

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

**IN THE MATTER OF:**

**CONSENT ORDER**

**KING CONSULTING, L.L.C.,  
A DOMESTIC BUSINESS CORPORATION,**

**RESPONDENT.**

**BCD CASE C2015-0220**

**INTRODUCTION**

The Building Codes Division (Division) conducted an investigation on behalf of the Director of the Department of Consumer and Business Services (Director) and determined that King Consulting, L.L.C. (Respondent) violated certain provisions of the Division's statutes and administrative rules as identified below.

The parties agree to resolve this matter without a hearing. Respondent understands that Respondent has the right to a contested case hearing under the Administrative Procedures Act, Oregon Revised Statutes (ORS) chapter 183, and Respondent fully and finally waives the right to a hearing and any judicial review therefrom by the signing of this Consent Order.

**FINDINGS OF FACT**

1. At all relevant times, Respondent has held the following licenses, certificates, and registrations: Manufactured Structure Installation Inspector (license number 525MHI); Residential Mechanical Inspector (license number 1640CAM); Residential Structural Inspector (license number 1728CAS); Structural Inspector – A-level (license number 5435SIA); Residential Plans Examiner (license number 1712CAX); Mechanical Inspector – A-level (license number 5402MIA); Plans Examiner – B-level (license number 5405PEB); Fire and Life Safety Plans Examiner (license number 5568PEF); Plans Examiner – A-level

1 (license number 5574PEA); Park and Camp Inspector (license number 445PCI); Plan  
2 Reviewer or Inspector (license number 122SRI); Oregon Inspector Certification (OIC1608);  
3 and Building Official (license number 5334BO).

- 4 2. At no relevant time has Respondent been licensed (registered) as a Third-Party Plan Review  
5 and Inspection Business ("SRB") in the state of Oregon.
- 6 3. On or around August 1, 2015, Respondent contracted with the City of Manzanita ("the  
7 City") to provide the City with building official, plan review, and building inspection  
8 services.
- 9 4. Pursuant to the terms of the contract, Respondent delegated the plan review, and building  
10 inspection services to Mr. Douglas Dick.
- 11 5. At no relevant time was Mr. Dick an employee of the City or King Consulting, LLC.
- 12 6. Mr. Dick held Third Party Plan Reviewer and Inspector ("SRI") certification at all relevant  
13 times, but at no relevant time was Mr. Dick registered as an SRB or the owner of a company  
14 that was registered as an SRB.
- 15 7. From approximately August 1, 2015 through approximately November 2015, Respondent  
16 used Mr. Dick, in his capacity as an independent contractor, to perform as a building official  
17 and complete Respondent's plan review and building inspection services for the City.
- 18 8. On October 20, 2015, Respondent applied for SRB registration. In its application for SRB  
19 registration, Respondent submitted proof that it held errors and omissions ("E & O")  
20 liability insurance in the amount of \$250,000 per occurrence, effective from August 13,  
21 2015 through August 13, 2016<sup>1</sup>.
- 22 9. E & O liability insurance provides consumers with remedies for damages resulting from

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23 <sup>1</sup> The foregoing proof of insurance indicated that Respondent's E & O liability insurance  
24 provider was Western World Insurance Company. In the Quality Control Manual submitted by  
25 Respondent in support of the foregoing application, Respondent wrote that its E & O insurance  
provider was Certain Underwriters at Lloyd's of London.

oversights relating to plan reviews and/or building inspections.

### APPLICABLE LAW

1. The terms used in this Notice may be defined in ORS 183.310(1)-(10), ORS 455.010(1)-(10), OAR 918-001-0005(1)-(4), OAR 918-030-0010(1)-(11), OAR 918-090-0010(1)-(12), and OAR 918-098-1005(1)-(20).
2. Under ORS 455.457, the Director by rule shall establish a licensing system for persons that perform specialty code inspections or plan reviews and for businesses that employ persons that perform specialty code inspections or plan reviews.
3. Under OAR 918-090-0100, a registration as a plan review and inspection business shall be held by any person who engages in or follows the business or occupation of, or advertises or purports to engage in or perform plan reviews or inspections other than as an exclusive employee of a municipality, the division or a registered plan review and inspection business.
4. Under OAR 918-090-0110(2)(h), an application for plan review and inspection business registration shall include proof of "errors and omissions" liability insurance or its equivalent, of at least \$500,000 per occurrence, with an aggregate limit of at least \$500,000 per policy year, including but not limited to, the name of the insurance company, the amount for which insured, the policy number and expiration, and the current business address and phone number of the insurance company's agent.
5. Under ORS 455.129(2) and (4), the Director may deny a license or registration if the Director finds that the applicant:
  - (a) Has failed to comply with the laws administered by the Department of Consumer and Business Services (Department) or with the rules adopted by the Department;\*\*\*
  - (c) Has filed an application for a license, certificate or registration that, as of the date of the license, certificate or registration was issued or the date of an order denying

