

## **SETTLEMENT AND RELEASE**

This Settlement and Release Agreement ("Agreement") is made as of this 9 day of May, 2025 (the "Execution Date"), between and among the New Mexico State Ethics Commission ("Commission" or "Releasor"), and Daniel Flack ("Mr. Flack"), AECS, Inc., dba DTF Engineering ("DTF Engineering"), and D&G Construction (collectively, "Releasees", or "Released Parties"). Each of the Releasor or Releasees may be referred to herein as a "Party" and collectively as the "Parties."

**WHEREAS**, following an investigation, the Commission has reason to believe that the October 1, 2023 contract for professional engineering services entered into between DTF Engineering and the Town of Kirtland ("Kirtland"), which provides that 15% will be added to the original cost when DTF Engineering either utilizes a third-party or purchases materials, violated Section 13-1-149 of the Procurement Code;

**WHEREAS**, following an investigation, the Commission has reason to believe that Mr. Flack violated Section 13-1-190(A) of the Procurement Code, NMSA 1978, §§ 13-1-28 to -199 (1984, as amended through 2023) and Sections 10-16-4(B) and 10-16-7(B) of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2023);

**WHEREAS**, Mr. Flack alleges he is not an employee of the Town, and the Released Parties deny all alleged violations of the Procurement Code and Governmental Conduct Act;

**WHEREAS**, on February 27, 2025, pursuant to NMSA 1978, Section 10-16-18(B) of the Governmental Conduct Act, Sections 13-1-196 and 13-1-197 of the Procurement Code, and Section 10-16G-9(F) of the State Ethics Commission Act, NMSA 1978, §§ 10-16G-1 to -16 (2019, as amended through 2023), the Commission authorized its attorney staff to commence a civil enforcement action to pursue claims against the Released Parties, for violations of the Procurement Code and the Governmental Conduct Act ("the Civil Action");

**WHEREAS**, under Section 13-1-196, any civil penalty that the State Ethics Commission collects under Sections 13-1-196 or 13-1-197, shall be credited to the general fund of the political subdivision in which the violation occurred and on whose behalf the Commission brings suit;

**WHEREAS**, 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 Civil Action, without the need for 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 facts underlying the claims that were or could have been raised in the Civil Action; and

**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 the Released Parties or the Commission, without any admission by the Released Parties, or the Commission 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 the Released Parties:

(a) The Released Parties agree to waive any and all demands, claims, or causes of action related to this matter against Releasor, including for recovery of attorney fees or costs incurred in defending against the claims and causes of action that the Releasor may assert in the Civil Action.

(b) For the duration of any contract between DTF Engineering and Kirtland, the Released Parties agree not to use, rely on, or otherwise apply any contract term or provision which allows DTF Engineering to charge 15% in addition to the costs either associated with use of third-party services or for the purchase of materials, including any costs associated with D&G Construction. DTF may agree with Kirtland to allow for the reimbursement of costs for third-party services and materials and any negotiated fixed fee, as permitted by Section

13-1-149 of the Procurement Code.

(c) Within seven (7) days after the Execution Date, DTF Engineering will transmit to Kirtland five thousand five hundred dollars (\$5,500.00) and will provide to Releasor evidence of that payment.

(d) Within seven (7) days after the Execution Date, Mr. Flack shall remit to the State Ethics Commission a payment to the State of New Mexico in the amount of five hundred dollars (\$500).

(e) So long as the October 1, 2023 contract between DTF Engineering and Kirtland remains in effect, Mr. Flack agrees to not participate in any aspect of "Procurement," as defined in Section 13-1-74 of the Procurement Code on behalf of or related to Kirtland; *provided, however*, that if Mr. Flack is formerly appointed as the Professional Technical Advisor to Kirtland, under the conditions required by Section 13-1-117.2 of the Procurement Code, Mr. Flack may perform those functions of a Professional Technical Advisor that are related to Procurement and expressly permitted in Section 13-1-117.2 of the Procurement Code.

(f) So long as any contract between DTF Engineering or Mr. Flack and Kirtland remains in effect, if Mr. Flack exercises, purports to exercise, or is delegated Kirtland's governmental authority in any matter, then Mr. Flack agrees to comply with all requirements of the Governmental Conduct Act as if he were an "employee" of Kirtland as defined in Section 10-16-2(I) of the Governmental Conduct Act.

**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 the Released Parties 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 Civil Action ("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 Releasees' 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 or negotiation preceding this settlement, shall not constitute evidence of any admission of fault, liability or wrongdoing by either of the Parties. Notwithstanding the foregoing, the Parties may refer to this Agreement to enforce this Agreement.

**6. 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 Releasees, 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.

**7. 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.

**8. 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.

**9. 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 Released Parties, 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.

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

**11. 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.

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

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

**14. 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.

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

and costs.

**16. 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 Released Parties:

Juan Flores and Jaime Dawes  
Stelzner, Winter, Warburton, Flores & Dawes, P.A.  
302 8th St. Ste. 200  
Albuquerque NM, 87102  
Telephone: (505) 938-7770  
jflores@stelznerlaw.com  
jd@stelznerlaw.com

*Attorneys for the Releasees*

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

  
\_\_\_\_\_  
(Date)

  
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Daniel Flack, on behalf of himself, AECS, Inc., dba DTF Engineering, and D&G  
Construction

May 8, 2025

(Date)

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