

**STATE OF NEW MEXICO
COUNTY OF TAOS
EIGHTH JUDICIAL DISTRICT**

STATE ETHICS COMMISSION,

Plaintiff,

v.

JAY CHRISTOPHER STAGG,

Defendant.

GB

No. D-820-CV-2023-00368

**JOINT MOTION TO ENTER ORDER APPROVING SETTLEMENT AND RELEASE
AND OF STIPULATED DISMISSAL WITH PREJUDICE**

COMES NOW Plaintiff State Ethics Commission and Defendant Jay Christopher Stagg and respectfully request the Court to enter an Order Approving the Settlement and Release and of Stipulated Dismissal with Prejudice. *See* Rule 1-041(A)(2) NMRA. In support of the joint motion, the Parties state as follows:

1. On July 9, 2024, the Parties entered a settlement agreement that amicably resolves the above-captioned matter. *See* Ex. A, Settlement and Release (Jul. 9, 2024). The settlement agreement contains no admission of liability on the part of Mr. Stagg and requires specific recusal obligations of Mr. Stagg, so long as he serves on the Village Council or other Village entity and is employed by Taos Ski Valley, Inc. *See* Ex. A, at 1 & 2-3, ¶ 2(b)-2(g).

2. Paragraph 11 of the Settlement and Release provides that the Parties will jointly file a motion for an order approving the agreement and expressly providing for ongoing judicial enforcement authority for the agreement's provisions. *See* Ex. A, at p. 5, ¶ 11(a).

3. The Court may enter an order of dismissal that expressly reserves "ongoing judicial enforcement authority" for the terms of the Settlement and Release. *Allred v. N.M.*

Dep't of Transp., 2017-NMCA-019, ¶ 31 (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381–82 (1994)) (noting that a court may include “an express reservation or repudiation of ongoing judicial enforcement authority within an order of dismissal”); *see also generally* Rule 1-041(A)(2) (providing that the Court, upon a motion of the plaintiff, may enter an order dismissing an action “upon such terms and conditions as the court deems proper”); *cf. also* Rule 1-106(B)(4) NMRA (providing that “[i]f the parties have entered into a mediated settlement agreement and have filed a stipulation of dismissal, the court shall close the case, provided that the court shall retain jurisdiction to later reopen the case to enter any orders and judgments as may be appropriate to enforce the mediated settlement agreement and to grant any other relief as the court deems just and proper”).

4. The Court should enter an order approving the Settlement and Release, dismissing this lawsuit with prejudice, but expressly reserving “ongoing judicial enforcement authority” for the Settlement and Release, for three reasons.

5. First, it is the policy of the State of New Mexico to favor settlement agreements. *See, e.g., Navajo Tribe of Indians v. Hanosh Chevrolet-Buick, Inc.*, 1988-NMSC-010, ¶ 3, 749 P.2d 90 (affirming district court’s entry of a stipulated settlement order).

6. Second, the Settlement and Release is a result of negotiations in good faith and at arm’s length between the Parties and is fair, adequate and reasonable resolution of the dispute in the above-captioned matter.

7. Third, the Settlement and Release ““does not *put the [C]ourt’s sanction on and power behind* a decree that violates [the] Constitution, statute or jurisprudence.”” *Allred*, 2017-NMCA-019, ¶ 31 (quoting *United States v. City of Miami*, 664 F.2d 435 (5th Cir. 1981)).

CONCLUSION

For the foregoing reasons, the Parties jointly and respectfully request the Court to enter an Order and Approving the Settlement and Release and of Stipulated Dismissal with Prejudice.

Respectfully submitted: July 15, 2024

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CERTIFICATE OF SERVICE

I certify that on July 15, 2024, I filed the foregoing electronically through the Court's Odyssey File & Serve system, which caused counsel of record to be served by electronic means, as more fully reflected on the Notification of Service.

/s/ Jeremy Farris
State Ethics Commission



SETTLEMENT AND RELEASE

This Settlement and Release Agreement (“Agreement”) is made as of this 9th day of July, 2024, between and among the New Mexico State Ethics Commission (“Commission” or “Releasor”), and Jay Christopher Stagg (“Mr. Stagg”, “Releasee”, or “Released Party”). Each of the Releasor or Releasee may be referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, on August 4, 2023, the Commission authorized its attorney staff to commence a civil enforcement action to pursue a claim against the Released Party.

WHEREAS, the Commission filed a complaint against Mr. Stagg on October 6, 2023 in New Mexico State District Court, Eighth Judicial District, County of Taos, captioned *State Ethics Commission v. Jay Christopher Stagg*, No. D-820-CV-2023-00368 (“the Lawsuit”), alleging that Mr. Stagg violated Subsection 10-16-4(B) of the Governmental Conduct Act.

WHEREAS, in the complaint, the Commission alleges Mr. Stagg’s participation and votes in the Village of Taos Ski Valley Planning & Zoning Commission (“P & Z Commission”) meetings on April 14, 2022, November 14, 2022, December 5, 2022, and February 6, 2023 violated the Government Conduct Act.

