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Department of Insurance
State of Idaho

Attorneys for the Department of Insurance

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of

WESTERN STATES FIRE PROTECTION
COMPANY

Fire Protection Sprinkler contractor
License No. FPSC-006

Docket No. 18-3647-19

**STIPULATION AND FINAL
ORDER**

COMES NOW the Idaho State Fire Marshal (“SFM”) and WESTERN STATES FIRE PROTECTION COMPANY (“RESPONDENT”), and do hereby agree and stipulate as follows:

STIPULATION

1. In accord with sections 41-253 and 41-254, Idaho Code, the SFM is appointed by the Director of the Department of Insurance (“Director”) and is delegated certain duties and powers including, but not limited to, enforcement of the International Fire Code (“IFC”) as adopted by the SFM, authority to promulgate rules in furtherance of the IFC, and the exclusive jurisdiction over single service integrated fire sprinkler systems.

2. In accord with Department of Insurance (“Department”) rule found at IDAPA

18.08.02¹, the definition of “fire protection sprinkler contractor” includes corporations who contract to install, repair, modify or maintain fire protection systems. IDAPA 18.08.02.004.02².

3. RESPONDENT is a Minnesota corporation duly authorized by the SFM as a fire protection sprinkler contractor and holds Idaho License No. FPSC-006, which is scheduled to expire on December 31, 2019. RESPONDENT is subject to title 41, Idaho Code, and to the rules of the Department.

4. At all times relevant hereto, RESPONDENT possessed an active Idaho Fire Protection Sprinkler Contractor license for its office in Liberty Lake, Washington.

5. RESPONDENT maintains a branch office in Springfield, Oregon, doing business under its assumed business name, OMLID & SWINNEY FIRE PROTECTION (“Omlid & Swinney”).

6. At all times relevant hereto, RESPONDENT did not possess an active Idaho Fire Protection Sprinkler Contractor license for its Omlid & Swinney branch office.

7. On or about March 21, 2017, the SFM received and reviewed construction plans for a proposed Bi-Mart retail store to be constructed in Kuna, Idaho.

8. The construction plans were approved by the SFM in March 2017 with the caveat that the SFM had to review and approve fire sprinkler plans before the installation of any components as required by law.

9. Omlid & Swinney submitted fire sprinkler plans to Assistant Chief Terry Gammel of the Kuna Rural Fire District in May 2017 and he approved the fire sprinkler plans on June 15, 2017. In a voice mail on June 27, 2017, Assistant Chief Gammel told Omlid & Swinney that it did not have to submit the plans to the SFM. Therefore, Omlid & Swinney did not submit its fire

¹ IDAPA 18.01.49. Re-designated as IDAPA 18.08.02 effective July 1, 2019.

² Formerly IDAPA 18.01.49.001.02.

sprinkler plan related to the Kuna Bi-Mart project to the SFM.

10. RESPONDENT, acting through its Omlid & Swinney branch office, was the contractor that installed the fire protection sprinkler system in the Kuna Bi-Mart store.

11. Upon inspection of the fire protection sprinkler system, the SFM's Office discovered that the riser configuration had changed from the plans provided to Assistant Chief Gammel and that, as a result, updated hydraulic calculations were required. Additionally, a sway brace needed to be added.

12. IDAPA 18.08.02.021.01 and 06³ provide that fire protection sprinkler plans must be submitted to the local fire department and the SFM and that such plans must be approved by the local fire department and the SFM before the commencement of work.

13. RESPONDENT, acting through its Omlid & Swinney branch office, installed a fire protection sprinkler system without first submitting plans to the SFM for approval, in violation of IDAPA 18.08.02⁴. The SFM has considered the mitigating fact that Omlid & Swinney was told by Assistant Chief Gammel that it did not have to submit the plans to the SFM and has taken that into consideration in assessing the penalties herein.

14. IDAPA 18.08.02.013.01⁵ prohibits a person from acting, or assuming to act, or advertising, as a fire protection sprinkler contractor without a license. IDAPA 18.08.02.015.03⁶ provides that branch offices of licensees must hold a separate branch office license.

15. RESPONDENT, acting through its Omlid & Swinney branch office, installed a fire protection sprinkler system without the required license, in violation of IDAPA 18.08.02⁷.

³ Formerly IDAPA 18.01.49.021.01 and .06, respectively.

⁴ Formerly IDAPA 18.01.49.

⁵ Formerly IDAPA 18.01.49.013.01.

⁶ Formerly IDAPA 18.01.49.015.03.

⁷ Formerly IDAPA 18.01.49.

16. When this was brought to the attention of RESPONDENT, the Omlid & Sweeney branch office promptly applied for and received its license. Thereafter, it submitted the plans to the SFM with the updated calculations and completed the required work at the Bi-Mart in Kuna, Idaho, to the satisfaction of the SFM.