1 the application \*\*\* contained a statement that, in light of circumstances under which  
2 it was made, was incorrect.

3 \*\*\*

4 (d) Has performed work without appropriate licensing, certification or registration or  
5 has employed individuals to perform work without appropriate licensing,  
6 certification or registration;

7 \*\*\*

8 (g) Has engaged in business as a specialty code contractor without holding a valid  
9 specialty code contractor license, certificate or registration required for the business;

10 \*\*\*

11 (h) Has failed to meet any condition or requirement to obtain or maintain a license,  
12 certificate or registration; or

13 \*\*\*

14 (i) Has acted in a manner creating a serious danger to the public health or safety.

15 6. Under OAR 918-090-0930(1)(o), for the purposes of 455.457, acting in such a manner that  
16 constitutes a danger to the public health or safety includes failing to maintain insurance as  
17 required by these rules.

18 7. Under ORS 455.127(2)(a), the Director may disqualify a person from obtaining or renewing  
19 a license, registration, certificate or certification if the person is or has been subject to civil  
20 penalties, revocation, cancellation or suspension of a license, registration, certificate or  
21 certification or other sanction by the director, department or an advisory board.

22 8. Under ORS 455.127(3), a disqualification under subsection (2) of this section shall be for a  
23 period determined by the director, department or appropriate advisory board by rule, not to  
24 exceed five years.

1 9. Under OAR 918-001-0034(1), disqualification under ORS 455.127(2) shall be for a period  
2 of five years except as provided in subsection (2) of this rule.

3 10. Under OAR 918-001-0034(2), the Director may, in its discretion, order a disqualification  
4 fewer than five years.

5 11. Under ORS 455.895(2), the Department may at its discretion impose a civil penalty of not  
6 more than \$5,000 per occurrence for violations of ORS chapter 455 or any rule adopted for  
7 the administration and enforcement of those statutes.

8 12. Under ORS 455.450(2) a person may not engage in, or procure or assist any other person to  
9 engage in, any conduct or activity for which a permit, label, license, certificate, registration,  
10 or other formal authorization is required by any specialty code, any provision of ORS  
11 chapter 455, or any rule adopted or order issued for the administration and enforcement of  
12 those provisions, without first having obtained such permit, label, license, certificate,  
13 registration, or other formal authorization.

14 13. Under ORS 455.775(2), if the Director has reason to believe that any person has been  
15 engaged, or is engaging, or is about to engage in any violation of the state building code or  
16 ORS chapter 455 or any rule adopted under those statutes, the Director may issue an order,  
17 subject to ORS 183.413 to 183.497, directed to the person to cease and desist from the  
18 violation or threatened violation.

19 **CONCLUSIONS OF LAW**

20 1. By contracting to provide the City with building official, plan review, and building  
21 inspection services, Respondent engaged in the business or occupation of performing  
22 specialty code plan reviews or inspections under OAR 918-090-0100 and ORS 455.457.

23 2. By engaging in the business or occupation of performing building official, plan reviews or  
24 inspections without holding a registration as a plan review and inspection business,  
25 Respondent violated OAR 918-090-0100.

