

**BEFORE THE OKLAHOMA STATE BOARD OF LICENSURE FOR  
PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

STATE OF OKLAHOMA ex rel. OKLAHOMA )  
STATE BOARD OF LICENSURE FOR )  
PROFESSIONAL ENGINEERS AND LAND )  
SURVEYORS, )

Complainant, )

vs. )

Case No. 2021-104

Name: Shiver-Megert & Associates, LLP )

Certificate of Authorization No.: 8852 )

Address: 102 S.E. 9<sup>th</sup> Street, Suite 200 )

Amarillo, TX 79101 )

Respondent. )

**CONSENT ORDER**

COMES NOW the Complainant, Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors (the "Board") and the Respondent, Shiver-Megert & Associates, LLP ("Shiver-Megert").

**FINDINGS OF FACT**

For the purposes of the entry of this Consent Order, the following facts are hereby stipulated to by the parties and adopted by the Board:

1. On June 16, 2021, Richard Constancio, Jr., Principal Architect of Shiver-Megert, signed and submitted a "Standard Form of Agreement Between Owner and Architect" to Anthony Folger of Warren Power & Machinery, Inc. (Client) for a Warren CAT New Ardmore Dealership project located in Ardmore, Oklahoma (Project 1).

2. Under Article 1 Initial Information, the Standard Form of Agreement Between Owner and Architect reads: "*The Owner shall retain the following consultants and contractors...*

*Civil Engineer: Vince Gil, P.E., Shiver Megert & Associates, LLP F-21483, 102 E. Ninth Ave., Suite 200, Amarillo, TX 79101, 806-372-5662... The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2... Electrical Engineer: Shiver Megert & Associates LLP F-21483, Vicente Gil, P.E., 102 E. Ninth Ave., Suite 200, Amarillo, TX 79101.*

3. In the above referenced agreement, the Owner's anticipated design and construction milestone dates are listed as follows: *"Design phase milestone dates, if any: Fall 2021, Construction commencement date: Winter 2022 (January), Substantial Completion date or dates: Winter 2022 (November)."*

4. On November 9, 2021, Vicente Gil (Gil), Professional Engineer (P.E.) and full-time employee at Shiver-Megert, submitted an application for a P.E. license to the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors (Board).

5. On November 30, 2021, Shiver-Megert submitted an application for a Certificate of Authorization to the Board.

6. In an email dated December 20, 2021, when asked who performed the engineering design work for Project 1 and the dates the work was performed, Gil advised: *"Electrical – none-only layout of previous project has been transferred, Shiver-Megert partners waiting to hire consultant or for myself (full time employee at Shiver-Megert) to obtain OK seal – deadline to obtain OK seal and join design team is end of this week otherwise consultant will be part of design team... Civil – none – owner still to approve architects site layout, Shiver-Megert partners waiting to hire consultant or for myself (full-time employee at Shiver-Megert) to obtain OK seal – deadline to obtain OK seal and join design team is end of this week otherwise consultant will be part of design team."*

b. The Rules of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors, OAC § 245:15, *et seq.*

14. Respondent was properly notified of the charges, and acknowledged its right to counsel.

15. Respondent has made no objection to the timeliness of the notice or to the specificity of the statement of charges.

16. The Findings of Fact stipulated to by Respondent constitute violations of the Statutes Regulating Professional Engineering and Land Surveying and the Rules of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors, pertaining to the professional practice of engineering upon which the Board may take disciplinary action against Respondent.

#### CONSENT

Shiver-Megert & Associates, LLP, by affixing its signature hereto, acknowledges that:

17. Respondent has been specifically advised to seek the advice of counsel prior to signing this Consent Order, and

18. Respondent understands this Consent Order is subject to the approval of the Board and has no force and effect until a final decision based upon it is rendered by the Board.

19. Respondent acknowledges that it has the following rights, among others:

- a. The right to a formal fact finding hearing before the Board;
- b. The right to reasonable notice of said hearing;
- c. The right to compel the testimony of witnesses;
- d. The right to cross-examine witnesses against themselves;
- e. The right to obtain judicial review of the Board's decisions; and,

f. The right to counsel.

