

SETTLEMENT AND RELEASE AGREEMENT

This SETTLEMENT AND RELEASE AGREEMENT (“*Agreement*”), effective as of January 31, 2024 (the “*Effective Date*”), is by and among **SOUTHERN NEVADA FIRE PROTECTION, INC. d/b/a NFP**, a Nevada corporation (“*NV Fire*”), **CLARK COUNTY DEPARTMENT OF BUILDING AND FIRE PROTECTION**, a political subdivision of the State of Nevada (the “*County*”); **DANNY HORVAT**, individually and as the Assistant Fire Chief for the County (“*Horvat*”); **STEPHEN DIGIOVANNI**, individually and as a Fire Protection Engineer for the County (“*DiGiovanni*”); and **JEROME STUEVE**, individually and as the former Clark County Building Official and director of the Building Department (“*Stueve*”). For the purposes of this Agreement, the parties to this Agreement may be individually referred to as “*Party*” and collectively referred to as the “*Parties*.”

RECITALS

A. On September 15, 2021, NV Fire filed a Complaint against the County, Horvat, DiGiovanni and Stueve (collectively referred to hereinafter as the “*Defendants*”) asserting claims for (1) intentional interference with contractual relations; (2) intentional interference with prospective economic advantage; (3) civil conspiracy; (4) fraudulent misrepresentation (only against the County and DiGiovanni); (5) declaratory relief; (6) 42 U.S.C. § 1983 – Equal Protection Violation (selective enforcement of the law); and (7) 42 U.S.C. § 1983 – Equal Protection (discrimination against a Class of One); 42 U.S.C. § 1983 – Due Process (Procedural) Violation (the “*Lawsuit*”).

B. The Lawsuit was originally filed in the Eighth Judicial District Court, Clark County Nevada identified as Case No. A-21-841122-B, but subsequently removed to the United States District Court for the District of Nevada as identified as Case 2:21-cv-01843-JCM-DJA.

C. On November 3, 2021, the Defendants filed their Answer denying all wrongdoing and asserting a number of affirmative defenses.

D. Pursuant to an Order entered on December 19, 2022, the Court dismissed NV Fire’s claims for civil conspiracy and for a due process (procedural) violation of 42 U.S.C. § 1983 and request for punitive damages arising out of its state law claims, all without prejudice.

E. On June 21, 2023, the Court approved a stipulation to stay the Lawsuit pending the outcome of a private mediation conference with the Honorable Peggy A. Leen (Ret.) (“*Judge Leen*”).

F. On January 31, 2024, the Parties attended the mediation where a global resolution and settlement was reached. Don Blunt attended the mediation on behalf of NV Fire. Clark County Fire Chief John Steinbeck, Assistant Fire Chief Danny Horvat, Robert Warhola and Timothy Baldwin with the District Attorney’s office, Tom Dillard, Esq. of the firm Olson Cannon Gormley & Stoberski attended the mediation on behalf of the Defendants.

G. To memorialize the settlement reached, the Parties each desire that their disputes and issues, as set forth in the Lawsuit, and any other disputes set forth herein, be fully and finally settled in the manner and upon the terms and conditions set forth herein (the “*Settlement*”). The parties recognize that this settlement is contingent upon the official approval by the governing Clark County Board of County Commissioners (the “Board”) at a duly noticed public meeting.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, covenants and agreements of the Parties as set forth herein, the Parties to this Agreement hereby agree to settle the disputes and issues described above and hereafter pursuant to the following terms and conditions:

1. **Recitals**. The foregoing Recitals are true and correct and are incorporated herein by this reference.

2. **Compromise and Release**. This Agreement is a compromise of the Lawsuit, and all disputes and issues related to the same, and shall not at any time be treated as an admission of liability by any Party hereto for any purpose.

3. **Payment**. Within thirty (30) days after Board approval and the County’s receipt of IRS W-9 forms with the Tax ID for both NV Fire and the firm Hayes Wakayama Juan, the County shall pay NV Fire the sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) (the “*Settlement Payment*”) in immediately available funds by check payable to “Hayes Wakayama” or wire transfer to the client trust account of Hayes Wakayama Juan.

4. **Alternative Freeze Calculation Requirements**. As soon as reasonably practicable, the County shall prepare and publish a spreadsheet of acceptable insulation requirements that shall be used in lieu of any freeze calculations. The County further agrees that Alternate Materials & Methods Request (“AMMRs”) shall no longer be required for freeze calculations or for freeze protection, when insulation requirements based on the aforementioned spreadsheet are proposed.

