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WV PE BOARD

BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: SWISS VALLEY ASSOCIATES, INC. **C2024-17**

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers (hereinafter "the Board") by Garth E. Thomas, Jr., P.E., its President, for the purpose of agreeing to resolve a Complaint seeking disciplinary action against Swiss Valley Associates, 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 this 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 a corporation organized under the laws of the State of Ohio, with its principal place of business in Clarington, Ohio.
3. State law requires a provider of engineering services to possess an active Certificate of Authorization (hereinafter "COA") in order to practice engineering or to offer to practice engineering in West Virginia.
4. Respondent Firm's COA (COA# C02126) was activated on October 23, 2003, and it remained active at all times material hereto, and through to the present. Its current COA expires December 31, 2025.
5. Every West Virginia Registered Professional Engineer (hereinafter "Registrant") is required to obtain a seal reflecting Registrant's name and license number.
6. A Registrant is required to place one's seal, signature and date on all final / record specifications, reports, drawings, plans, design information and calculations whenever presented to a client or any public or governmental agency.

7. In October 2023, the Board became aware that Respondent Firm, in August 2023, presented engineered drawings for a project located at 251 Main Street, New Martinsville, Wetzel County, WV (hereinafter "Project") to its client and/or published these engineered drawings for bidding purposes.

8. These engineered drawings were sealed by two Ohio Registered Professional Engineers who utilized their Ohio PE seals to seal the drawings, in violation of West Virginia Engineering Law. Only one of the two engineers held a West Virginia Professional Engineer registration at the time the drawings were sealed.

9. Respondent Firm's agents, servants, and employees, presented these incorrectly sealed, engineered drawings to its client which were used for bidding purposes.

10. This resulted in a Board-initiated investigation, which was the basis of the Board's Complaint which set forth allegations that Respondent Firm was in violation of West Virginia Engineering Law. Specifically, that Respondent Firm through the act(s) of its agent(s), servant(s) and/or employee(s) presented the Ohio PE sealed, engineered drawings to its client, and/or caused them to be published to obtain bids for the Project, and that Respondent Firm aided or assisted another person, who was not duly registered, in providing engineering services in the State of West Virginia.

11. The Board initiated Complaint Number C2024-17 against Respondent Firm at its regular meeting on November 15, 2023, which was received and filed by the Board on said date.

12. The Respondent Firm filed its timely, verified Response, and the Board received it on or about December 26, 2023.

13. The Board and Respondent Firm have agreed to settle this matter through the entry of this Consent Order, wherein, Respondent Firm would forego its rights to an administrative hearing, and its right to appeal, and by making certain admissions as set forth herein.

14. The Board has taken into account the following factors in reaching this settlement: the violation did not pose harm to the public; the corrective measures taken by Respondent Firm; and Respondent Firm has cooperated in the resolution of this Complaint.

15. 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

16. 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*.

17. Matthew D. Brake, Treasurer of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm, and for Respondent Firm he makes such admissions, knowingly, freely voluntarily, and without any threat of harm or act of coercion.

18. Respondent Firm admits that its employee(s) presented Ohio PE sealed drawings to its client in violation of West Virginia Engineering Law. Respondent Firm contends that the failure to seal the engineered drawings was not an intentional act, but an inadvertent error. Respondent Firm further admits that its employee, who was not a West Virginia registered PE, provided engineering services to its client for an engineering project in West Virginia, and by doing so, it also aided and/or assisted another person in violating West Virginia Engineering Law.

19. Failure to comply with any of the provisions of W.Va. Code §30-13-1 *et seq*., or any of the rules promulgated under W.Va. Code Chapter 30, Article 13, is a basis for disciplinary action by the Board. W.Va. Code §30-13-21(a)(4).

20. 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), and W.Va. Code R. §7-1-15.

21. The Board may reprimand, suspend or revoke or refuse to issue, restore or renew a certificate of registration or authorization, or place on probation, impose a civil penalty or reprimand any professional engineer or firm, 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), (b) and (d), and §30-13-22(d).

22. A registrant's seal is used to identify his or her professional work. W.Va. Code §30-13-16(a).

23. A registrant's seal and signature shall appear on the first or title page of all final and/or record documents presented to a client or any public or governmental agency to certify that the work was done by a registrant or under the control of a registrant. W.Va. Code R. §7-1-7.3(a).

24. Failure to affix a [West Virginia PE] seal and signature on a final drawing presented to a client in violation of W.Va. Code R. §7-1-7.3(a) is a form of misuse of seal which constitutes a general violation of applicable statutes and rules.