20. Respondent waives all such rights to a formal hearing as set forth above in paragraph nineteen (19).

21. Respondent understands in order to make a decision relative to approving this Consent Order discussions must take place between Board members, Board Staff and Board Counsel. These discussions may include the Board's review of any and all previously enumerated exhibits or referenced project materials. Respondent understands that this discussion will take place at the Board's next regularly scheduled meeting in Oklahoma City, Oklahoma. Respondent understands it has the right to be present when this matter is discussed, but hereby waives that right.

22. Should the Consent Order not be accepted by the Board, it is agreed that presentation to and consideration of the Consent Order by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation in or resolution of these proceedings. Likewise, if this Consent Order is not accepted, the Board shall not take into consideration the contents of this Order as evidence of an admission.

23. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review or to other challenge or contest the validity of the Consent Order, the stipulated facts, conclusions of law and imposition of administrative action contained herein, and the final decision of the Board incorporating said Consent Order.

24. This Consent Order contains the entire agreement between the parties. Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

25. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Consent Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

26. This Consent Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understanding, discussions, negotiations, and commitments (written or oral). This Consent Order may not be altered, amended, modified, supplemented or otherwise changed except by a writing executed by an authorized representative of each of the parties.

27. Respondent consents to the entry of this Consent Order.

### **ORDER**

In accordance with the foregoing findings of facts and conclusions of law, and the agreement and consent of the Respondent, it is hereby ordered as follows:

28. Shiver-Megert should be and hereby is found guilty of the charges set forth in Count I of the Formal Notice of Charges, because it did not have a Certificate of Authorization in the State of Oklahoma at the time it offered to perform electrical and civil engineering services for the Warren CAT New Ardmore Dealership project located in Ardmore, Oklahoma. Further, the Firm did not have a Certificate of Authorization in the State of Oklahoma at the time it issued cover sheets for the Warren CAT Power Systems Division Facility in Oklahoma City, OK and the Warren CAT Rental Shop Expansion in Tulsa, OK in violation of 59 O.S. § 475.18(A)(4) and 475.21(A)(2) and OAC § 245:15-9-7, 245:15-23-1(a)(2), (3), and (4).

29. In accordance with 59 O.S. § 475.20(B) and OAC §§ 245:15-23-3 and 18, Shiver-Megert is hereby assessed an administrative penalty in the total amount of One Thousand Five

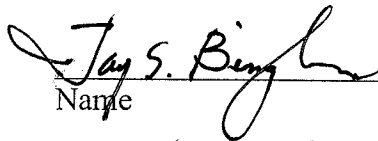
Hundred Dollars (\$1,500.00) as and for the violations set forth in Count I above, which shall be paid within thirty (30) days from the date of the entry of this Consent Order.

30. In accordance with 59 O.S. § 475.20(B) and OAC §§ 245:15-23-3 and 15-23-18, Shiver-Megert is hereby **REPRIMANDED** as and for the violations set forth in Count I.

**DISCLOSURE**

Pursuant to the Oklahoma Open Records Act, 51 O.S. § 24-A.1 through 24-A.21, the signed original of this Consent Order shall remain in the custody of the Board as a public record and shall be made available for public inspection, publication, and copying upon request.

Shiver-Megert & Associates, LLP

  
Name \_\_\_\_\_ Title ARCHITECT  
JAY S. BINGHAM  
Date: 3.16.2022

**CERTIFICATION OF BOARD ATTORNEY**

I believe this Consent Order to be in the best interests of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors and the State of Oklahoma for the violations as alleged in the Formal Notice of Charges.

Dated this \_\_\_\_\_ day of April, 2022.

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Robert A. Manchester, IV OBA #19518  
4308 North Meridian  
Oklahoma City, OK 73112  
(405) 525-6710  
(405) 528-5366 (Fax)  
Attorney for Oklahoma State Board of  
Licensure for Professional Engineers  
and Land Surveyors

**ORDER OF THE BOARD**

NOW on this \_\_\_\_\_ day of April, 2022, Respondent has admitted voluntarily, with knowledge of its rights under law, the allegation contained in Count I of the Formal Notice of Charges. It further appears that the foregoing Consent Order is just and equitable in order to safeguard life, health, and property, and to promote the public welfare in the State of Oklahoma.

IT IS THEREFORE ORDERED that the Respondent's stipulation to the violation contained in Count I of the Formal Notice of Charges are accepted and the above Consent Order incorporated herein shall be the order of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors.

