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8
9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 929-A

12 **SYDNEY SMITH XINOS**
13 **1116 Elder Circle**
14 **Austin, TX 78733**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Civil Engineer License No. C 27399**

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Joanne Arnold (Complainant) is the Acting Executive Officer of the Board for
22 Professional Engineers, Land Surveyors and Geologists. She brought this action solely in her
23 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
24 State of California, by David E. Hausfeld, Deputy Attorney General.

25 2. Sydney Smith Xinos (Respondent) is representing himself in this proceeding and has
26 chosen not to exercise his right to be represented by counsel.

27 3. On or about July 14, 1976, the Board for Professional Engineers, Land Surveyors and
28 Geologists issued Civil Engineer License No. C 27399 to Sydney Smith Xinos (Respondent).

1 The Civil Engineer License was in full force and effect at all times relevant to the charges brought
2 in Accusation No. 929-A and will expire on March 31, 2011, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 929-A was filed before the Board for Professional Engineers, Land
5 Surveyors and Geologists (Board), Department of Consumer Affairs, and is currently pending
6 against Respondent. The Accusation and all other statutorily required documents were properly
7 served on Respondent on April 30, 2010. Respondent timely filed his Notice of Defense
8 contesting the Accusation. A copy of Accusation No. 929-A is attached as Exhibit A and
9 incorporated herein by reference.

10 **ADVISEMENT AND WAIVERS**

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 929-A. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 7. Respondent hereby freely, voluntarily, and knowingly waives and gives up each and
22 every right set forth above including, but not limited to, the right to a hearing on the charges and
23 allegations contained in Accusation No. 929-A and the right to reconsideration and judicial
24 review, in order to enter into this Stipulated Settlement. Respondent further waives any other
25 legal claim or defense, which he may have asserted, including, but not limited to, any time based
26 claim such as laches, in the event it is necessary to re-calendar an administrative hearing based on
27 any part of or all of Accusation No. 929-A. Respondent understands that, in signing this
28

1 Stipulated Settlement rather than contesting the Accusation, he is enabling the Board to issue its
2 order without further process.

3 CULPABILITY AND RESERVATIONS

4 8. Respondent understands the nature of the charges alleged in Accusation No. 929-A
5 and gives up his right to contest those charges. Though Respondent denies said charges and
6 allegations, if they were proven at hearing, the charges and allegations would constitute cause for
7 imposing discipline upon his license to practice civil engineering.

8 9. Respondent's license history and status as set forth in paragraph 2 of the Accusation
9 are true and correct. Respondent's address of record is current and accurate as set forth in the
10 caption of this Stipulation.

11 10. For the purpose of settlement and compromise of the instant proceeding before the
12 Board only, and not for any other purpose in any other civil or criminal matter, except in
13 proceedings before the Board of Professional Engineers and Land Surveyors or any other
14 professional licensing agency in the State of California, Respondent stipulates that the Board has
15 jurisdiction to impose a public reproof upon his license to practice engineering pursuant to
16 section 495 of the Business and Professions Code.

17 11. All agreements contained in this Stipulated Settlement are made exclusively for this
18 proceeding and for any future proceedings between the Board and Respondent, or between
19 Respondent and any other licensing agency in the State of California, and shall not be deemed to
20 be admissions for any purpose in any other administrative, civil or criminal action, forum or
21 proceeding.

22 12. It is stipulated and agreed that Civil Engineering License No. C 27399 issued to
23 Respondent shall, by way of letter from the Acting Executive Officer, be publicly reproofed. Said
24 letter of public reproof will issue as set forth above and shall be in substantially the same form as
25 the sample letter attached hereto as Exhibit B.

26 CONTINGENCY

27 13. This stipulation shall be subject to approval by the Board for Professional Engineers,
28 Land Surveyors and Geologists. Respondent understands and agrees that counsel for

1 Complainant and the staff of the Board for Professional Engineers, Land Surveyors and
2 geologists may communicate directly with the Board regarding this stipulation and settlement,
3 without notice to or participation by Respondent. By signing the stipulation, Respondent
4 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
5 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
6 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
7 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
8 and the Board shall not be disqualified from further action by having considered this matter.

9 14. The parties understand and agree that facsimile copies of this Stipulated Settlement
10 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
11 effect as the originals.

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

18 16. In consideration of the foregoing admissions and stipulations, the parties agree that
19 the Board may, without further notice or formal proceeding, issue and enter the following
20 Disciplinary Order:

21 **DISCIPLINARY ORDER**

22 IT IS HEREBY ORDERED as follows:

23 A Public Reproval shall be issued to Respondent Sydney Smith Xinos, Civil Engineer
24 License No. C 27399. It is further ordered that Respondent shall complete the following required
25 conditions.

26 A. Within two (2) years from the effective date of the decision, Respondent shall
27 reimburse the Board for its investigative and enforcement costs in the amount of \$2,000.00.

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1 B. Within two (2) years from the effective date of the decision, Respondent shall
2 successfully complete fifteen (15) hours of continuing education courses, related to civil
3 engineering. This continuing education requirement specifically applies to civil engineering and
4 not land surveying. This continuing education requirement must be approved in advance by the
5 Board or its designee. Respondent shall provide the Board with verifiable proof of his successful
6 completion of said continuing education courses.

7 C. Included within the fifteen (15) hours of continuing education courses required under
8 paragraph B, above, Respondent shall successfully complete a one hour course in professionalism
9 and ethics for civil engineers, approved in advance by the Board or its designee. Respondent
10 shall provide the Board with verifiable proof of his successful completion of said course.

