizer Information

Not Applicable

Incorporator Information

No Records to View.

Trustee Information

Not Applicable

Filing History



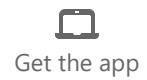
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Robert Caldwell

Aggregates & Asphalt / Manufacturing

Bosque Farms, New Mexico, United States · [Contact Info](#)

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Pro-Fab, Inc

University of New Mexico - Robert O. Anderson School of...

About

Dynamic and results-oriented professional with 16 years of leadership experience in the manufacturing and construction materials industries- aggregates and asphalt. Proven ability to navigate complex technical collaborations, build and manage diverse teams, and implement strategic initiatives. Highly versed and knowledgeable with ground-up establishment, company rebuild, fording sustained growth while navigating through economic uncertainty, global pandemic, and strained workforce availability. Demonstrated success in transforming organizations, driving revenue, and establishing new ventures. Adept at financial analysis,

regulatory compliance, systems and processes, and fostering a culture of safety, quality, trust, and productivity with all stakeholders.

Activity

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CRH announced the acquisition of BoDean Company Inc. and Northgate Ready Mix LLC in Santa Rosa, Calif. These acquisitions represent the first entry...

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Experience

 **Pro-Fab, Inc**

1 year

Vice President

Jun 2014 - Feb 2024 · 9 years 9 months

New Mexico, United States

Guided organizational revenue growth of approximately 125% within a high mix technical manufacturing environment, achieving net profits above industry standards while simultaneously green-fielding a commercial material supply company within the aggregate and hot mix asphalt industry, Black Rock Services, LLC.

Provided strategic direction, leadership, and collaboration with CFO and Director of Sales.

Ensured operational support and strategy through collaborative communication with...

Show more ▾

General Manager

Jan 2009 - Jun 2014 · 5 years 6 months

New Mexico, United States

Created stability, confidence, and consistency within the organization post an ownership transition.

Responsible for financial results to include full P&L ownership, human resources, and operational effectiveness.

Developed new market segments and reestablished presence in the core market, leading to increased profitability.

Reduced risk through driving diversification of revenue streams and increasing focus on quality management systems.

Cost estimating: entailed...

Show more ▾

Sales And Marketing Representative

2008 - 2009 · 1 year

New Mexico, United States

Accepted and managed a diverse set of responsibilities and duties under company leadership, including sales and marketing, cost estimating, project management, lean manufacturing principles, and ISO standards while finishing my BBA in 2008

President

Black Rock Services, LLC

Jan 2015 - Dec 2023 · 9 years

Albuquerque, New Mexico Area

Led the establishment of Black Rock Services, commercial construction material supply company (aggregates and hot mix asphalt), while ensuring the sustained success of Pro-Fab, Inc, a technical manufacturing firm. Orchestrated operations from the ground up resulting in substantial revenue milestones through the inception of major surface mining and hot mix asphalt plant operations.

Extensive adeptness in building a safety-first culture, managing financials including Profit and Loss (P&L)...

Show more 

Education



University of New Mexico - Robert O. Anderson School of Management

BBA · Production Operations Management

2003 - 2008

Activities and Societies: UNM Track and Field - Pole Vault

More activity by Robert



Shared by Robert Caldwell


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Entity Details

Business ID#: **1045343**Status: **Active**Entity Name: **MOUNTAIN STATES
CONSTRUCTORS, INC.**Standing: **Good Standing**DBA Name: **Not Applicable**

Entity Type and State of Domicile

Entity Type: **Domestic Profit
Corporation**State of Incorporation: **New Mexico**Benefit Corporation: **No**Statute Law Code: **53-11-1 to 53-18-12**

Formation Dates

Date of Incorporation in NM: **01/07/1980**Date of Organization in NM: **Not Applicable**Date of Formation in State of
Domicile: **Not Applicable**Date of Authority in NM: **Not Applicable**Date of Registration in NM: **Not Applicable**Management Type: **N/A**

Reporting Information

Report Due Date: **04/15/2026**Next Annual Meeting Date: **04/16/2024**Suspension Expiration Date: **01/01/1900**

Period of Existence and Purpose and Character of Affairs

Period of Duration: **01/01/1900**

Business Purpose:

Benefit Purpose: **Not Applicable**

Character Of Affairs:

Outstanding Items

Reports:

No Pending Reports.

Registered Agent:

No Records Found.

License:

No Records Found.

