

ROBERT A. MANCHESTER, IV
ATTORNEY AT LAW

4308 North Meridian
Oklahoma City, Oklahoma 73112
405-525-6710 • FAX 405-528-5366
ramivou@hotmail.com

January 11, 2024

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Kirby Building Systems, LLC
124 Kirby Drive
Portland, TN 37148

Re: Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors v.
Kirby Building Systems, LLC and Harold Wayne Gregory; Case No. 2023-062

Dear Sir/Madam:

Please be advised that this office acts as attorney for the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors. Any questions regarding this matter should be directed to this office.

A Formal Notice of Charges has been filed against you alleging violations of the Statutes regulating Professional Engineering and Land Surveying, Okla. Stat. Tit. 59 § 475.1 *et seq.* and the Rules of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors, OAC 245:2, *et seq.*

Please call me upon receipt so that we may discuss the same to determine if this matter may be resolved without the necessity of a hearing. Enclosed please find:

1. Formal Notice of Charges;
2. Consent Order.

If you agree with the terms of the enclosed Consent Order, please sign and return to me by February 5, 2024. If you wish to contest this matter, you will note on the Notice of Hearing in the Formal Notice of Charges, the formal hearing in this matter is set for February 15, 2024 at 9:00 a.m. at the office of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors at 220 N.E. 28th Street, Oklahoma City, Oklahoma. At that hearing you are allowed to present what evidence you have in defense of the allegations. You are also entitled to an attorney.

Kirby Building Systems, LLC
January 11, 2024
Page 2

We look forward to hearing from you and resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'RAM', with several long, sweeping horizontal strokes extending to the right.

ROBERT A. MANCHESTER, IV

RAM/bl
Enclosure
cc: Kathy Hart

**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. 2023-062

Name: Kirby Building Systems, LLC)
Certificate of Authorization No.: 9253)
Address: 124 Kirby Drive)
Portland, TN 37066)

FILED

JAN 11 2024

Name: Harold Wayne Gregory)
P.E. Certificate of Licensure No.: 18416)
Address: 608 Dear Path)
Gallatin, TN 37066)

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

Respondents.)

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, brings this Formal Notice of Charges against the above named Respondents, Kirby Building Systems, LLC, (the "Firm"), and Harold Wayne Gregory, ("Gregory") (collectively the "Respondents").

NOTICE OF HEARING

1. On February 15, 2024, 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. Respondents, in accordance with the above mentioned statutes and rules, have 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. Respondents are 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(s) of its final decision in writing.

JURISDICTION

Jurisdiction for this Formal Notice of Charges 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

6. On March 28, 1997, Professional Engineer (“P.E.”) Certificate of Licensure No. 18416 was issued to Gregory to offer to practice and/or practice engineering in the State of Oklahoma.

7. On October 26, 2016, Certificate of Authorization (“CA”) No. 7712 was issued to Gulf States Manufacturers, LLC to offer to practice and/or practice engineering in the State of Oklahoma.

8. On December 6, 2017, the firm name on CA No. 7712 was changed from Gulf State Manufacturers, LLC to Kirby Building Systems Mississippi, LLC.

9. On February 12, 2021, as a result of an internal corporate reorganization, Kirby Building Systems Mississippi, LLC was merged into Kirby Building Systems direct parent corporation Associated Building Systems, Inc. and operates as Kirby Building Systems, LLC.

10. On June 30, 2021, CA No. 7712 expired for the Firm’s failure to renew.

11. On March 21, 2023, the Firm issued an “Order Acknowledgement and Acceptance” letter to Southcore Construction, Inc. to manufacture a metal building for Siteone Landscape Supply Store #0189 in Bixby, Oklahoma.

12. On April 12, 2023, the Firm issued a Letter of Transmittal which included the unsigned and unsealed “Anchor Rod Plan”, the signed and sealed “Letter of Design Certification”, and “General Information for Column Base Plate Reactions” calculations. The certification letter and the calculations were prepared, signed, and sealed by Gregory, dated April 11, 2023, and include the Firm’s title block.