- 1 3. By having Mr. Dick perform plan review, and building inspection services for the City as an  
2 independent contractor acting on Respondent's behalf, without Respondent or Mr. Dick  
3 holding a registration as a plan review and inspection business, Respondent procured and  
4 assisted Mr. Dick to engage in conduct and activities for which registration was required  
5 under ORS 455.457, without such registration, in violation of ORS 455.450(2).
- 6 4. By violating ORS 455.450(2) and OAR 918-090-0100, Respondent is subject to civil  
7 penalties under ORS 455.895(2).
- 8 5. By engaging in business as a specialty code contractor without holding a valid specialty  
9 code contractor business registration, Respondent's application may be denied  
10 under ORS 455.129(2)(g).
- 11 6. By performing building official services, and having plan review and building inspection  
12 services performed for the City through Mr. Dick, without holding a registration as a plan  
13 review and inspection business, Respondent's application may be denied under ORS  
14 455.129(2)(d).
- 15 7. By failing to hold E & O liability insurance in an amount of at least \$500,000 per  
16 occurrence, while conducting inspections, plan review and building official services for the  
17 City, Respondent deprived consumers of an adequate remedy for damages resulting from  
18 oversights relating to those services, thereby acted in a manner creating a serious danger to  
19 the public health or safety, as defined by 918-090-0930(1)(o), and subjected its application  
20 to denial under ORS 455.129(2)(i).
- 21 8. By failing to hold E & O liability insurance in an amount of at least \$500,000 per  
22 occurrence, Respondent failed to meet the requirements for an SRB registration application  
23 under OAR 918-090-0100(2)(h).

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- 1 9. By failing to meet the requirements for an SRB registration application, Respondent failed  
2 to meet a condition or requirement to obtain a license or registration, and subjected its  
3 application to denial under ORS 455.129(2)(h).
- 4 10. By violating ORS 455.450(2) and OAR 918-090-0100 Respondent failed to comply with the  
5 laws administered and rules adopted by the Department, and subjected its application to  
6 denial under ORS 455.129(2)(a).
- 7 11. Because Respondent is subject to civil penalties or other sanction by the Director, the  
8 Director may disqualify Respondent from obtaining an SRB registration under ORS  
9 455.127(2).
- 10 12. The Director may disqualify Respondent from obtaining an SRB registration for up to five  
11 years under ORS 455.127(3) and OAR 918-001-0034.
- 12 13. Because the Respondent has engaged in violations of ORS 455.450 and OAR 918-090-0100,  
13 the Director has reason to believe the Respondent has engaged in violations of the laws  
14 administered by, and rules adopted by, the Director. Because Respondent continued to  
15 engage in violations of ORS 455.450 and OAR 918-090-0100 after it was clearly aware that  
16 it was engaging in those violations, as evidenced by the fact that it continued to engage in  
17 the business of plan review and inspections without registration, and continued to procure  
18 and assist in Mr. Dick's unlawful work as a plan reviewer and inspector for an unregistered  
19 plan review and inspection business after it had applied for, but had not been issued,  
20 registration, the Director has reason to believe the Respondent will engage in violations of  
21 the laws administered by and rules adopted by the Director. Because the Director has reason  
22 to believe the Respondent has and will engage in violations of the laws and rules within the  
23 Director's purview, the Director may issue an order for Respondent to cease and desist from  
24 further violations of those statutes and rules, under ORS 455.775(2).

25 **ORDER**

1 1. The Director hereby assesses a total civil penalty of \$6,000.00 against Respondent for  
2 violating ORS 455.450(2) and OAR 918-090-0100 as follows:

3 a. \$5,500.00 of the total civil penalty will be suspended for a period of five years if  
4 there is compliance with all other terms of this Consent Order.

5 b. Respondent agrees to pay the remaining \$500.00 of the civil penalty. Respondent  
6 will make five (5) monthly payments on the 25<sup>th</sup> day of each month in the amount of  
7 \$100.00 per month. Respondent's first payment shall be postmarked no later than the  
8 25<sup>th</sup> day of the month following the month in which this Consent Order becomes a  
9 final order. *(An invoice will be included with Respondent's copy of the final order*  
10 *after the Director signs it. This is a one-time invoice; Respondent will not receive*  
11 *monthly invoices or other reminders to pay. Respondent understands timely*  
12 *payments must be made even if no invoice is ever received.)* Payments shall be  
13 mailed to Department of Consumer and Business Services, Fiscal Services Section,  
14 P.O. Box 14610, Salem, OR 97309-0445.

