

**BEFORE THE PROFESSIONAL ENGINEERING COMMITTEE OF
THE NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL
ENGINEERS AND PROFESSIONAL SURVEYORS**

IN THE MATTER OF:

**Tony D. Ooten
License No. 17094**

CASE NO.: TDO-12-11-2018

Respondent.

**PRE-NCA SETTLEMENT AGREEMENT
FOR FAILURE TO NOTIFY THE BOARD OF DISCIPLINARY ACTION**

WHEREAS, Tony D. Ooten (hereinafter, "Respondent") is an engineer licensed in New Mexico under the Engineering and Surveying Practice Act, NMSA 1978, Sections 61-23-1 et seq., and is subject to the jurisdiction of the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors ("Board"), and the Professional Engineering Committee ("Committee") created by the Board; and

WHEREAS, the Committee staff has received evidence that Respondent failed to notify the Committee of disciplinary action within 90 days of the imposition by any other applicable licensing board; and

WHEREAS, the Committee has delegated express authority to its Executive Director to offer proposed settlement agreements under certain circumstances when evidence exists of a violation of the Engineering and Surveying Practice Act or its promulgated rules; and

WHEREAS, the Executive Director may offer a Pre-NCA Settlement Agreement that includes a fine of \$500 to be paid within 30 days; and

WHEREAS, this Pre-NCA Settlement Agreement ("Agreement") is entirely voluntary; if the Agreement is rejected by Respondent or not accepted by the Committee, the matter will be forwarded to the Committee for additional consideration, which may include the initiation of formal disciplinary action and possible issuance of a Notice of Contemplated Action ("NCA") against Respondent; and

WHEREAS, Respondent desires to resolve this matter in an informal, amicable fashion without the need for the time and expense of a formal hearing; and

WHEREAS, the Committee's Executive Director believes this proposed Agreement is appropriate pursuant to the Committee's delegated duties, and in the best interest of the Committee, and the public.

THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Jurisdiction**: Respondent is licensed by the Board or otherwise subject to the Engineering and Surveying Practice Act, and falls under the jurisdiction of the Board and its Professional Engineering Committee.
2. **Voluntary Agreement**: Respondent enters into this Agreement voluntarily and without duress. It is understood that the Committee has not, at this current time, taken any formal disciplinary action against Respondent, and that the Committee or its agents cannot and have not coerced or induced Respondent to enter into this Agreement.
3. **Committee Approval**: This Agreement is subject to Committee approval.
4. **Waivers**: If this Agreement is accepted by the Committee and the terms are satisfied, Respondent understands that the underlying allegations will not be referred for any additional disciplinary action, and agrees to waive any and all rights to a full evidentiary hearing on the merits; including the right to discovery and to confront and cross examine witnesses, and the right to an appellate process.
5. **Allegations**: Respondent acknowledges the evidence and alleged conduct received by the Committee in this matter may have justified findings of violations under the Engineering and Surveying Practice Act, or the rules promulgated under that Act, if this matter had been heard in a merits hearing.
6. **Conditions**: Respondent further agrees to the following conditions:
 - Fine**: A fine in the amount of \$500 shall be assessed. The fine shall be paid no later than thirty (30) days from the date this Agreement is accepted by the Board.
7. **Reportable Discipline**: This Agreement, if accepted, constitutes formal disciplinary action by the Committee and must be reported to the National Council Examiners for Engineering and Surveying (NCEES) Enforcement database. Respondent acknowledges the following discipline being reported:
 - a. Respondent was disciplined on May 11, 2017 by the State of Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Minnesota Board").
 - b. The respondent affirmed disciplinary action was imposed when submitting his license renewal and paying his licensing fee on December 11, 2018.

c. Respondent submitted details of the disciplinary action imposed by the Minnesota Board, received by the Committee staff on December 11, 2018.

8. Non-Compliance: Respondent agrees that any violation of this Agreement may result in further disciplinary action. A violation will result in the immediate filing of an Order to Show Cause by the Board's Executive Director as to why the Committee should not find Respondent in violation of the Agreement and impose lawful sanctions or penalties and/or take any other disciplinary action. Upon filing an Order to Show Cause, the matter shall be set for the next regular meeting of the Committee, at which time the Committee shall hear from the Executive Director regarding the alleged non-compliance and any evidence offered by Respondent. Any presentation regarding the Order to Show Cause shall be limited to evidence surrounding Respondent's alleged failure to comply with the Agreement or defense thereof. If the Committee finds that a violation has occurred, the Committee may impose any discipline against Respondent considered in the Order to Show Cause.
9. Compliance: If Respondent fully complies with the terms and conditions of this Agreement the matter will be concluded. Respondent agrees to otherwise comply with the Engineering and Surveying Practice Act, and acknowledges that any separate violation of the Act or its rules may result in separate disciplinary charges and action by the Committee.
10. Contact Information: Respondent shall notify the Board's office within ten (10) calendar days if there is a change in employment or home address while this Agreement is in effect.

5-2-2019
DATE


RESPONDENT

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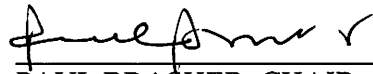
ORDER

This proposed settlement comes before the Committee during a properly scheduled public meeting with a quorum present and majority voting in the affirmative, this Agreement is:

X ACCEPTED

 REJECTED

5-3-19
DATE



PAUL BRASHER, CHAIR
NEW MEXICO PROFESSIONAL
ENGINEERING COMMITTEE