BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

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| In the Matter of:<br><br>Forrest Rodgers<br>Respondent. | No. 2016-058<br><br>STIPULATED FACTS, CONCLUSIONS OF LAW AND AGREED ORDER |

THIS STIPULATION is entered into by Respondent, FORREST RODGERS, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation. This stipulation is based on the following:

## A. STIPULATED FACTS

1. On July 18, 2016, the Executive Ethics Board (Board) received a complaint referred by the State Auditor's Office (SAO) alleging that Forrest Rodgers (Mr. Rodgers), former Executive Director for the Eastern Washington State Historical Society (Society), Northwest Museum of Arts and Culture (MAC), may have violated several chapters of the Ethics in Public Service Act in actions that he made regarding the MAC and the MAC Foundation (Foundation), a non-profit organization. There were also allegations of special privilege provided to the Spokane School of Arts (SAS) and the improper use of state resources.

2. Mr. Rodgers was initially hired as the Executive Director for the MAC in August 2011.

3. Mr. Rodgers indicated in his response to Board staff that that in December of 2011, the CEO of the MAC retired. Prior to her retirement, she also served as the Executive Director of the Foundation. When she retired he was designated the Executive Director of the Foundation without compensation.

4. Mr. Rodgers told SAO investigators that he supervised the state employees of the MAC, the non-state employees of the Foundation, as well as MAC and Foundation contractors.

5. On October 6, 1999, the Society and the Foundation entered into an affiliation agreement. The agreement was reviewed and updated in June of 2008 by the MAC Board President and the Foundation President. In section II of the agreement, the MAC agreed to provide the Foundation the following services:

i. Office space, including desk, chairs, computers, file cabinets, and other associated equipment to assist the Foundation in its activities.
ii. Consumable office supplies, telephone services, postage, audiovisual and printing services.
iii. Professional Staff services related to direct fundraising and financial accounting will be provided to support the Foundation activity. The specific positions and amounts of salary and benefits obligated to direct fund-raising and financial services will be identified in writing by the Foundation on an annual basis to the MAC.
iv. The services provided to the Foundation by the MAC shall be services rendered by employees of the MAC.

6. Section III(b) of the agreement states that the services provided in Section II shall not exceed $75,000 per year.

7. Mr. Rodgers indicated in a response to Board staff that no MAC employee spent time or resources to perform work for the Foundation beyond the services allowed in the agreement.

8. On May 12, 2012, the MAC Board voted to terminate Mr. Rodgers as the Executive Director of the MAC in a 13-7 vote. Present at the meeting were members who are also on the Foundation Board; Sue Bradley (Ms. Bradley), Peter Moye (Mr. Moye), and Al Payne (Mr. Payne).

9. On May 17, 2012, the MAC Board President received a letter from attorneys representing Mr. Rodgers. The letter indicated that if Mr. Rodgers was not reinstated, he would file a lawsuit seeking five years of pay and compensation for the harm he had suffered as result of his termination totaling well over $750,000 and that he would proceed with litigation against the MAC and the offending Board members personally. On July 18, 2012, the MAC Board voted to reinstate Mr. Rodgers to his position as Executive Director with back pay

10. Mr. Rodgers told SAO investigators that sometime after he was reinstated he was contacted by Mr. Payne, past MAC Board President (June 2013 –June 2014). Mr. Rodgers indicated that Mr. Payne told him the settlement the MAC Board agreed on did not include emotional distress and that Mr. Payne thought that he deserved it after what the Board had put him through. Mr. Rodgers told SAO investigators that Mr. Payne told him to come up with some type of compensation plan and he would present it to the new Board President, Mr. Moye. This conversation most likely occurred sometime in July 2014.

11. Mr. Rodgers drafted a performance-based bonus in which he was asking for a "stipend" of $750 a month for August 2012 through August 2014, totaling $18,000. This pay would be in addition to his regular salary paid by the state. In Mr. Rodgers' request for a performance-based bonus he refers to WAC 357-28-300, which set out the limit on the amount an employee can receive for a performance-based bonus. Mr. Rodgers presented his written request to Mr. Moye on August 1, 2014.

12. Mr. Rodgers told SAO investigators that after he completed the request for a performance-based bonus he gave it to Mr. Moye. At that time, they both decided that the Foundation and not the MAC would pay the performance-based bonus of $18,000.

13. Mr. Payne indicated in his response to Board staff that he believes that the decision to ask the Foundation to pay the performance-based bonus was to avoid the complication of state rules on performance-based bonuses.

14. Mr. Payne indicated in his response to Board staff that he believes he was on the MAC Executive Committee at the time and that he introduced the motion to give Mr. Rodgers a $20,000 bonus. The motion was amended to $13,000 or $14,000 and approved by the MAC Executive Committee. Mr. Payne further indicated that he does not believe they were required to take it to the full MAC Board for approval but he believes they did and it was passed.