17. Idaho Code § 41-117 states, in relevant part, that each violation shall “in addition to any applicable prescribed denial, suspension, or revocation of certificate of authority or license be punishable by an administrative penalty of not more than one thousand dollars (\$1,000) for any individual or natural person and not more than five thousand dollars (\$5,000) for any other person, imposed by the director. . . Each instance of violation may be considered to be a separate offense.”

18. The parties agree that this matter may be brought to a close by this Stipulation and Final Order.

19. Based upon the foregoing, RESPONDENT and the SFM agree as follows:

- a. RESPONDENT does not dispute the facts as alleged in this Stipulation;
- b. RESPONDENT admits to violating two provisions of IDAPA 18.08.02⁸ as stated herein, subject to the mitigating circumstances referenced herein;
- c. RESPONDENT agrees that the Director of the Idaho Department of Insurance may enter the Final Order attached hereto, which provides as follows:
 - i. That the Stipulation be adopted in full and incorporated into the Final Order;
 - ii. That an administrative penalty be imposed against RESPONDENT in the amount of Two Thousand Five Hundred Dollars (\$2,500) for each of the two violations (for a total of \$5,000) to be paid not later than September 16, 2019.

⁸ Formerly IDAPA 18.01.49.

20. By entering into this Stipulation, RESPONDENT knowingly and voluntarily waives any rights it would otherwise have to notice and a hearing at which it may be represented by counsel, present evidence, and examine witnesses. The parties hereto further waive their right of reconsideration, appeal, and other rights as set forth in title 67, chapter 52, Idaho Code, including the right to submit this matter for review by a court of competent jurisdiction.

21. The parties agree that the terms of this Stipulation and Final Order are appropriate and proper under the circumstances referenced herein.

22. RESPONDENT acknowledges that it has read this Stipulation and Final Order and understands its contents; that it has been given the opportunity to discuss this Stipulation and Final Order with independent legal counsel of its choosing; and that it has entered into this Stipulation knowingly, voluntarily, and with full knowledge of any rights it may be waiving thereby.

23. RESPONDENT acknowledges that this is an administrative action that may be required to be reported on license applications and license renewal forms.


24. This Stipulation is subject to approval by the Director or the Director's designee and shall become effective and binding upon the SFM and RESPONDENT upon such approval. Should the Director decline to approve this Stipulation and Final Order, the SFM and RESPONDENT shall retain all of their rights, claims and/or defenses, and any factual and/or legal admissions made by RESPONDENT herein shall be withdrawn.

25. This Stipulation constitutes the full and final resolution of all matters addressed herein, and the SFM agrees that, subject to the Director's approval described above, and RESPONDENT's full compliance with the provisions set forth in the Final Order, the SFM shall seek no further sanctions for the violations addressed herein.

26. RESPONDENT agrees that, upon execution of this Stipulation, no subsequent

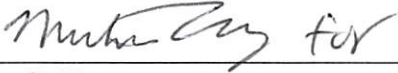
AGREED THIS 3RD day of SEPTEMBER, 2019.

STATE OF IDAHO
DEPARTMENT OF INSURANCE
DIVISION OF STATE FIRE MARSHAL

By: 
Knute Sandahl
State Fire Marshal

Approved as to Form:

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: 
John C. Keenan
Deputy Attorney General
Attorney for the Department of Insurance

FINAL ORDER

The parties hereto, namely the State Fire Marshal and WESTERN STATES FIRE PROTECTION COMPANY, having entered into the foregoing Stipulation, and the form of the order having been approved, the Director, having reviewed the same, does hereby find that there is a factual basis for entry of a Final Order herein and does hereby conclude that WESTERN STATES FIRE PROTECTION COMPANY did violate Department Rule, as stated in the Stipulation.

NOW, THEREFORE, based on the foregoing and in consideration of the premises,

IT IS HEREBY ORDERED that the foregoing Stipulation is approved and is incorporated herein as if set forth in full and made a part hereof;

IT IS FURTHER ORDERED that an administrative penalty is hereby imposed against WESTERN STATES FIRE PROTECTION COMPANY in the total amount of Five Thousand Dollars (\$5,000) to be paid no later than September 16, 2019.

DATED this 4th day of September, 2019.

STATE OF IDAHO
DEPARTMENT OF INSURANCE



DEAN L. CAMERON
Director

CERTIFICATE OF SERVICE

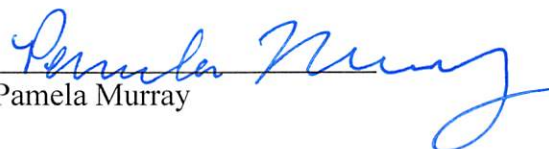
I HEREBY CERTIFY that, on this 5th day of September, 2019, I caused a true and correct copy of the foregoing, fully-executed STIPULATION AND FINAL ORDER to be served upon the following by the designated means:

Walter Downing
Vice President and General Counsel
Western States Fire Protection Company
7020 S. Tucson Way
Centennial, CO 80112

- first class mail
- certified mail
- hand delivery
- via facsimile

John C. Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

- first class mail
- certified mail
- hand delivery
- via facsimile



Pamela Murray