13. On July 10, 2023, the Firm notified Southcore Construction, Inc. that it had “reached the final stages of engineering” and would be proceeding with the fabrication and loading processes for the Siteone Landscape Supply Store #0189 in Bixby, Oklahoma.

14. On July 14, 2023, the Firm issued thirty-eight (38) pages of engineering design drawings as signed and sealed by Gregory, dated July 14, 2023, and include the Firm's title block on each drawing.

15. On November 10, 2023, CA No. 9253 was issued to Kirby Building Systems, LLC to offer to practice and/or practice engineering in the State of Oklahoma and is valid to December 31, 2023.

COUNT I:

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

16. The Firm did not have an active Certificate of Authorization in the State of Oklahoma at the time it offered to practice and practiced engineering services for the Siteone Landscape Supply Store #0189 project in Bixby, Oklahoma.

17. The Firm is, therefore, guilty of violating the provisions of 59 O.S. § 75.21(A)(2) and OAC § 245:15-23-1(a) by offering to practice and practicing engineering in the State of Oklahoma as defined by 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.

COUNT II:

The Allegations contained in the Statement of Allegations/Charges Against Respondents and Count I above are incorporated herein by reference.

18. At the time Gregory provided, signed, sealed, and issued the engineering services for the Siteone Landscape Supply Store #0189 in Bixby, Oklahoma, Gregory knew or should

have known that the Firm did not have a Certificate of Authorization to offer to practice and/or practice engineering in the State of Oklahoma.

19. Gregory is, therefore, guilty of violating the provisions of 59 O.S. § 475.18(A)(8) by aiding and assisting the Firm in offering to practice and/or practicing engineering in the State of Oklahoma as defined by 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. Respondents are in violation of any or all of the aforementioned statutes and rules.
2. That appropriate action be taken against Respondents, 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, IV OBA #19518
4308 North Meridian Avenue
Oklahoma City, OK 73112
(405) 525-6710
(405) 528-5366 (Fax)
Attorney for Oklahoma State Board of
Licensure for Professional Engineers
and Land Surveyors

**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. 2023-062

Name: Kirby Building Systems, LLC)
Certificate of Authorization No.: 9253)
Address: 124 Kirby Drive)
Portland, TN 37066)

Name: Harold Wayne Gregory)
P.E. Certificate of Licensure No.: 18416)
Address: 608 Dear Path)
Gallatin, TN 37066)

Respondents.)

CONSENT ORDER

COMES NOW the Complainant, Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors (the "Board") and Respondents, Kirby Building Systems, LLC, (the "Firm"), and Harold Wayne Gregory, ("Gregory") (collectively the "Respondents").

FINDINGS OF FACT

1.

CONCLUSIONS OF LAW

19. The Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors has jurisdiction of this case pursuant to:

a. Statutes Regulating Professional Engineering and Land Surveying, 59

O.S. § 475.1 *et seq.*

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

20. Respondents were properly notified of the charges, and acknowledged their right to counsel.

21. Respondents have made no objection to the timeliness of the notice or to the specificity of the statement of charges.

22. The Findings of Fact stipulated to by Respondents 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 surveying upon which the Board may take disciplinary action against Respondents.

CONSENT

Kirby Building Systems, LLC and Harold Wayne Gregory, by affixing their signatures hereto, acknowledge that:

23. Respondents understand 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.

24. Respondents have been specifically advised to seek the advice of counsel prior to signing this Consent Order, and

25. Respondents acknowledge that they have 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.

26. Respondents waive all such rights to a formal hearing as set forth above in paragraph twenty-five (25).

27. Respondents understand 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. Respondents understand that these discussions will take place at the Board's next regularly scheduled meeting in Oklahoma City, Oklahoma. Respondents understand they have the right to be present when this matter is discussed, but hereby waive that right.

28. Respondents, for the purpose of avoiding further administrative action with respect to this cause, execute this Consent Order. 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.

29. Respondents expressly waive all further procedural steps, and expressly waive 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.

