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BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: **WALKER PARKING CONSULTANTS/ENGINEERS, INC.** **C2018-11**

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Edward L. Robinson, P.E., its President, (hereinafter "the Board") for the purpose of agreeing to resolve a Complaint seeking disciplinary action against Walker Parking Consultants/Engineers, Inc. (hereinafter "Respondent Firm"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of such agreement, does hereby **FIND** the following:

1. The matters set forth herein are within the jurisdiction of the Board, which is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia.
2. Respondent Firm is organized under the laws of the State of Michigan, with its principal place of business in Kalamazoo.
3. Respondent Firm has a Certificate of Authorization No. C00967 ("COA") required to practice engineering in West Virginia.
4. It came to the attention of the Board that Justin Riley, an employee of Respondent Firm, created and placed his name on engineering drawings, specifications and construction documents for the Huntington Tri-State Airport parking lot restoration project, which constituted the practice of engineering.

5. That this was the practice of engineering is underscored by the fact that the firms bidding on the project were required to have a professional engineer on staff.

6. The employee of Respondent Firm whose name appears on the engineering work is not licensed to practice engineering in West Virginia.

7. The Board initiated Complaint Number C2018-11 at its regular meeting on January 25, 2018, which was filed and served on February 1, 2018.

8. Respondent failed to file a timely response but, after notification by the Board, submitted a response on March 16, 2018, and initiated settlement negotiations.

9. Respondent Firm admits that, in allowing an unlicensed person to prepare the bidding documents, it aided and assisted in the unlicensed practice of engineering in West Virginia, but states that the project was postponed and construction is still not underway.

10. Respondent Firm also respondent that, while it is of the opinion that the work did not require the seal of a professional engineer, the bidding documents would be reviewed and sealed by a professional engineer licensed in West Virginia prior to construction if so required by this Board.

11. The Board has taken into account the following factors in reaching this settlement: Respondent cooperated in this settlement of this matter, the unlicensed practice did not result in any harm to the public since construction has not started, and the documents will be signed by a professional engineer licensed in West Virginia prior to construction pursuant to this consent order.

12. The Board, in its discretion, will not assess administrative costs although it is within its power to assess such costs, and administrative costs were incurred in the investigation, initiation and resolution of this complaint.

CONCLUSIONS OF LAW

13. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and matters related to such practice are within the jurisdiction of the Board. W. Va. Code § 30-13-1 *et seq.*

14. John Bale, as an Owner of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.

15. It is unlawful for any person to practice engineering, as defined by West Virginia Code § 30-13-3(e), in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. W. Va. Code § 30-13-2.

16. It is unlawful for any person to aid or assist another person in violating any provisions of West Virginia Code § 30-13-1 *et seq.* or the promulgated rules of the Board. W. Va. Code § 30-13-21(a)(8).

17. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration, or place on probation, impose a civil penalty or reprimand any professional engineer who has failed to comply with any of the provisions of this article or any of the rules promulgated under it. W. Va. Code § 30-13-21(a)(4).

18. The provisions of W. Va. Code § 30-13-21(a) are applicable as appropriate to unlicensed persons and firms. W. Va. Code §§ 30-13-21(b) and (d).

19. The Board is authorized to "assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an amount determined by the board." W. Va. Code § 30-13-21(b); see also W. Va. Code § 30-13-21(d)(4).

20. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-3(e), without a license is an action that may subject a person to discipline by the Board, including a civil penalty up to Five Thousand Dollars ($5,000.00). W. Va. Code R. § 7-1-15.1.

21. The penalty for aiding and assisting a violation shall be no more than the maximum penalty set forth in Board rule. W. Va. Code R. § 7-1-15.2.

22. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the extent to which the cited person or firm has cooperated with the Board and the Board's investigation; and other matters as may be appropriate. W. Va. Code R. § 7-1-15.4.

23. The assessment of administrative costs is within the Board's sole discretion. W. Va. Code § 30-13-21(d)(4) and W. Va. Code R. § 7-1-14.4.

CONSENT OF RESPONDENT FIRM

Respondent Walker Parking Consultants/Engineers, Inc., through one of its Owners, John Bale, who has affixed his signature hereon, agrees to the following:

24. Respondent Firm is aware of its right to be represented by counsel and is aware of its right to pursue this matter through appropriate administrative and/or court procedures, including its right to a formal hearing before the Board, and Respondent Firm intelligently and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.

25. Respondent Firm admits that the employee who did the work and whose name appears on the drawings did not and does not have a license to practice engineering in the State of West Virginia (and does not qualify for same), in violation of West Virginia engineering law.

26. Respondent Firm accepts the findings set forth above and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.

27. Respondent Firm acknowledges that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to the above-styled matter. In this regard, Respondent Firm authorizes the Board to review and examine all investigative file materials concerning Respondent Firm's activities in West Virginia in consideration of this Consent Order.

28. Respondent Firm acknowledges that the Board may reject this proposal, notice and hold a hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.

29. Respondent Firm understands that this Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order, but that nothing in this Consent Order prohibits the Board from considering this disciplinary action or the circumstances giving rise to the same with regard to any future disciplinary matter involving Respondent Firm which may be before this Board.

30. Respondent Firm understands that the Complaint and this Consent Order are public records which, together with other public documents in the file, must be made available upon legal request in accordance with the State's Freedom of Information Act.

31. Respondent Firm agrees that the sum and substance of the Complaint and this agreement in part or in their entirety will be set forth in Board publications and on the Board's website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying ("NCEES").

32. Respondent Firm acknowledges that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certificate which may have been issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from Respondent Firm's non-compliance with this Consent Order.

33. Respondent Firm acknowledges that proof of any material misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certificate which may be issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia engineering law.

ORDER

1. On the basis of the foregoing, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint Number C2018-11 pursuant to West Virginia Code § 30-13-22(b).

2. The Board **ORDERS** Respondent Firm to have the bidding documents prepared by a non-engineer reviewed and sealed by a professional engineer licensed in West Virginia and submit same to the appropriate authorities prior to construction.

3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred and Fifty Dollars ($250.00) for aiding and assisting the practice of engineering in West Virginia without a license.

4. The civil penalty imposed herein totaling Two Hundred and Fifty Dollars ($250.00) must be paid within thirty (30) days of the date of entry set forth below, such amount to be

made payable to the W. Va. P.E. Board for transfer to the general fund of the State of West Virginia upon receipt.

5. The sum and substance of the Complaint and this agreement in part or in their entirety shall be set forth in Board publications and on the Board's website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying ("NCEES").

6. Any violation of the terms of this Consent Order shall be immediate cause for rescission of this agreement, reinstatement of the complaint, the summary revocation of the certificate of authorization issued to Respondent Firm by the Board, further disciplinary action by the Board, and/or refusal by the Board to renew or reinstate Respondent Firm's certificate of authorization until such time as it fully complies with the terms herein.

7. If the civil penalty imposed herein is not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent Firm upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein One Thousand Two Hundred Fifty Dollars ($1,250.00), together with pre-judgment interest from the date of the President's signature hereon, post-judgment interest from the date of entry of the Judgment Order and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.

8. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalty agreed to herein.

9. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to same may be the subject of any

appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order. This shall not prohibit the Board from considering this disciplinary action or the circumstances giving rise to the same with regard to any future disciplinary matter involving Respondent Firm which may come before this Board.

10. This Consent Order relates solely to matters set forth in West Virginia engineering law and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

AGREED TO BY:

5-15-18

WALKER PARKING CONSULTANTS/ ENGINEERS, INC.
By JOHN BALE, an Owner of Respondent Firm

DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 23rd day of May, 2018.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

By: _____
EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT