

1 appeal, judicial review, or any other administrative and/or judicial action concerning the
2 matters set forth herein.

3 4. Respondent affirmatively agrees that this Consent Agreement shall be
4 irrevocable.

5 5. Respondent understands that this Consent Agreement or any part of the
6 agreement may be considered in any future disciplinary action by the Board against it.

7 6. The Consent Agreement, any record prepared in this matter, all investigative
8 materials prepared or received by the Board and all related exhibits and materials, are
9 public records (as defined in A.R.S. § 41-151.18) upon acceptance by the Board of this
10 Consent Agreement and may be retained in the Board's files pertaining to this matter.

11 7. Respondent understands this Consent Agreement deals with Board case
12 number P16-011 involving allegations that Respondent engaged in conduct that could
13 subject him to discipline under the Board's statutes and rules. The investigation into
14 these allegations against Respondent shall be concluded upon the Board's adoption of
15 this Consent Agreement.

16 8. Respondent understands that this Consent Agreement does not constitute a
17 dismissal or resolution of any other matters currently pending before the Board, if any,
18 and does not constitute any waiver, express or implied, of the Board's statutory authority
19 or jurisdiction regarding any other pending or future investigation, action or proceeding.

20 9. Respondent also understands that acceptance of this Consent Agreement does
21 not preclude any other agency, subdivision, or officer of this State from instituting any
22 other civil or criminal proceedings with respect to the conduct that is the subject of this
23 Consent Agreement.

24 10. Respondent acknowledges and agrees that, upon signing this Consent
25 Agreement and returning this document to the Board's Executive Director, Respondent
26 may not revoke acceptance of the Consent Agreement or make any modifications to the
27 document regardless of whether the Consent Agreement has been signed on behalf of the
28

1 Board. Any modification to this original document is ineffective and void unless
2 mutually agreed by the parties in writing.

3 11. This Consent Agreement is subject to the approval of the Board and is
4 effective only when accepted by the Board and signed on behalf of the Board. If the
5 Board does not accept this Consent Agreement, the Board retains its authority to hold a
6 formal administrative hearing pursuant to A.R.S. § 32-128(E). In the event that the
7 Board does not approve this Consent Agreement, it is withdrawn, shall be of no
8 evidentiary value, and shall not be relied upon nor introduced in any action by any party.
9 Respondent agrees that should the Board reject this Consent Agreement and this case
10 proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by
11 its review and discussion of this document or any records relating thereto.

12 12. If a court of competent jurisdiction rules that any part of this Consent
13 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
14 shall remain in full force and effect.

15 13. Respondent agrees that any violation of this Consent Agreement may result
16 in disciplinary action, including suspension or revocation of Respondent's registration,
17 under A.R.S. §§ 32-150.

18 14. Respondent agrees that the Board will adopt the following Findings of Fact,
19 Conclusions of Law and Order.

20 II. FINDINGS OF FACT

21 1. The Board is the duly constituted authority for the regulation and control of
22 the practice of several professions, including the practice of engineering. A.R.S. §§ 32-
23 101, *et seq.* Pursuant to A.R.S. §§ 32-106 and 32-122.01, the Board possesses
24 jurisdiction over the subject matter and over Respondent.

25 2. Respondent is the holder of Arizona Professional Engineer (Civil)
26 Registration No. 46538.

27 3. In or around 2015, Respondent entered into an agreement with the Hualapai
28 Tribe to design Hualapai Fire Station #3 (the "Station"), located in Grand Canyon West.

1 4. On or about May 28, 2015, Respondent prepared calculations for
2 construction of the Station.

3 5. On or about June 9, 2015, Respondent signed and sealed professional
4 documents prepared by an independent contractor for the Station, which included
5 structural engineering, mechanical engineering, electrical engineering and architectural
6 plans.

7 6. On or about August 21, 2015, Board staff received a complaint alleging that
8 Respondent's contractor copied and modified certain drawings from a different fire
9 station project and sealed all discipline's sheets, including the architectural, structural,
10 mechanical, and electrical drawings. It is also alleged that the title block of Respondent's
11 firm, Strytek Engineering, was simply added to some copied sheets. It is alleged that
12 Respondent's drawings were deficient due to missing critical information including
13 structural calculations and details.

14 7. On January 14, 2016, an Enforcement Advisory Committee ("EAC")
15 convened to review the complaint against Respondent. During the meeting, the EAC
16 found that Respondent provided services that were not within his scope of knowledge or
17 his professional registration, when he sealed architectural, structural, mechanical, and
18 electrical design documents (including structural calculations) that he was not qualified to
19 perform and that exceeded, in depth and detail, what would be considered to be incidental
20 to the work of Respondent's profession. The findings of the EAC are as follows:

- 21 a. Respondent signed and sealed professional documents not prepared by
22 Respondent or a bona fide employee of Respondent in violation of A.R.S. § 32-
23 128(C)(4) as it relates to A.A.C. R4-30-301(16).
- 24 b. Respondent failed to apply the appropriated technical knowledge and skill in
25 violation of A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(6), (17),
26 and (18) in that the calculations for the Station project were identified to be
27 deficient, incomplete, or missing specific and key structural components, and
28 they were found not to match the structural plan details.