30. This Consent Order contains the entire agreement between the parties. Respondents are not relying on any other agreement or representations of any kind, verbal or otherwise.

31. 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.

32. 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.

33. Respondents consent 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 Respondents, it is hereby ordered as follows:

34. The Firm 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 an active Certificate of Authorization in the State of Oklahoma at the time it offered to practice and practiced engineering services for the Siteone Landscape Supply Store #0189 project in Bixby, Oklahoma in violation of the provisions of 59 O.S. § 75.21(A)(2) and OAC § 245:15-23-1(a).

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

Five Hundred (\$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.

The Firm is hereby ordered to **CEASE AND DESIST** from practicing and/or offering to practice engineering in the State of Oklahoma until such time as it has been issued a Certificate of Authorization to practice engineering in accordance with the laws of the State of Oklahoma.

36. Gregory should be and hereby is found guilty of the charges set forth in Count II of the Formal Notice of Charges, because at the time he provided, signed, sealed, and issued the engineering services for the Siteone Landscape Supply Store #0189 in Bixby, Oklahoma, he knew or should have known that the Firm did not have a Certificate of Authorization to offer to practice and/or practice engineering in the State of Oklahoma in violation of the provisions of 59 O.S. § 475.18(A)(8).

37. In accordance with 59 O.S. § 475.20(B) and OAC §§ 245:15-23-3 and 18, Gregory is hereby assessed an administrative penalty in the total amount of One Thousand Dollars Five Hundred (\$1,500.00) as and for the violations set forth in Count II above, which shall be paid within thirty (30) days from the date of the entry of this Consent Order.

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

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.

Kirby Building Systems, LLC

By: _____
(Title)

Date: _____

By: _____
Harold Wayne Gregory

Date: _____

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 February, 2024.

ROBERT A. MANCHESTER, IV, OBA #19518
4308 North Meridian Avenue
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 February, 2024, Respondents have admitted voluntarily, with knowledge of their rights under law, the allegations contained in Counts I and II 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 Respondents' stipulation to the violations contained in Counts I and II of the Formal Notice of Charges is 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 February, 2024.

OKLAHOMA STATE BOARD OF
LICENSURE FOR PROFESSIONAL
ENGINEERS AND LAND SURVEYORS

By: _____
David L. Page, P.L.S., Chair

ROBERT A. MANCHESTER, IV
ATTORNEY AT LAW

4308 North Meridian
Oklahoma City, Oklahoma 73112
405-525-6710 • FAX 405-528-5366
ramivou@hotmail.com

January 11, 2024

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Mr. Harold Wayne Gregory
608 Deer Path
Gallatin, TN 37066

Re: Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors v.
Kirby Building Systems, LLC and Harold Wayne Gregory; Case No. 2023-062

Dear Mr. Gregory:

Please be advised that this office acts as attorney for the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors. Any questions regarding this matter should be directed to this office.

A Formal Notice of Charges has been filed against you alleging violations of the Statutes regulating Professional Engineering and Land Surveying, Okla. Stat. Tit. 59 § 475.1 *et seq.* and the Rules of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors, OAC 245:2, *et seq.*

Please call me upon receipt so that we may discuss the same to determine if this matter may be resolved without the necessity of a hearing. Enclosed please find:

1. Formal Notice of Charges;
2. Consent Order.

If you agree with the terms of the enclosed Consent Order, please sign and return to me by February 5, 2024. If you wish to contest this matter, you will note on the Notice of Hearing in the Formal Notice of Charges, the formal hearing in this matter is set for February 15, 2024 at 9:00 a.m. at the office of the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors at 220 N.E. 28th Street, Oklahoma City, Oklahoma. At that hearing you are allowed to present what evidence you have in defense of the allegations. You are also entitled to an attorney.

Mr. Harold Wayne Gregory
January 11, 2024
Page 2

We look forward to hearing from you and resolving this matter.

