BOARD OF TECHNICAL REGISTRATION

BEFORE THE ARIZONA STATE

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David Ellsworth

Professional Engineer (Structural) Registration No. 24470

David M. Ellsworth, P.E. Non-Registrant Firm

Respondents

CONSENT AGREEMENT and ORDER OF DISCIPLINE

Case No.: P22-040

In the interest of a prompt and judicious resolution of the above-captioned matter before the Arizona State Board of Technical Registration ("Board") and consistent with the public interest, statutory requirements, and the responsibilities of the Board, and pursuant to A.R.S. § 32-101 et seq., and A.A.C. R4-30-120(G), the undersigned party, David Ellsworth ("Respondent"), holder of Registration No. 24470, and principal of David M. Ellsworth P.E. ("Respondent Firm"), Non-Registrant Firm, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final disposition of this matter.

RECITALS

- Respondent has read and understands this Consent Agreement and has had 1. the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.
- Respondent understands that he has a right to a public administrative hearing concerning this case. He further acknowledges that at such formal hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly, voluntarily, and irrevocably waives his right to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action concerning the matters set forth herein.

- 3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.
- 4. Respondent understands that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action by the Board against him.
- 5. The Consent Agreement, any record prepared in this matter, all investigative materials prepared or received by the Board and all related exhibits and materials, are public records upon acceptance by the Board of this Consent Agreement and may be retained in the Board's files pertaining to this matter.
- 6. Respondent understands this Consent Agreement deals with Board case number P22-040 involving allegations that Respondent engaged in conduct that would subject him to discipline under the Board's statutes and rules. The investigation into these allegations against Respondent shall be concluded upon the Board's adoption of this Consent Agreement.
- 7. Respondent understands that this Consent Agreement does not constitute a dismissal or resolution of any other matters currently pending before the Board, if any, and does not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other pending or future investigation, action or proceeding.
- 8. Respondent also understands that acceptance of this Consent Agreement does not preclude any other agency, subdivision, or officer of this State from instituting any other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.
- 9. Respondent acknowledges and agrees that, upon signing this Consent Agreement and returning this document to the Board's Executive Director, he may not revoke his acceptance of the Consent Agreement or make any modifications to the document regardless of whether the Consent Agreement has been signed on behalf of the Board. Any modification to this original document is ineffective and void unless mutually agreed by the parties in writing.

- 10. This Consent Agreement is subject to the approval of the Board and is effective only when accepted by the Board and signed on behalf of the Board. If the Board does not accept this Consent Agreement, the Board retains its authority to hold a formal administrative hearing pursuant to A.R.S. § 32-128(E). In the event that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any action by any party, except that the parties agree that should the Board reject this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its review and discussion of this document or any records relating thereto.
- 11. If a court of competent jurisdiction rules that any part of this Consent Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full force and effect.
- 12. Respondent understands that any violation of this Consent Agreement may result in disciplinary action, including suspension or revocation of the registration under A.R.S. § 32-150.
- 13. Respondent agrees that the Board will adopt the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

- 1. The Board is the duly constituted authority for the regulation and control of the practice of Professional Engineering in the State of Arizona.
- 2. Respondent is the holder of Arizona Professional Engineer (Structural) Registration No. 24470.
 - 3. Respondent is the principal of Respondent Firm.
 - 4. Respondent Firm is not registered with the Board, nor has it ever been.
- 5. On or about March 17, 2021, Respondent and Respondent Firm entered into a contract to provide structural engineering services to a member of the public for a project in Mesa, Arizona.
 - 6. On or about May 21, 2021, Respondent prepared unsealed preliminary

engineering documents for the project in Mesa, Arizona, and listed Respondent Firm in the document title block.

- 7. On or about November 30, 2021, the Board received a complaint, which included an allegation that Respondent and Respondent Firm engaged in the practice of engineering without firm registration with the Board. Board records show no indication that Respondent Firm has ever been registered with the Board.
- 8. On or about October 6, 2022, Respondent acknowledged not having firm registration with the Board but indicated that he did not believe he needed firm registration for the following reasons:
 - a) Respondent said he does not actively solicit engineering work, and only takes on occasional projects through referrals.
 - b) Respondent said he no longer maintains a formal "Firm", and issues professional documents under his name instead of a "Firm" name.
 - c) Respondent indicated that he did not know that an individual providing professional engineering services needed to be a registered firm as required by the Board.
- 9. As of October 13, 2022, Respondent has not registered Respondent Firm with the Board as required.

CONCLUSIONS OF LAW

- 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq.
- 2. The conduct alleged in the Findings of Fact constitutes grounds for discipline pursuant to A.R.S. § 32-121, A.R.S. § 32-141, and A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(4), in that Respondent and Respondent Firm practiced or offered to practice a Board regulated profession without firm registration.

<u>ORDER</u>

Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues the following Order:

1. LETTER OF REPRIMAND. Respondent is hereby issued a Letter of

Reprimand.

- 2. ADMINISTRATIVE PENALTY. Within Sixty (60) days from the effective date of this Consent Agreement, Respondent shall pay an administrative penalty of Two Hundred and Fifty Dollars (\$250.00) by certified check or money order made payable to the State of Arizona Board of Technical Registration.
- 3. COST OF INVESTIGATION. Within Thirty (30) days from the effective date of this Consent Agreement, Respondent shall pay the cost of investigation of this case to the Board in the amount of Fifty-One Dollars (\$51.00) by certified check or money order made payable to the State of Arizona Board of Technical Registration, according to the provisions of A.R.S. § 32-128(H).
- 4. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, as well as, all rules governing the practice of Professional Engineering in the State of Arizona. The Board shall consider any violation of this paragraph to be a separate violation of the rules and statues governing the Arizona Board of Technical Registration. The Board may also consider Respondent's non-compliance with this Order as a separate violation of A.R.S. § 32-150.
- 5. RENEWAL OF REGISTRATION. Respondent and Respondent Firm shall timely renew their Arizona registration as a Profession Engineer and an Engineering Firm, and timely pay all required registration fees.
- 6. EFFECTIVE DATE. The effective date of this Consent Agreement is the date the Respondent and Board sign the Consent Agreement. If the dates are different, the effective date is the later of the two dates.
- 7. COSTS OF COMPLIANCE. Respondent shall pay all costs associated with complying with this Consent Agreement.

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8. NONCOMPLIANCE. If Respondent violates this Order in any way or fails to fulfill the requirements of this Order, the Board, after giving notice and the opportunity to be heard, may revoke, suspend or take other disciplinary actions against the registration. The issue at such a hearing will be limited solely to whether this Order has been violated.

Jack Gilmore, L.A., Chairman Arizona State Board of Technical Registration

Consent Agreement and Order, No. P22-040 accepted this 27 day of

10 Jack 9, 2022.

David Ellsworth, on behalf of himself and David M. Ellsworth P.E., Respondents

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3	ORIGINAL filed this day of
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5	November, 2022, with:
6	Arizona State Board of Technical Registration
7	1110 W. Washington, Suite 240 Phoenix, AZ 85007
8	COPY of the foregoing mailed via Certified Mail
9	No. 9214 8901 9434 4600 0898 3 6 and First Class mail this
10	First Class mail this, day of, 2022, to:
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12	David Ellsworth 4329 E. Boulder Ridge
13	Phoenix, AZ 85044
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16	By Daniel Carthal
17	By: <u>Daniel Carthel</u>
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