15 c. Respondent understands the suspended civil penalty (\$5,500.00) will be considered  
16 satisfied five years after this Consent Order becomes a final order, provided  
17 Respondent complies with its terms and has not committed any further violations of  
18 the Division's statutes and rules within that five-year period. Respondent  
19 understands and agrees that if Respondent does not comply with the terms of this  
20 Consent Order or if Respondent commits any further violations of the Division's  
21 statutes or rules within the five-year period, then the entire civil penalty, including  
22 any suspended amount, will become immediately due and payable. Failure to comply  
23 with this Consent Order includes, but is not limited to, failure to pay the civil penalty  
24 amount due by the due date.  
25

- 1 2. Respondent's application for Third-Party Plan Review and Inspection Business (SRB)  
2 registration is hereby denied pursuant to ORS 455.129(2)(a), (2)(c), (2)(d), (2)(g), (2)(h) and  
3 (2)(i), for the violations and failures detailed above.
- 4 3. Pursuant to ORS 455.127 and OAR 918-001-0034, Respondent is disqualified from  
5 obtaining an SRB registration for two years, commencing on the date that this Consent  
6 Order becomes a final order.
- 7 4. Respondent agrees to cease and desist from any further violations of the State Building Code  
8 and related statutes and rules, including but not limited to, engaging in the business or  
9 occupation of performing building official services, specialty code plan reviews or  
10 inspections without holding a registration as a plan review and inspection business (OAR  
11 918-090-0100) and procuring and/or assisting individuals to engage in activities or conduct  
12 requiring registration or license without holding such registration (ORS 455.450(2)).
- 13 10. The following licenses, registrations, and/or certificates of Respondent remain in good  
14 standing and are not impacted by this matter: Manufactured Structure Installation Inspector  
15 (license number 525MHI); Residential Mechanical Inspector (license number 1640CAM);  
16 Residential Structural Inspector (license number 1728CAS); Structural Inspector – A-level  
17 (license number 5435SIA); Residential Plans Examiner (license number 1712CAX);  
18 Mechanical Inspector – A-level (license number 5402MIA); Plans Examiner – B-level  
19 (license number 5405PEB); Fire and Life Safety Plans Examiner (license number 5568PEF);  
20 Plans Examiner – A-level (license number 5574PEA); Park and Camp Inspector (license  
21 number 445PCI); Plan Reviewer or Inspector (license number 122SRI); Oregon Inspector  
22 Certification (OIC1608); and Building Official (license number 5334BO).
- 23 5. Respondent agrees to fully cooperate with the Division's enforcement efforts in other cases  
24 that rely on the facts underlying this case. Cooperation may include, but may not be limited  
25 to, making sworn statements, assisting with investigations, providing documents as

1 requested by the Division, or testifying in administrative hearings. Other cases may include,  
2 but may not be limited to, those involving Douglas Dick, 3D Code Consulting, LLC, On the  
3 Level Inspection Concepts, On the Leven Inspection Concepts, Inc., the City of Manzanita,  
4 and any other related cases.

5 6. Respondent understands that further enforcement action may be taken for any violation of  
6 the Division's statutes or rules not alleged in this Consent Order, whether committed before  
7 or after the execution of this Consent Order, and/or for any violation of the terms of this  
8 Consent Order.

9 7. Respondent understands that failure to comply with this Consent Order may be used as a  
10 basis for the denial of future license, certificate, registration, or other applications, or for the  
11 refusal to renew the same; for the suspension, revocation, or conditioning of a license,  
12 certificate, or registration issued by the Division or other state agencies; and/or for any other  
13 reason provided for in law.

14 8. Respondent understands that this Consent Order is a public record.

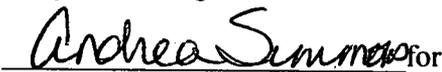
15 9. Respondent has read and fully understands the terms of this Consent Order, freely and  
16 voluntarily consents to the entry of this Consent Order without any force or duress, and  
17 expressly waives all rights to hearing or judicial review in this matter.

18 10. Respondent understands that, upon signature of all parties, this Consent Order will be a  
19 Final Order.

20 

21 Garth King  
22 Owner and Authorized Representative  
King Consulting, L.L.C.

It is so agreed this 29 day of Feb, 2016.

23 

24 Director  
25 Department of Consumer and Business Services  
State of Oregon

It is so agreed this 16<sup>th</sup> day of March, 2016.