25. The underlying violation is the misuse of seal. Such action subjects 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.

26. The penalty for aiding and assisting a violation of engineering law and its rules shall be no more than the maximum penalty set forth in the Board rule, W.Va. Code R. §7-1-15.1. W.Va. Code R. §7-1-15.2. A person, so aiding or assisting, shall be disciplined in the same manner and extent as the actor committing the offense. In this case, the underlying violation is misuse of seal, as defined by W.Va. Code R. §7-1-7.3(a). Such action subjects 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.

27. Practicing engineering, or offering to practice engineering, as defined by W.Va. Code §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.

28. It is unlawful for any person to aid or assist the unlicensed offer of engineering services, and/or the unlicensed practice of engineering. W.Va. Code §30-13-21(a)(8) and W.Va. Code §30-13-2.

29. The penalty for aiding and assisting a violation of engineering law and its rules shall be no more than the maximum penalty set forth in the Board rule, W.Va. Code R. §7-1-15.1. W.Va. Code R. §7-1-15.2. A person, so aiding or assisting, shall be disciplined in the same manner and extent as the actor committing the offense. In this case, the underlying violation is practicing engineering, as defined by W.Va. Code § 30-13-3(e), without a license. Such action subjects 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.

30. 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).

31. The provisions of W.Va. Code §30-13-21(a) are applicable to persons and firms. W.Va. Code §30-13-21(b), and (d).

32. Based on the findings of fact set forth above, and the legal citations set forth herein, Respondent Firm was in violation of W.Va. Code §30-13-1 et seq. and the promulgated rules of the Board.

33. 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 THE RESPONDENT FIRM

Matthew D. Brake, Treasurer of Respondent Firm, by affixing his signature hereon, agrees to the following:

34. Respondent Firm is aware of its rights to be represented by counsel in this matter and to pursue this matter through appropriate administrative and/or court proceedings,

including its right to a formal hearing before the Board, and after having the opportunity to consult with its counsel, Respondent Firm knowingly, freely, voluntarily, and without any threat of harm or act of coercion, waives its rights to a formal hearing and any subsequent appeal therefrom, and enters into this Consent Order to resolve Complaint C2024-17; provided the Board accepts the terms and conditions set forth in this Consent Order.

35. Respondent Firm admits it was in violation of West Virginia Engineering Law, W.Va. Code §30-13-1 *et seq.* and/or the rules promulgated under it by aiding and assisting its employee in publishing the Ohio PE sealed drawings for bidding purposes.

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

37. If the Board does reject this proposal, any admissions made by Respondent Firm herein are deemed null and void.

38. 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.

39. Should the Board not approve this Consent Order, Respondent Firm waives any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on Respondent Firm even if the Board does not approve this Consent Order.

40. 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.

41. 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 same with regard to any future disciplinary matter involving Respondent Firm which may be before this Board.

42. 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.

43. 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).

44. 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, non-renewal or non-reinstatement of any Certificate of Authorization 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.

45. 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, non-renewal or non-reinstatement of any Certificate of Authorization 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 C2024-17 pursuant to W.Va. Code §30-13-22(b).

2. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Five Hundred Dollars ($500.00) for aiding or assisting another in the failure to seal the aforesaid engineered drawings in accordance with West Virginia Engineering Law.

3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred and Fifty Dollars ($250.00) for aiding or assisting the unlicensed practice of engineering.

4. The total civil penalty imposed herein is Seven Hundred and Fifty Dollars ($750.00), and must be paid within thirty (30) days of the date of entry set forth below, and 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 further disciplinary action by the Board.

7. If the civil penalty imposed herein is not paid within thirty (30) days of the date of entry set forth below, then Respondent Firm's license is hereby **ORDERED REVOKED**. Said revoked license may be restored once the civil penalty is paid, and Respondent Firm pays the appropriate fees, and is otherwise in good standing with the Board. W.Va. Code §30-13-21(d)(1).

8. This Consent Order may be summarily enforced in the Circuit Court of Kanawha County, West Virginia, 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 of Seven Hundred and Fifty Dollars ($750.00), together with pre-judgment interest from the date of the Board 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.

9. 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.

10. 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. 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.

11. 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.

(Signature line appears on next page)

AGREED TO BY:

RESPONDENT FIRM

Matthew Brake — 2/13/2024

SWISS VALLEY ASSOCIATES, INC. **DATE**
By: MATTHEW D. BRAKE, TREASURER

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 6th day of March, 2024.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

By: Garth E. Thomas Jr.
GARTH E. THOMAS, JR., P.E.
BOARD PRESIDENT