11 D. If Respondent fails to satisfy these conditions, without cause, all allegations contained
12 in Accusation 929-A are deemed admitted. In addition, the Board may file a new Accusation for
13 unprofessional conduct based upon Respondent's failure to comply with this Order as an
14 independent basis for disciplinary action, even though not specifically enumerated in the
15 Professional Engineer's Act or the Board's Regulations.

16
17 **ACCEPTANCE**

18 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
19 stipulation and the effect it will have on my Civil Engineer License. I enter into this Stipulated
20 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
21 bound by the Decision and Order of the Board for Professional Engineers, Land Surveyors and
22 Geologists.

23
24 DATED: 2/27/11

Original Signed

SYDNEY SMITH XINOS
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board for Professional Engineers, Land Surveyors and Geologists of the Department of Consumer Affairs.

Dated: 3/14/11

Respectfully Submitted,
KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Original Signed
DAVID E. HAUSFELD
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 929-A

1 EDMUND G. BROWN JR.
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2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DAVID E. HAUSFELD
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10 **STATE OF CALIFORNIA**

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12 **SYDNEY SMITH XINOS**
13 **1116 Elder Circle**
Austin, TX 78733

A C C U S A T I O N

14 **Civil Engineer License No. C 27399**

15 Respondent.
16

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18 Complainant alleges:

19 **PARTIES**

20 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity
21 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
22 Department of Consumer Affairs.

23 2. On or about July 14, 1976, the Board for Professional Engineers and Land Surveyors
24 issued Civil Engineer License Number C 27399 to Sydney Smith Xinos (Respondent). The Civil
25 Engineer License was in full force and effect at all times relevant to the charges brought herein
26 and will expire on March 31, 2011, unless renewed.

27 ///

28 ///

1 **JURISDICTION**

2 3. This Accusation is brought before the Board for Professional Engineers and Land
3 Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.
4 All section references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 6775 of the Code states, in pertinent part,

6 [T]he board may reprove, suspend for a period not to exceed two years, or
7 revoke the certificate of any professional engineer registered under this chapter:

8

9 (b) Who has been found guilty by the board of any deceit, misrepresentation,
10 or fraud in his or her practice.

11 (c) Who has been found guilty by the board of negligence or incompetence
12 in his or her practice.

13 (d) Who has been found guilty by the board of any breach or violation of a
14 contract to provide professional engineering services.

15

16 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
17 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
18 disciplinary action during the period within which the license may be renewed, restored, reissued
19 or reinstated.

20 **STATUTORY PROVISIONS**

21 6. Section 6749 of the Code states, in pertinent part,

22 (a) A professional engineer shall use a written contract when contracting to
23 provide professional engineering services to a client pursuant to this chapter. The
24 written contract shall be executed by the professional engineer and the client, or
25 his or her representative, prior to the professional engineer commencing work,
26 unless the client knowingly states in writing that work may be commenced before
27 the contract is executed. The written contract shall include, but not be limited to,
28 all of the following:

(1) A description of the services to be provided to the client by the
professional engineer.

(2) A description of any basis of compensation applicable to the contract,
and the method of payment agreed upon by the parties.

(3) The name, address, and license or certificate number of the professional
engineer, and the name and address of the client.

(4) A description of the procedure that the professional engineer and the
client will use to accommodate additional services.

(5) A description of the procedure to be used by any party to terminate the
contract.

. . . .

1 **REGULATORY PROVISIONS**

2 7. California Code of Regulations, title 16, section 475 states, in pertinent part,

3
4 To protect and safeguard the health, safety, welfare, and property of the
5 public, every person who is licensed by the Board as a professional engineer,
6 including licensees employed in any manner by a governmental entity or in private
7 practice, shall comply with this Code of Professional Conduct. A violation of this
8 Code of Professional Conduct in the practice of professional engineering
9 constitutes unprofessional conduct and is grounds for disciplinary action pursuant
10 to Section 6775 of the Code. This Code of Professional Conduct shall be used for
11 the sole purpose of investigating complaints and making findings thereon under
12 Section 6775 of the Code.

13 (a) Compliance with Laws Applicable to a Project:

14 A licensee shall provide professional services for a project in a manner
15 that is consistent with the laws, codes, ordinances, rules, and regulations applicable
16 to that project. A licensee may obtain and rely upon the advice of other
17 professionals (e.g., architects, attorneys, professional engineers, professional land
18 surveyors, and other qualified persons) as to the intent and meaning of such laws,
19 codes, and regulations.

20

21 **COSTS**

22 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

26 **REESE VILLAGE PROJECT**

27 9. In September 2000, The Association for Community Housing Solutions (TACHS)
28 retained Respondent to provide professional engineering services. This retention was based upon
written contracts dated September 12, 2000 in which Respondent was to prepare an update to the
street improvement plans, preparation of traffic control plans and an update to the ALTA survey
for the Reese Village Project (Project) on 70th Street in the City of San Diego, California. On
September 22, 2000 Respondent and TACHS entered into a contract amendment that increased
the price under the agreement and shortened the date for the completion of the street improvement
plans and the ALTA survey update. Those plans were to be completed no later than September
26, 2000. Respondent completed the plans approximately one year later.

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3. Taking such other and further action as deemed necessary and proper.

DATED: 4/13/10

Original Signed

DAVID E. BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

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