15. Mr. Moye told SAO investigators that at the December 2014 MAC Board meeting, he brought Mr. Rodgers' request for the performance-based bonus up to the MAC Board. After some discussion, it was decided to move the discussion into an Executive Committee meeting. In the Executive Committee meeting, it was decided that a sub-committee would be formed by Mr. Moye to make a recommendation back to the Executive Committee.

16. On December 17, 2014, Mr. Moye sent an email to all Executive Committee Members, minus Paul Bridge (Mr. Bridge), Board Treasurer. The email contained the recommendation of the sub-committee and asked each member to vote "yay or nay" on the recommendation. Nowhere in the recommendation document did it indicate that the money to pay for the performance-based bonus would come from the Foundation. In Mr. Rodgers' request for performance-based bonus in the memo dated August 1, 2014, he indicated that the MAC should ask the Foundation for the funds to pay for the bonus.

17. On December 22, 2015, MAC Board Member Maureen Green (Ms. Green) told SAO investigators that she first became aware of Mr. Rodgers' request for a performance-based bonus when it came via email and that the bonus was discussed in an Executive Committee meeting around December 1, 2014. Ms. Green told the SAO investigators that in the meeting on December

1, 2014, Board President Mr. Moye suggested that a smaller committee be formed to look over Mr. Rodgers' request.

18. Ms. Green told the SAO Investigators that the full Board never approved the payment for the performance-based bonus and the Executive Committee only approved the recommendation of $13,900 not the $21,262.59 that Mr. Rodgers received.

19. On December 29, 2015, MAC Board Member Patty Dicker (Ms. Dicker) told SAO investigators that she first became aware of Mr. Rodgers' request at an Executive Committee meeting when Mr. Moye presented Mr. Rodgers' request for a performance-based bonus. Ms. Dicker stated that Mr. Moye picked members to be part of a committee to review the request in more detail.

20. Ms. Dicker told SAO investigators that there was no discussion as to where the money was to come from to pay for the performance-based bonus. Ms. Dicker stated that the Executive Committee was never notified if the performance-based bonus was approved or not.

21. Ms. Dicker indicated that the recommendation was never brought before the full MAC Board for ratification, as required.

22. Tiffany Henderson (Ms. Henderson), MAC Financial Analyst, told Board staff that she was first hired by the MAC in July of 2014. She stated that right from the beginning she performed financial management work for the Foundation.

23. Ms. Henderson reported to Board staff that she was told by Mr. Rodgers that the bonus was approved and to issue the performance-based bonus check to him. She stated that Mr. Rodgers showed her his recommendation (August 1, 2014) to the MAC Board and the final vote of the Executive Committee approving it.

24. Ms. Henderson told Board staff that she told Mr. Rodgers that it would be a violation of state law for him to receive the bonus. She stated that Mr. Rodgers told her that the money was

being paid by the Foundation and not the state and that she and other employees could expect to be getting bonuses from the Foundation in the future.

25. Ms. Henderson indicated in a written response to Board staff that when Mr. Rodgers told her that she would be getting a bonus in the future, she felt that Mr. Rodgers was trying to pacify her by distracting her with a potential bonus.

26. Ms. Henderson told Board staff that Mr. Rodgers told her that the amount approved by the MAC Board ($13,900) was intended to be the net amount.

27. On December 31, 2014, Ms. Henderson sent an email to MAC President Mr. Moye. The email indicated that the approved amount to be paid to Mr. Rodgers was $13,900. The email indicated that she had a conversation with Mr. Rodgers about whether the amount was net or gross and Mr. Rodgers' had advised her that it was the net amount. Ms. Henderson indicated that they did not see in the documentation provided indicating whether the amount was net or gross. Mr. Moye replied in an email indicating that the amount was net and that the Foundation was to pay it.

28. On December 31, 2014, Ms. Henderson issued a check from Foundation funds to Mr. Rodgers for $13,900 plus taxes of $7,362.69 for a total of $21,262.59. Mr. Hawley approved and signed the check.

29. MAC employee #2 told SAO investigators that there is a Foundation Board Member, Ms. Bradley, who is also on the Board of the SAS. For several years, Ms. Bradley has been hosting a fundraiser event for the SAS at the MAC. The MAC opens its doors for the weekend for the craft show and does not charge an admission. MAC employee #2 further stated that MAC employees work these events, but all of the booth fees goes to the SAS and the MAC gets nothing in return and runs a deficit.

30. MAC employee #3 told SAO investigators that Ms. Bradley uses the MAC as her own personal playground for private fundraising.

31. In 2012, the SAS entered into an agreement with the MAC Foundation to have the MAC Foundation manage the SAS funds and investment. At the direction of Mr. Rodgers, the MAC Financial Analyst performed this task for the SAS.

32. The SAS, through Ms. Bradley, also made the request to have the MAC Foundation set up a checking account to be managed by the MAC Foundation. Ms. Bradley was on the MAC Foundation Board at the time of this request.