WHEREAS, Mr. Stagg filed an answer to the complaint on November 13, 2023 denying the allegations asserted against him in the complaint and also denying any violation of the Government Conduct Act.

WHEREAS, Releasee has been a full-time salaried employee of Taos Ski Valley, Inc. (“TSVI”) since 1973.

WHEREAS, Mr. Stagg has served as a Village Councilor on the Village of Taos Ski Valley (“VTSV”) Village Council since 2006.

WHEREAS, Mr. Stagg served as a commissioner of the VTSV P & Z Commission between 2002 and 2023. Mr. Stagg retired from his role as a commissioner on the P & Z Commission in or around April 2023 and has no intention of rejoining the P & Z Commission at any time in the future.

WHEREAS, Mr. Stagg denies Releasor’s allegations as stated herein and all claims of wrongdoing, damages, and any liability whatsoever, including but not limited to violations of the Government Conduct Act, and states in particular:

- (a) Mr. Stagg’s participation in the April 14, 2022, November 14, 2022, December 5, 2022, and February 6, 2023 P & Z Commission meetings did not affect his employment or compensation.
- (b) Mr. Stagg did not derive any financial benefit from his acts as a Village P & Z Commissioner.

(c) Mr. Stagg's participation and votes in the above-referenced P & Z Commission meetings were not influenced or compelled by any "fiduciary duty" allegedly arising from Mr. Stagg's employment with TSVI. Mr. Stagg has no ownership interest in TSVI nor does he have an ownership interest in any property owned by TSVI. Although Mr. Stagg holds the honorary title of vice-president, along with several other longtime TSVI employees, Mr. Stagg is not a member of the TSVI board of directors.

WHEREAS, Releasor State Ethics Commission and Mr. Stagg (collectively "the Parties") have agreed to amicably resolve this matter, including any and all issues, claims, demands, and/or damages, of whatever nature, that exist, or could exist, by and among them, relating in any way to claims made or which could have been made in the Lawsuit, without the need for further litigation.

WHEREAS, Without conceding the merit or lack of merit of any claim or defense or the existence of any liability whatsoever, the Parties wish to settle, compromise, and finally and forever resolve all matters, controversies, disputes, and claims that may exist between the Parties relating to Releasee's former service upon the P & Z Commission and ongoing service upon the VTSV Village Council that were or could have been raised in the Lawsuit;

WHEREAS, the Releasor State Ethics Commission's Executive Director has authority to enter the Agreement on the Commission's behalf.

NOW, THEREFORE, without trial or adjudication of issue of fact or law, without this Settlement Agreement constituting evidence against Mr. Stagg, without any admission by Mr. Stagg of any wrongdoing, 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 Mr. Stagg, within seven (7) days after the Execution Date:

(a) Mr. Stagg agrees to waive any and all demands, claims, or cause of action against Releasor for recovery of attorney fees or costs incurred in defending against the claims and cause of action asserted in the complaint.

(b) Mr. Stagg further agrees that, so long as he remains an employee of TSVI, throughout the remainder of his term as a Councilor on the VTSV Village Council, as well as any future term served by Mr. Stagg upon Village Council or other VTSV government entity, including the P & Z Commission, Mr. Stagg shall recuse himself from any *quasi-judicial proceeding or action* by any arm or instrumentality of VTSV, including but not limited to the Village Council and the P & Z Commission, in which TSVI or any successor, assign, or affiliate of TSVI is the interested party.

(c) Mr. Stagg's recusal from such matter shall be complete and he shall not participate in either the discussion of or any votes taken on any quasi-judicial action as defined in Paragraph 2(d) of this Agreement.

(d) For purposes of this Agreement, a "quasi-judicial proceeding or action" shall be any proceeding or action involving a determination of the rights, duties, or obligations of specific persons on the basis of the application of presently existing legal standards or policy considerations to past or present facts developed at a hearing conducted for the purpose of resolving the particular interests in question.

(e) For purposes of this Agreement, the decision of VTSV, or any arm or instrumentality thereof, regarding any existing or potential contract between VTSV and TSVI or any successor, assign, or affiliate of TSVI, also shall be considered a "quasi-judicial proceeding or action."

(f) This Agreement does not preclude Mr. Stagg from participating in proceedings that are legislative, and not quasi-judicial, in nature, regarding VTSV actions that apply generally to village constituents, even if TSVI or any of its affiliates are among the persons whose rights or interests are affected by the proceedings or any action taken as a result of such proceedings.

(g) This Agreement shall not be construed to permit Mr. Stagg to participate in or vote on any proceeding or action in which his recusal would otherwise be required by law.

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 Releasees 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 the Lawsuit ("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 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 Agreement.

5. No Admission of Wrongdoing. This Agreement (whether or not consummated), the settlement reflected herein, and all communications or other actions relating to this settlement, shall not be offered or construed as, or received against any of the Parties in a lawsuit between the Parties, or in any other civil, criminal, administrative, or other action or proceeding, as evidence of: (a) an admission by any of the Parties with respect to the truth or falsity of any fact alleged in this Agreement or the deficiency of any allegation or defense that

has been or could have been asserted, or of any liability, negligence, fault, misrepresentation, omission, or other wrongdoing or actionable conduct of any of the Parties; or (b) any liability, negligence, fault, misrepresentation, omission, or other wrongdoing or actionable conduct with respect to any statement or written document approved or made the Released Parties. Notwithstanding the foregoing, the Parties may refer to this Agreement to enforce this Agreement.

