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WV PE BOARD

BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: JAMES D. JOYE
CAROLINA ENGINEERING SOLUTIONS, LLC

C2013-10

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 James D. Joye (hereinafter "Respondent Joye") and Carolina Engineering Solutions LLC (hereinafter "Respondent Firm") (together, "Respondents"). 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 Joye holds a professional engineering license in his home state of South Carolina and is also licensed in several other states, but never held a West Virginia professional engineering license until the matter which gave rise to this Complaint.
3. Respondent Firm is organized under the laws of the State of South Carolina and is owned by Respondent Joye.
4. Respondent Joye submitted a comity application for licensure in West Virginia on August 20, 2012, after which he was issued Professional Engineering License #019875 but was instructed to return a copy of his seal and the required fee to complete the licensure process.

5. By letter dated January 14, 2013, Respondent Joye submitted the required fee and said he would be faxing a copy of his stamp [seal] the next day, stating: "It is imperative that I receive confirmation to practice engineering in the state of West Virginia by tomorrow (January 15, 2013)."

6. Upon inquiry by the Board regarding the reason for Respondent Joye's urgency regarding the completion of his license, Respondent Joye provided the Board with a proposal prepared by Respondents for an assisted living facility to be located in West Virginia which was dated April 3, 2012.

7. During the course of the investigation, Respondent Joye made conflicting statements regarding the nature of the April 3rd document.

8. The Board activated Professional Engineering License #019875 on January 15, 2013, notwithstanding the investigation resulting from Respondent Joye's request for activation of his license.

9. After Respondent Joye's licensure, Respondent Firm qualified and applied for and was issued Certificate of Authorization C04603, naming Respondent Joye as its Engineer in Responsible Charge.

10. Prior to the filing of the Complaint, Respondents, at their request, had an informal conference with the Board and, after the meeting with the Board, were also afforded an opportunity to provide certain information that may have assisted in their effort to keep the matter under investigation from becoming a Board-initiated Complaint, which information was not forthcoming.

11. The Board initiated complaint number C2013-10 at its regular meeting on March19, 2013, which was filed and served on April 2, 2013.

12. Counsel for the Board notified Respondents of the opportunity for settlement and, after initiating settlement negotiations, agreed that Respondents need not timely respond to the Complaint.

13. Respondent Joye admits that he offered engineering services in West Virginia prior to his application for licensure in West Virginia license, in violation of West Virginia engineering law.

14. Respondent Firm admits that its offer to provide engineering services in West Virginia was in violation of West Virginia engineering law inasmuch as the offer was made at a time when Respondent Firm did not have nor qualify for a COA because it had no engineer licensed in West Virginia who could act as Respondent Firm's engineer in responsible charge.

15. Respondents state that no work was done on the project until Respondent Joye was licensed and Respondent Firm had applied for its COA.

16. The Board has taken into account the following factors in reaching this settlement: Respondents applying for the necessary credentials to practice and offer to practice engineering in West Virginia, at which time Respondents self-reported their unlicensed offer of same; the different accounts of what transpired when and Respondents' inability to provide proof of some of those accounts; Respondents' cooperation in the prompt resolution of this Complaint; and the nature of the violation, which did not pose a harm to the public.

17. 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

18. 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.

19. Respondent Joye, as the owner of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.

20. It is unlawful for any person to practice or offer to practice engineering, as defined by West Virginia Code § 30-13-1 et seq., 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.

21. West Virginia engineering law allows a firm to practice or offer to practice engineering only upon the issuance of a certificate of authorization by the Board. W. Va. Code § 30-13-17.

22. 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).

23. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-1 et seq., 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.

24. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-1 et seq., without a valid Certificate of Authorization is an action that may subject a firm to discipline by the Board, including a civil penalty up to Five Thousand Dollars ($5000.00). W. Va. Code R. § 7-1-5.1.

25. 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.

26. 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 RESPONDENTS

James D. Joye, individually and as owner of Carolina Engineering Solutions LLC, by affixing his signature hereon, agrees to the following:

27. Respondents are aware of their right to be represented by counsel and to pursue this matter through appropriate administrative and/or court procedures, including their right to a formal hearing before the Board, and Respondents intelligently and voluntarily waive these rights provided the Board accepts the terms and conditions set forth in this Consent Order.

28. Respondent Joye admits that he did not have a license to offer engineering services in the State of West Virginia at the time of the offer, in violation of West Virginia engineering law.

29. Respondent Firm admits that it did not have a Certificate of Authorization to offer engineering services in the State of West Virginia at the time of the offer, in violation of West Virginia engineering law.

30. Respondents accept the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.

31. Respondents acknowledge that entering into the negotiation of this Consent Order constitutes a waiver of any and all objections regarding the timeliness of Board action on Complaint Number C2013-10. This paragraph is binding Respondents even in the event that the Board does not approve this Consent Order.

32. Respondents acknowledge 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, Respondents authorize the Board to review and examine all investigative file

materials concerning Respondents' activities in West Virginia in consideration of this Consent Order.

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

34. Respondents acknowledge 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.

35. Respondents understand 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 Respondents which may be before this Board.

36. Respondents understand that the complaint and this Consent Order are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.

37. Respondents agree 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 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).

38. Respondents acknowledge 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 certification issued to Respondents by the Board, and the addition of any other charges which may arise or ensue from Respondents' non-compliance with this Consent Order.

39. Respondents acknowledge 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 certification issued to Respondents 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 C2013-10 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent Joye pay a civil penalty in the amount of Two Hundred and Fifty Dollars ($250.00) in settlement of Complaint #C2013-08 for offering to practice engineering in West Virginia without a license.
3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250.00) in settlement of Complaint #C2013-10 for offering to practice engineering in West Virginia without a certificate of authorization.
4. The civil penalties imposed herein totaling Five Hundred Dollars ($500.00) 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 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 penalties imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondents upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein ($500.00), 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 penalties 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 Respondents 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.

[signature line appears next page]

AGREED TO BY:

James D. Joye
JAMES D. JOYE, individually and as [President] of CAROLINA ENGINEERING SOLUTIONS, LLC

5/15/13
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 28th day of MAY, 2013.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

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