Contact InformationMailing Address: **3601 PAN AMERICAN FWY NE #111, Albuquerque, NM 87107**Principal Place of Business in New Mexico: **3601 PAN AMERICAN FWY NE #111, Albuquerque, NM 87107**

Secondary Principal Place of Business in New Mexico:

Principal Office Outside of New Mexico: **Not Applicable**

Registered Office in State of Incorporation:

Principal Place of Business in Domestic State/ Country: **Not Applicable**Principal Office Location in NM: **Not Applicable****Registered Agent Information**Name: **DAVID W OTOSKI**

Geographical Location Address:

Physical Address: **3601 PAN AMERICAN FWY NE #111, ALBUQUERQUE, NM 87107**Mailing Address: **NONE**Date of Appointment: **02/12/2016**

Effective Date of Resignation:

Director Information

Title	Name	Address
Director	NEIL R JACKSON	3601 PAN AMERICAN FRWY NE #111, Albuquerque, NM 87107

Officer Information


Title	Name	Address
Chairman of the Board	DAVID OTOSKI	3601 PAN AMERICAN FWY NE #111, Albuquerque, NM 87107
Treasurer	KAREN PACE	3601 PAN AMERICAN FWY NE #111, Albuquerque, NM 87107
Secretary	KAREN PACE	3601 PAN AMERICAN FWY NE #111, Albuquerque, NM 87107
President	DAVID OTOSKI	3601 PAN AMERICAN FWY NE #111, Albuquerque, NM 87107
President	DAVID OTOSKI	3601 PAN AMERICAN FWY NE #111, Albuquerque, NM 87107

Title	Name	Address
Vice President	Neil R. Jackson	3601 Pan American Fwy NE, #111, Albuquerque, NM 87107


Organizer Information
Not Applicable

Incorporator Information
 No Records to View.

Trustee Information
Not Applicable

Filing History 

Filing Date	Filing Type	Fiscal Year End Date	Post Mark	Survivor/ Re-Domesticated Entity	Instrument Text	Processed Date	Filing #
01/07/1980	Certificate Of Incorporation				MOUNTAIN STATES CONSTRUCTORS, INC. AUTHORIZED IS 50,000 PERPETUAL	10/20/1989	263189
05/30/2012	Certificate Of Amendment				AMENDING ARTICLE FOUR- AUTHORIZED SHARES (3 PGS)	05/30/2012	263197

License History 

Filing Date	Filing Number	License Start Date	License End Date
No records to view.			

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CITY OF ALBUQUERQUE

City Council

P.O. Box 1293
Albuquerque, NM 87103
Tel: (505) 768-3100
Fax: (505) 768-3227
www.cabq.gov/council

President Dan Lewis
District 5

Vice President Renée Grout
District 9

Isaac Padilla
Council Director

Louie Sanchez
District 1

Joaquín Baca
District 2

Klarissa J. Peña
District 3

Brook Bassan
District 4

Nichole Rogers
District 6

Tammy Fiebelkorn
District 7

Dan Champine
District 8

Via electronic mail

Jeremy Farris, Executive Director
800 Bradbury Drive Southeast, Suite 215
Albuquerque, NM 87106
Jeremy.farris@sec.nm.gov



April 18, 2024

Mr. Farris,

Thank you for the quick and measured response. I take my public service very seriously and in no way would jeopardize my reputation in service of personal benefit.

While I did meet with the board of APANM to discuss the position of executive director, I did not know that individual members of the board were participating in the rulemaking hearings. Furthermore, I had no idea that discussing a potential job could constitute "acquiring a financial interest" pursuant to NMSA 1978, § 10-16-2(F). While I understand that ignorance of the law is generally no defense, I did not take an official action in furtherance of affecting or acquiring any personal financial interest.

I believe my official actions were in the best interests of the people of Albuquerque. I believed that when I introduced a change to the air quality control board ordinance, and I continued to believe that when I voted to override the mayor's ill-conceived veto. The veto override, while it occurred after my first conversation about the position, was consistent with my position before that conversation.

That said, in reviewing the factual background you provided, I was most surprised to learn that an attorney had filed an entry of appearance on APANM's behalf, long before I knew it even existed as an entity. As you noted, APANM did not introduce testimony before the board, but I recognize that the perception created by that joint entry could tarnish the intentions behind my official acts.

Therefore, I would like to make a counter proposal to your settlement agreement. I propose that I will recuse myself in all matters that come before the City Council relating to the Joint Air Quality Control Board, APANM or any of the members of APANM for as long as I am employed by APANM. I believe this would remedy any ethical concerns relating to my actions. In exchange I would ask that this matter be concluded with no further findings or fine.

Thank you for the consideration,

Dan Lewis