6. **Mutual Non-Disparagement.** As further consideration for this Agreement, the Parties agree not to make any disparaging comments about one another. “Disparaging comments” are (1) any denigrating or derogatory statement about one another or the services provided, or (2) comments or representations intended to bring any Releasee or the Releasor into disrepute. The Releasees and Releasor agree not to make disparaging comments in any written or verbal form, including in print or electronically, including but not limited to statements on social media or other websites. This provision does not preclude the parties from discussing the facts and resolution of the Released Claims in a manner that does not disparage the Parties. Moreover, it is expressly agreed that this provision does not constrain the Parties from publicly expressing any opinion on the interpretation of Subsection 10-16-4(B) of the Governmental Conduct Act, and any federal or state statute, regulation, judicial opinion, administrative opinion, guidance or other law or regulation that might pertain to that subsection.

7. **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 State Ethics Commissions 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.

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

9. **Compromise of a Disputed Claim.** The Parties agree that this Agreement represents a compromise of disputed rights, demands, claims, actions and causes of action, taking into account, among other things, the costs, inconvenience, expenditure of time and energy, and risks associated with litigation. It is further agreed that nothing contained within this Agreement shall be considered an admission for any such claims, demands, damages, actions, or causes of action, such liability or wrongdoing being expressly denied. Nothing in this Agreement constitutes an admission of liability or wrongdoing by Releasees.

10. **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 State Ethics Commission's Released Claims against the Mr. Stagg, 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.

11. Enforcement Provisions. The Parties stipulate and agree that:

(a) the Parties will jointly file a motion to approve this Agreement and to voluntarily dismiss with prejudice and will jointly submit a proposed order approving the Agreement and of dismissal that shall include an express reservation of ongoing judicial enforcement authority for the provisions of this Agreement;

(b) subject to the Court's approval of the joint motion to approve this Agreement and to voluntarily dismiss with prejudice, the Eighth Judicial District Court, County of Taos, State of New Mexico, shall retain continuing subject matter and personal jurisdiction over this matter to adjudicate any motion a Party files to enforce the terms of this Agreement, including for any motion to show cause filed by Plaintiff State Ethics Commission to enforce the terms of this Paragraph; and

(c) should the Commission reasonably and in good faith believe Mr. Stagg has failed to perform in accordance with Paragraph 2 of this Agreement, the Commission shall notify Mr. Stagg of this concern and provide Mr. Stagg ten (10) days to cure any alleged non-compliance if the alleged non-compliance is subject to cure. If at the expiration of the ten (10) day cure period, Mr. Stagg has not resolved the Commission's concern, the Commission may file a motion for an order to show cause why Mr. Stagg should not be found in civil contempt. Mr. Stagg's vote or participation in a discussion regarding any quasi-judicial proceeding or action by VTSV, or any arm or instrumentality of VTSV, involving TSVI, or any successor, assign, or affiliate of TSVI, is an instance of non-compliance that is *not* subject to cure. If the alleged violation of Paragraph 2 of this Agreement is not subject to cure, after providing Mr. Stagg with notice of the alleged violation, the Commission may file a motion for an order to show cause why Mr. Stagg should not be found in civil contempt of the order approving this Agreement. Mr. Stagg shall have fifteen (15) days to respond to the motion for an order to show cause. If the Commission fails to act reasonably and in good faith, Mr. Stagg may file an appropriate motion to enforce the terms of this Paragraph.

(d) Mr. Stagg agrees that that he will apprise himself both of the Agreement and of the Order of Stipulated and Voluntary Dismissal of this Lawsuit and that he has the ability to comply with the terms of both.

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

13. **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.

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

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

16. **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.

17. **Fees and Costs.** Each Party agrees to pay its own attorneys' fees, and costs.

18. **Notices.** All notices, requests, demands or other communications required or contemplated hereunder or relating hereto shall be in writing and forwarded by overnight delivery or by hand, with a copy by email, and addressed as follows:

(a) If to Releasor State Ethics Commission: Executive Director

State Ethics Commission
c/o jeremy.farris@sec.nm.gov
800 Bradbury Dr. Ste. 215
Albuquerque, NM 87106

(b) If to Releasee:

Jay Christopher Stagg
c/o Kurt B. Gilbert
HINKLE SHANOR LLP
P.O. Box 2068
Santa Fe, NM 87504
Telephone: (505) 982-4554
kgilbert@hinklelawfirm.com

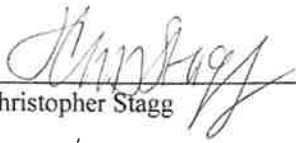
Attorneys for Jay Christopher Stagg



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

July 9 2024

(Date)



Jay Christopher Stagg

July 9, 2024

(Date)