Sincerely,

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ROBERT A. MANCHESTER, IV

RAM/bl
Enclosure
cc: Kathy Hart

**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. 2023-062

Name: Kirby Building Systems, LLC)
Certificate of Authorization No.: 9253)
Address: 124 Kirby Drive)
Portland, TN 37066)

FILED

JAN 11 2024

Name: Harold Wayne Gregory)
P.E. Certificate of Licensure No.: 18416)
Address: 608 Dear Path)
Gallatin, TN 37066)

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

Respondents.)

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, brings this Formal Notice of Charges against the above named Respondents, Kirby Building Systems, LLC, (the "Firm"), and Harold Wayne Gregory, ("Gregory") (collectively the "Respondents").

NOTICE OF HEARING

1. On February 15, 2024, 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. Respondents, in accordance with the above mentioned statutes and rules, have 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. Respondents are 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(s) of its final decision in writing.

JURISDICTION

Jurisdiction for this Formal Notice of Charges 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

6. On March 28, 1997, Professional Engineer (“P.E.”) Certificate of Licensure No. 18416 was issued to Gregory to offer to practice and/or practice engineering in the State of Oklahoma.

7. On October 26, 2016, Certificate of Authorization (“CA”) No. 7712 was issued to Gulf States Manufacturers, LLC to offer to practice and/or practice engineering in the State of Oklahoma.

8. On December 6, 2017, the firm name on CA No. 7712 was changed from Gulf State Manufacturers, LLC to Kirby Building Systems Mississippi, LLC.

9. On February 12, 2021, as a result of an internal corporate reorganization, Kirby Building Systems Mississippi, LLC was merged into Kirby Building Systems direct parent corporation Associated Building Systems, Inc. and operates as Kirby Building Systems, LLC.

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12. On April 12, 2023, the Firm issued a Letter of Transmittal which included the unsigned and unsealed “Anchor Rod Plan”, the signed and sealed “Letter of Design Certification”, and “General Information for Column Base Plate Reactions” calculations. The certification letter and the calculations were prepared, signed, and sealed by Gregory, dated April 11, 2023, and include the Firm’s title block.

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14. On July 14, 2023, the Firm issued thirty-eight (38) pages of engineering design drawings as signed and sealed by Gregory, dated July 14, 2023, and include the Firm's title block on each drawing.

15. On November 10, 2023, CA No. 9253 was issued to Kirby Building Systems, LLC to offer to practice and/or practice engineering in the State of Oklahoma and is valid to December 31, 2023.

COUNT I:

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

16. The Firm did not have an active Certificate of Authorization in the State of Oklahoma at the time it offered to practice and practiced engineering services for the Siteone Landscape Supply Store #0189 project in Bixby, Oklahoma.

17. The Firm is, therefore, guilty of violating the provisions of 59 O.S. § 75.21(A)(2) and OAC § 245:15-23-1(a) by offering to practice and practicing engineering in the State of Oklahoma as defined by 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.

COUNT II:

The Allegations contained in the Statement of Allegations/Charges Against Respondents and Count I above are incorporated herein by reference.

18. At the time Gregory provided, signed, sealed, and issued the engineering services for the Siteone Landscape Supply Store #0189 in Bixby, Oklahoma, Gregory knew or should

have known that the Firm did not have a Certificate of Authorization to offer to practice and/or practice engineering in the State of Oklahoma.

19. Gregory is, therefore, guilty of violating the provisions of 59 O.S. § 475.18(A)(8) by aiding and assisting the Firm in offering to practice and/or practicing engineering in the State of Oklahoma as defined by 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. Respondents are in violation of any or all of the aforementioned statutes and rules.
2. That appropriate action be taken against Respondents, 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, IV OBA #19518
4308 North Meridian Avenue
Oklahoma City, OK 73112
(405) 525-6710
(405) 528-5366 (Fax)
Attorney for Oklahoma State Board of
Licensure for Professional Engineers
and Land Surveyors

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

STATE OF OKLAHOMA ex rel. OKLAHOMA)
STATE BOARD OF LICENSURE FOR)
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SURVEYORS,)

Complainant,)

vs.)