Dated this \_\_\_\_\_ day of April, 2022.

OKLAHOMA STATE BOARD OF  
LICENSURE FOR PROFESSIONAL  
ENGINEERS AND LAND SURVEYORS

By: \_\_\_\_\_  
Chuck Darr, P.E., Chair



**BEFORE THE OKLAHOMA STATE BOARD OF LICENSURE FOR  
PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

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STATE BOARD OF LICENSURE FOR )  
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Amarillo, TX 79101 )

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**FILED**

**MAR 08 2022**

OKLA. BOARD OF LIC. FOR  
PROF. ENGRS. & LAND SURVEYORS

Case No. 2021-104

**FORMAL NOTICE OF CHARGES**

COMES NOW the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors (hereinafter the "Board") by and through its attorney, Robert A. Manchester, IV, and based upon the recommendation of the Board's Investigation Committee, its investigator and as ordered by the Board, brings this Formal Notice of Charges against the above named Respondent, Shiver-Megert & Associates, LLP ("Shiver-Megert").

**NOTICE OF HEARING**

1. On April 7, 2022, the Board will be in session at 9:00 o'clock a.m. at 220 N.E. 28th Street, Oklahoma City, Oklahoma, at which time this Formal Notice of Charges will be considered by the Board and a formal fact finding hearing will be held pursuant to Oklahoma Administrative Procedures Act, 75 O.S. § 301, *et seq.*, the Statutes Regulating Professional Engineering and Land Surveying, 59 O.S. § 475.1 *et seq.*, and the duly promulgated Rules of the Board OAC § 245:2 *et seq.*

2. Respondent, in accordance with the above mentioned statutes and rules, has the right to appear personally or to be represented by an attorney and will be afforded the opportunity to respond, compel the testimony of witnesses, present evidence, and argue all issues involved.

3. Respondent is ordered by the Board to appear at said hearing on said date. If a Respondent is not present in person or through legal counsel, then the proceeding will be held in the absence of such Respondent, and the Board, in its discretion, may summarily take appropriate action as authorized by law. The Board will notify the absent Respondent of its final decision in writing.

### **JURISDICTION**

Jurisdiction for this Formal Complaint is based upon:

4. The statutes regulating Professional Engineering and Land Surveying, 59 O.S. § 475.1 *et seq.*

5. The Rules of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors (OAC § 245:2 *et seq.*).

### **STATEMENT OF ALLEGATIONS/CHARGES AGAINST THE RESPONDENT**

It is alleged that Respondent has violated 59 O.S. § 475.1 *et seq.* and the Board Rules (OAC § 245:2 *et seq.*) as follows:

6. On June 16, 2021, Richard Constancio, Jr., Principal Architect of Shiver-Megert, signed and submitted a “Standard Form of Agreement Between Owner and Architect” to Anthony Folger of Warren Power & Machinery, Inc. (Client) for a Warren CAT New Ardmore Dealership project located in Ardmore, Oklahoma (Project 1).

7. Under Article 1 Initial Information, the Standard Form of Agreement Between Owner and Architect reads: *"The Owner shall retain the following consultants and contractors... Civil Engineer: Vince Gil, P.E., Shiver Megert & Associates, LLP F-21483, 102 E. Ninth Ave., Suite 200, Amarillo, TX 79101, 806-372-5662... The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2... Electrical Engineer: Shiver Megert & Associates LLP F-21483, Vicente Gil, P.E., 102 E. Ninth Ave., Suite 200, Amarillo, TX 79101."*

8. In the above referenced agreement, the Owner's anticipated design and construction milestone dates are listed as follows: *"Design phase milestone dates, if any: Fall 2021, Construction commencement date: Winter 2022 (January), Substantial Completion date or dates: Winter 2022 (November)."*

9. On November 9, 2021, Vicente Gil (Gil), Professional Engineer (P.E.) and full-time employee at Shiver-Megert, submitted an application for a P.E. license to the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors (Board).