5. **Southern Nevada NFPA 13 “Code” Amendment**. The County shall use its best efforts to get Clark County, Nevada (the Board of County Commissioners) to amend the Code governing fire protection and safety standards (NFPA 13) in order to eliminate the requirement for freeze protection that is based on zero-degrees for eight (8) hours and should consider an adjustment for elevation level and based on historical temperature data for Clark County, Nevada. The County agrees to consult with NV Fire in developing said freezing model that shall be implemented as soon as reasonably practicable. This provision is a material term that NV Fire relied upon in settling the Lawsuit.

6. **Audit**. Within 90 days of approval of this agreement, the Clark County Audit Department shall begin to conduct an internal audit to determine whether policies, procedures and internal controls are designed and operating effectively to ensure fire protection plans are reviewed in a fair and timely basis and personal bias is not a factor in the review and approval of fire prevention plans. The audit shall also determine whether the County has been consistent with review and approval of all fire sprinkler, standpipes and fire pump plans, including the requirement of freeze calculations submitted by all fire protection companies from 2019 to the

present. The Clark County Audit Department will prepare a public report and make recommendations to address issues identified during the audit. The findings and recommendations are presented at a public meeting of the Audit Committee and the public has an opportunity to provide input on the report at that time.

7. **Dismissal of the Lawsuit.** Within five (5) days after NV Fire’s receipt of the Settlement Payment (as set forth above), the Parties shall execute a Stipulation of Dismissal with Prejudice, dismissing the Lawsuit, in its entirety, with prejudice, and each party to bear their own fees, costs and expenses.

8. **General Mutual Release of Claims.**

8.1 ***Mutual Release.*** Except as otherwise provided for in this Agreement, the performance of the terms herein, and in consideration of and subject to the agreements and representations referred to herein, and effective upon NV Fire’s receipt of the Settlement Payment, the Parties release and forever discharge one another and each of their successors, nominees, affiliates and assigns, current and former partners, employees, personal representatives and attorneys of and from all demands, liens, claims, assignments, contracts, covenants, actions, suits, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, controversies, judgments, costs of litigation and suits, interests, orders and liabilities whatsoever, whether arising at law or equity, whether known or unknown, asserted or non-asserted, suspected or unsuspected, pending or threatened, or fixed or contingent, that arise out of any matters between them related to the Lawsuit. This includes a mutual release of any claims for receipt of attorney fees or costs pursuant to 42 U.S.C. Section 1988.

8.2 ***Acknowledgments by the Parties.*** Each of the Parties acknowledges, warrants and represents that such Party fully understands the terms contained herein and relies solely on its/his judgment, and in so doing voluntarily accepts the terms set forth above for the purpose of making a full settlement of any claims which such Party may have suffered or may suffer in the future in connection with the matters being released.

9. **Additional Facts.** Each Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to this Settlement. Nevertheless, and excepting only such rights or claims as may be created by this Agreement, it is the intention of the Parties to fully, finally and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist, or should have existed among them. In furtherance of such intention, the releases given herein shall be and remain in effect as full and complete mutual releases of all such matters (except such rights or claims as may be created by this Agreement), notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

10. **Conditions of Settlement.** This Agreement is subject to, and expressly conditioned upon, the official approval by the governing Clark County Board of Commissioners (the “Board”), which the Defendant shall use all best efforts to obtain by no later than June 18, 2024.

11. **Representations and Warranties.** The Parties hereby represent and warrant to each other that:

(a) It/he has full power and authority (and all necessary action has been taken) to execute, deliver and perform its/his obligations under this Agreement, and that this Agreement is binding upon and enforceable against it/his in accordance with its terms; and

(b) It/he has not assigned or transferred to any person or entity any matter released in this Agreement or any part or portion of any matter released in this Agreement, and all claims, defenses, rights and obligations and causes of action asserted or the subject of this Agreement are in fact owned by such representing Party. The Parties enter into this Agreement with the intention of binding itself/himself and its/his successors, predecessors, subsidiaries, affiliates, officers, partners, employees, assigns, attorneys, agents and all others who may claim under, through or in connection with each.

12. **Severability.** If any term or provision of this Agreement shall be deemed to be invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby, and each remaining term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

13. **Waivers.** No waiver of any breach or any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving Party, which will be extended by a period of time equal to the period of the delay.

14. **Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the successors, assigns, and nominees of the Parties hereto.

15. **Prevailing Party.** In the event of the bringing of any action or suit by a Party hereto by reason of any breach of any of the covenants, agreements or provisions on the part of the other Party arising out of this Agreement, then in that event, the prevailing Party will be entitled to recover from the other party all costs and expenses of the action or suit, reasonable attorneys' fees, witness fees and any other professional fees resulting therefrom.