Case No. 2023-062

Name: Kirby Building Systems, LLC)
Certificate of Authorization No.: 9253)
Address: 124 Kirby Drive)
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Name: Harold Wayne Gregory)
P.E. Certificate of Licensure No.: 18416)
Address: 608 Dear Path)
Gallatin, TN 37066)

Respondents.)

CONSENT ORDER

COMES NOW the Complainant, Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors (the "Board") and Respondents, Kirby Building Systems, LLC, (the "Firm"), and Harold Wayne Gregory, ("Gregory") (collectively the "Respondents").

FINDINGS OF FACT

1.

CONCLUSIONS OF LAW

19. The Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors has jurisdiction of this case pursuant to:

a. Statutes Regulating Professional Engineering and Land Surveying, 59

O.S. § 475.1 *et seq.*

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

20. Respondents were properly notified of the charges, and acknowledged their right to counsel.

21. Respondents have made no objection to the timeliness of the notice or to the specificity of the statement of charges.

22. The Findings of Fact stipulated to by Respondents 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 surveying upon which the Board may take disciplinary action against Respondents.

CONSENT

Kirby Building Systems, LLC and Harold Wayne Gregory, by affixing their signatures hereto, acknowledge that:

23. Respondents understand 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.

24. Respondents have been specifically advised to seek the advice of counsel prior to signing this Consent Order, and

25. Respondents acknowledge that they have 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.

26. Respondents waive all such rights to a formal hearing as set forth above in paragraph twenty-five (25).

27. Respondents understand 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. Respondents understand that these discussions will take place at the Board's next regularly scheduled meeting in Oklahoma City, Oklahoma. Respondents understand they have the right to be present when this matter is discussed, but hereby waive that right.

28. Respondents, for the purpose of avoiding further administrative action with respect to this cause, execute this Consent Order. 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.

29. Respondents expressly waive all further procedural steps, and expressly waive 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.

30. This Consent Order contains the entire agreement between the parties. Respondents are not relying on any other agreement or representations of any kind, verbal or otherwise.

31. 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.

32. 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.

33. Respondents consent 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 Respondents, it is hereby ordered as follows:

34. The Firm 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 an active Certificate of Authorization in the State of Oklahoma at the time it offered to practice and practiced engineering services for the Siteone Landscape Supply Store #0189 project in Bixby, Oklahoma in violation of the provisions of 59 O.S. § 75.21(A)(2) and OAC § 245:15-23-1(a).

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

Five Hundred (\$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.

The Firm is hereby ordered to **CEASE AND DESIST** from practicing and/or offering to practice engineering in the State of Oklahoma until such time as it has been issued a Certificate of Authorization to practice engineering in accordance with the laws of the State of Oklahoma.

36. Gregory should be and hereby is found guilty of the charges set forth in Count II of the Formal Notice of Charges, because at the time he provided, signed, sealed, and issued the engineering services for the Siteone Landscape Supply Store #0189 in Bixby, Oklahoma, he knew or should have known that the Firm did not have a Certificate of Authorization to offer to practice and/or practice engineering in the State of Oklahoma in violation of the provisions of 59 O.S. § 475.18(A)(8).

37. In accordance with 59 O.S. § 475.20(B) and OAC §§ 245:15-23-3 and 18, Gregory is hereby assessed an administrative penalty in the total amount of One Thousand Dollars Five Hundred (\$1,500.00) as and for the violations set forth in Count II above, which shall be paid within thirty (30) days from the date of the entry of this Consent Order.

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

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.

Kirby Building Systems, LLC

By: _____
(Title)

Date: _____

By: _____
Harold Wayne Gregory

Date: _____

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 February, 2024.

ROBERT A. MANCHESTER, IV, OBA #19518
4308 North Meridian Avenue
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 February, 2024, Respondents have admitted voluntarily, with knowledge of their rights under law, the allegations contained in Counts I and II 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 Respondents' stipulation to the violations contained in Counts I and II of the Formal Notice of Charges is 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 February, 2024.

OKLAHOMA STATE BOARD OF
LICENSURE FOR PROFESSIONAL
ENGINEERS AND LAND SURVEYORS

By: _____
David L. Page, P.L.S., Chair