1 c. Respondent failed to apply the appropriate technical knowledge and skill in
2 violation of A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(6), (17),
3 and (18) in that the architectural, structural, mechanical, and electrical project
4 drawings for the Station were found to be deficient, incomplete and poorly
5 coordinated. The EAC identified that the plans were missing specific sheets
6 and details that are referenced throughout the plans, including the foundation
7 plan, roof framing plan, and architecture plans.

8 III. CONCLUSIONS OF LAW

9 1. The Board has jurisdiction in this matter pursuant to A.R.S. §§ 32-101, *et*
10 *seq.*

11 2. The conduct alleged in the Findings of Fact constitutes grounds for
12 discipline pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(16), in
13 that Respondent signed, stamped, or sealed professional documents not prepared by
14 Respondent or a bona fide employee of Respondent.

15 3. The conduct alleged in the Findings of Fact constitutes grounds for
16 discipline pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(6), in that
17 Respondent failed to apply appropriate knowledge and skill that would be applied by
18 other qualified registrants who practice the same profession.

19 4. The conduct alleged in the Findings of Fact constitutes grounds for
20 discipline pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(17) and
21 (18), in that Respondent accepted professional engagements or assignments outside of
22 Respondent's professional registration category, without being qualified by education,
23 technical knowledge, or experience to perform the work.

24 ORDER

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

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

1 2. STAYED SUSPENSION AND PROBATION. Respondent's registration
2 as a Professional Engineer (Civil), Registration No. 46538, shall be suspended for
3 twenty-four (24) months; however, the suspension is stayed as long as Respondent
4 remains in compliance with this Order. During the stay of suspension, Respondent's
5 registration as a Professional Engineer is placed on probation. If Respondent is non-
6 compliant with any terms of this Order, the stay of the suspension shall be lifted and
7 Respondent's registration as a Professional Engineer shall be automatically suspended
8 without a formal hearing, and remain suspended until Respondent is compliant with all
9 the terms of this Order. The Board may also consider Respondent's non-compliance with
10 this Order as a separate violation of A.R.S. § 32-150.

11 3. ASSURANCE OF DISCONTINUANCE. Respondent shall not practice,
12 offer to practice, display any card, sign or other device indicating proficiency in, or by
13 any implication hold himself out to be qualified to practice, architecture as defined in
14 A.R.S. § 32-101(B)(6) and (7).

15 Respondent shall not undertake assignments involving disciplines outside his
16 scope of expertise, and he affirmatively agrees that he will contract with qualified,
17 registered professionals who specialize in those disciplines required to complete all
18 projects. The only exception to the above assurance is when the project is not a public
19 works project, Respondent is certain that the work is "incidental" to the project, and he is
20 qualified by education, technical knowledge, or experience to perform the work.
21 Respondent affirmatively agrees that the exemption for "incidental" work necessarily
22 requires that: (a) the work is related to and necessary for completion of Respondent's
23 professional service, but is secondary and of relatively minor consequence when
24 compared to the professional services usually and normally performed by Respondent
25 practicing in his licensed profession, and (b) such incidental work can be performed
26 competently and safely.

1 4. PROFESSIONAL ETHICS CLASS. Within sixty (60) days of the
2 effective date of this Consent Agreement, Respondent shall provide verification to the
3 Board that Respondent has successfully completed a class in professional ethics.

4 5. ADMINISTRATIVE PENALTY. Within six (6) months of the effective
5 date of this Consent Agreement, Respondent shall pay a civil penalty in the total amount
6 of Two Thousand Dollars (\$2000.00) by certified check or money order, made payable to
7 the State of Arizona Board of Technical Registration.

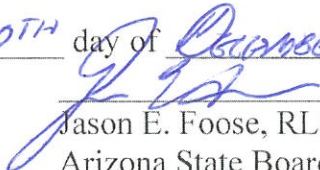
8 6. COST OF INVESTIGATION. Within sixty (60) days of the effective date
9 of this Consent Agreement, Respondent shall pay to the Board the cost of investigation of
10 this case in the amount of Six Hundred Eighty Dollars (\$680.00) by certified check or
11 money order, made payable to the State of Arizona Board of Technical Registration,
12 according to the provisions of A.R.S. § 32-128(H).

13 7. EFFECTIVE DATE. The effective date of this Consent Agreement is the
14 date it was last executed by the Respondent or the Board.

15 8. COSTS OF COMPLIANCE. Respondent shall pay all costs associated
16 with complying with this Consent Agreement.

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

22 ACCEPTED and ORDERED this 10TH day of December, 2019.

23 
24 Jason E. Foose, RLS, Chairman
25 Arizona State Board of
26 Technical Registration

26 Consent Agreement and Order, Number P16-011 accepted this 24 day of
27 October, 2019.

28 
David Marsh, Respondent

1 ORIGINAL filed this 12 day of DECEMBER, 2019, with:

2 Arizona State Board of Technical Registration
3 1110 W. Washington, Suite 240
4 Phoenix, AZ 85007

5 COPY of the foregoing mailed/e-mailed this
6 12 day of DECEMBER, 2019 to:

7 Janae A. Perry-Meier, Esq.
8 LAW OFFICES OF DONALD W. HUDSPETH, P.C.
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12 *Attorney for Respondent*

13
14 Deanie Reh
15 deanie.reh@azag.gov
16 *Counsel for the State*

17 By: /s/Domenique T. Clark
18 **Domenique T. Clark, Paralegal**

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By: 