33. Mr. Rodgers told SAO investigators that he authorized MAC staff to manage the checking account and issue checks for quarterly distribution. Mr. Rodgers further stated that the MAC was not compensated by the SAS for those services.

34. On March 23, 2012, Mr. Rodgers and Lori Bertis, MAC Service Manager, held a meeting with Sue Bradley and Jodi Davis, of the SAS. The meeting was to discuss the upcoming SAS event "Yuletide 2012" that was to be held at the MAC. In this meeting, the SAS was advised that the normal fee to use the MAC for this type of event was $600 per day but that the normal fee would be waived. The free rent also included the use of the MAC's six-foot tables and folding chairs and the tables that were already located in the classrooms. SAS would be responsible for trash removal.

35. Mr. Rodgers told SAO investigators that the Yuletide event only benefited SAS financially but the MAC got some benefit through exposure.

36. Mr. Rodgers told the SAO investigator that the SAS was not charged a rental fee for the 2012 event but was charged for the event in the following years.

37. The SAS held the Yuletide event in 2013, again the normal fees were waived, and MAC staff assisted in the event.

## B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty (conflict of interest). RCW 42.52.020 states:

> No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties

2. Based on the stipulated facts, Mr. Rodgers' actions as the Executive Director of the Foundation were incompatible with his official duties as the Executive Director of the MAC in violation of RCW 42.52.020.

3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing special privileges. RCW 42.52.070 states:

> Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

4. Based on the stipulated facts, Mr. Rodgers provided himself a special privilege by using his position at the Foundation and the MAC to secure a performance-based bonus for himself and in addition, he provided a special privilege to the SAS in violation of RCW 42.52.070.

5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from receiving outside compensation for conducting an official duty. RCW 42.52.110 - Compensation for official duties or nonperformance states:

> No state officer or state employee may, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law except: (1) The state of Washington; or (2) in the case of officers or employees of institutions of higher education or of the *Spokane

intercollegiate research and technology institute, a governmental entity, an agency or instrumentality of a governmental entity, or a nonprofit corporation organized for the benefit and support of the state employee's agency or other state agencies pursuant to an agreement with the state employee's agency.

6. Based on the stipulated facts, Mr. Rodgers asked for and received compensation from an outside organization for the performance of his official duties as the Executive Director of the MAC in violation of RCW 42.52.110.

7. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

> No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

8. WAC 292-110-010 Use of state resources, prior to April 1, 2016, states, in part:

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(2) **The following are permitted uses:**

(a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.

(b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.

(c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.

(d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:

(i) There is little or no cost to the state;

(ii) Any use is brief;

(iii) Any use occurs infrequently;

(iv) The use does not interfere with the performance of any officer's or employee's official duties; and

(v) The use does not compromise the security or integrity of state property, information, or software.

9. Based on the stipulated facts above, Mr. Rodgers used state resources for a personal benefit and in support of outside organizations in violation of RCW 42.52.160 and WAC 292-110-010.

10. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

## C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is aggravating factors that these types of violations significantly reduce the public respect and confidence in state government employees, they were continuing in nature, Mr. Rodgers was in a position of executive management, and Mr. Rodgers benefitted financially as result of these violations. In the matter at hand, it is a mitigating factor that Mr. Rodgers was terminated from his state position and is no longer a state employee.

## D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Forrest Rodgers and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

3. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

4. Forrest Rodgers agrees that if any or all of the alleged violations were proven at a hearing the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to $5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

5. Forrest Rodgers further agrees that the evidence available to the Board is such that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order.

6. Forrest Rodgers waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2).

7. If the Board accepts this stipulation, the Board agrees to release and discharge Forrest Rodgers from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts in this matter subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the stipulation. Forrest Rodgers in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between Forrest Rodgers and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if Forrest Rodgers does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, Forrest Rodgers waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Forrest Rodgers understands and

agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Forrest Rodgers agrees to pay a civil penalty in the amount of thirty thousand dollars ($30,000.00).

12. The civil penalty in the amount of thirty thousand dollars ($30,000.00) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

## II. CERTIFICATION

I, Forrest Rodgers, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.

12.16.2017

FORREST RODGERS Date
Respondent

Presented by:

12/21/17

KATE REYNOLDS Date
Executive Director

## II. ORDER

Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

___✓___ ACCEPTED in its entirety;

_______ REJECTED in its entirety;

_______ MODIFIED. This stipulation will become the order of the Board if the Respondent approves* the following modification(s):

_______________________________________________

_______________________________________________

DATED this 12th day of January 2018

_______________________________________________
John Ladenburg, Sr., Member

_______________________________________________
Shirley Battan, Vice Chair

_______________________________________________
Anna Dudek Ross, Member

_______________________________________________
Lisa Marsh, Member

_______________________________________________
Gerri Davis, Member

* I, Forrest Rodgers, accept/do not accept (circle one) the proposed modification(s).

_______________________________________________
Forrest Rodgers, Respondent Date