10. On November 30, 2021, Shiver-Megert submitted an application for a Certificate of Authorization to the Board.

11. In an email dated December 20, 2021, when asked who performed the engineering design work for Project 1 and the dates the work was performed, Gil advised: *"Electrical – none-only layout of previous project has been transferred, Shiver-Megert partners waiting to hire consultant or for myself (full time employee at Shiver-Megert) to obtain OK seal – deadline to obtain OK seal and join design team is end of this week otherwise consultant will be part of design team... Civil – none – owner still to approve architects site layout, Shiver-Megert partners waiting to hire consultant or for myself (full-time employee at Shiver-Megert) to obtain OK seal – deadline*

*to obtain OK seal and join design team is end of this week otherwise consultant will be part of design team.”*

12. In the above referenced email dated December 20, 2021, Gil provided a document dated December 2021 titled “Overall Electrical Plan” marked “PRELIMINARY – THIS DOCUMENT IS RELEASED FOR INTERIM REVIEW AND IS NOT TO BE USED FOR BUILDING, CONSTRUCTION, OR PERMIT PURPOSES”. When asked who at Shiver-Megert performed the work shown on the “Overall Electrical Plan”, Gil advised: *“Our draftsman and design team copied the Texas project (now the Oklahoma project) over including the layout of electrical devices (to show prefer device and equipment locations). I set up the sheets to present to whoever gets hired to be the electrical engineer for this project.”*

13. In a December 17, 2021, email from Board Staff to Gil, Gil was asked to provide a complete list of other Oklahoma engineering projects that Gil and/or Shiver-Megert & Associates, LLP have been involved with for the past five (5) years. In his December 20, 2021, response, Gil provided design files for three (3) past projects in Oklahoma. These projects consist of a New Warren CAT Power Systems Division Facility in Oklahoma City, Oklahoma (Project 2), Warren CAT Rental Shop Building Office Revisions in Oklahoma City, Oklahoma, and Warren CAT Rental Shop Expansion (Project 3).

14. On the cover sheets for the Warren CAT Power Systems Division Facility in Oklahoma City, OK (Project 2) and the Warren CAT Rental Shop Expansion in Tulsa, OK (Project 3), the firm’s title block reads: *“Shiver-Megert & Associates, LLP, Architecture and Engineering.”* When asked on December 21, 2021, whether it is correct that Shiver-Megert coordinated the engineering services for these projects but did not perform any of the engineering design in-house,

Gil advised: "*Shiver-Megert did not perform any engineering work in-house on any past Oklahoma project.*"

15. On December 29, 2021, the Board issued a Professional Engineer license to Gil and a Certificate of Authorization to Shiver-Megert & Associates, LLP.

### COUNT I

The Allegations contained in the Statement of Allegations/Charges Against Respondent above are incorporated herein by reference.

16. Shiver-Megert did not have a Certificate of Authorization in the State of Oklahoma at the time it offered to perform electrical and civil engineering services for the Warren CAT New Ardmore Dealership project located in Ardmore, Oklahoma (Project 1). Further, the Firm did not have a Certificate of Authorization in the State of Oklahoma at the time it issued cover sheets for the Warren CAT Power Systems Division Facility in Oklahoma City, OK (Project 2) and the Warren CAT Rental Shop Expansion in Tulsa, OK (Project 3) with a title block reading: "*Shiver-Megert & Associates, LLP, Architecture and Engineering.*"

17. Shiver-Megert is, therefore, guilty of violating the provisions of 59 O.S. § 475.18(A)(4) and 475.21(A)(2) and OAC § 245:15-9-7, 245:15-23-1(a)(2), (3) and (4) by offering to practice engineering in the State of Oklahoma as defined 59 O.S. § 475.1 et seq., without a Certificate of Authorization, and is, therefore, subject to and should be assessed the Administrative Penalties set forth in 59 O.S. § 475.20(B) and OAC § 245:15-23-3 and 18.

**REQUESTED FINDINGS OF THE BOARD AND PENALTY**

The undersigned requests the Board, after considering all the testimony, evidence and argument, to find:

1. Respondent is in violation of any or all of the aforementioned statutes and rules.
2. That appropriate action be taken against Respondent, which may include:
  - A. An Administrative Penalty;
  - B. Reprimand;
  - C. Censure;
  - D. Suspension;
  - E. Revocation;
  - F. Such other action as the Board deems appropriate.

Respectfully submitted,



ROBERT A. MANCHESTER, OBA #19518  
4308 North Meridian Ave.  
Oklahoma City, OK 73112  
(405) 525-6710  
(405) 528-5366 (Fax)  
Attorney for Oklahoma State Board of  
Licensure for Professional Engineers  
and Land Surveyors