16. **Costs.** Outside of the costs expressly assigned to a Party outlined in this Agreement, the Parties acknowledge that each side is to bear their own attorneys' fees and costs connected with and/or arising from the Dispute and that no claim for such, including damages, may be made at any subsequent time.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto and may not be modified except by an instrument in writing signed by the Party to be charged. This Agreement supersedes all prior agreements and communications between the Parties, written or oral. Neither Party has made any statement, representation or promise, other than as expressly set forth herein, to any other party in entering into this Agreement, which has been relied upon by any other party entering into this Agreement.

18. **Time of Essence.** The Parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

19. **No Admission.** The Parties' execution of this Agreement is not an admission of any liability, fault or responsibility. on the part of any released party. Any settlement made pursuant to this Agreement is regarded by the Parties hereto as payment to avoid the expense, inconvenience and uncertainty of litigation.

20. **Construction.** The Parties and their respective advisors believe that this Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor or against any Party. Both Parties have participated in drafting this Agreement. The Parties understand and expressly assume the risk that any fact not recited, contained or embodied herein may turn out hereafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true. Nevertheless, the Parties intend by this Agreement, and with the advice of their own, independently selected counsel, to release finally, fully and forever, all matters released hereunder and agree that this Agreement shall be effective in all respects notwithstanding any such difference in facts, and shall not be subject to termination, modification or rescission by reason of any such difference in facts.

21. **Governing Law, Jurisdiction and Venue.** The Parties hereto expressly agree that this Agreement will be governed by, interpreted under and construed and enforced in accordance with the laws of the State of Nevada. The Parties hereby consent to the exclusive jurisdiction of the courts of the State of Nevada in the event any action is brought for declaratory relief or enforcement of any of the terms and provisions of this Agreement, with exclusive venue to be in Las Vegas, Nevada.

22. **Titles and Headings.** Titles and headings of Sections of this Agreement are for convenience of reference only and shall not affect the construction of any provisions of this Agreement.

23. **Attorney Representation.** In negotiation, preparation and execution of this Agreement, the Parties hereby acknowledge that each Party has been represented by its own counsel and that each Party has had an opportunity to consult with an attorney of its own choosing prior to the execution of this Agreement and has been advised that it is in its best interests to do so. The Parties have read this Agreement in its entirety and fully understand the terms and provisions contained herein. The Parties execute this Agreement freely and voluntarily and accept the terms, conditions and provisions of this Agreement, and state that the execution by each of them of this Agreement is free from any coercion whatsoever.

24. **Survival.** The representations and warranties made herein, as well as the other promises on the part of the Parties set forth herein, shall survive the Effective Date.

25. **Execution of other Documents and Reasonable Cooperation.** The Parties agree to act in good faith in executing any additional documents that may be necessary to effectuate the settlement, waiver and release as set forth in this Agreement. The Parties also agree to cooperate fully and to take all reasonable additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

26. **No Reliance.** The Parties represent and warrant that, in executing and entering into this Agreement, they are not relying and have not relied upon any representation, promise or statement made by anyone which is not recited, contained or embodied in this Agreement. Furthermore, each of the parties to this Agreement has received independent legal advice or has had the opportunity to receive independent legal advice, from such Party's respective attorneys with respect to the advisability of executing this Agreement. The Parties are entering into this Agreement wholly of their own free will and volition.

27. **No Third-Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

28. **Modification and Amendment.** This Agreement may not be modified or amended in any way, except by a writing signed by the party to be charged therewith.

29. **Counterparts: Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original instrument but all of which together shall constitute one agreement. The signatures to this Agreement may be transmitted by facsimile or email, and such signatures shall be deemed originals.

[signature(s) on following page(s)]

30. **Effectiveness.** This Agreement shall become effective immediately following execution by Plaintiffs and delivery of an executed Agreement to counsel for Defendant. This Agreement is not binding on Clark County until approved by the Board at a duly noticed public meeting.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year hereinabove written.

SOUTHERN NEVADA FIRE PROTECTION, INC d/b/a NFP

CLARK COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Plaintiff, Southern Nevada Fire Protection, Inc. d/b/a NFP, on behalf of DON BLUNT

By: _____
TICK SEGERBLOM, Chair

Date: 5-28-24

Date: _____

APPROVED BY COUNSEL FOR PLAINTIFF:

APPROVED BY COUNSEL FOR DEFENDANTS:

By: _____
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Attorney for Defendants Clark County, Danny Horvat, Stephen DiGiovanni and Jerome Stueve

Date: _____

Date: _____