

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Release") is executed by and between Oconee County Board of Commissioners, Oconee County, Georgia ("Oconee County") and Site Engineering, Inc. ("SEI"), under seal, and is effective on May 8, 2019 (the "Effective Date").

RECITALS:

- a. WHEREAS, Oconee County and SEI entered into a construction contract (the "Prime Contract"), under which SEI agreed to serve as the general contractor for the construction of the McNutt Creek Sewer Connector (the "Project").
- b. WHEREAS, Precision Planning, Inc. ("Precision Planning") served as the Project Engineer for the Project, under a contract or agreement with Oconee County.
- c. WHEREAS, the Project was substantially complete on December 11, 2018, when Oconee County released flow into the sanitary sewer pipes and began using the pipe system for its intended purpose. All punch list items were completed and accepted on December 21, 2018
- d. WHEREAS, SEI has two outstanding and unpaid pay applications: Pay Request No. 16 in the amount of \$66,298.00, and Pay Request No. 17 in the amount of \$210,764.90, which together represent SEI's billing for one-hundred percent (100%) of the Prime Contract funds, including retainage on the Project.
- e. WHEREAS, on December 17, 2018, Oconee County gave written notice to SEI that it would assess liquidated damages in the amount of \$203,500.00, calculated at \$500/day for 407 days, and withhold an additional \$75,000.00 for an unresolved property damage claim asserted by Mr. Forehand, for a total amount of \$278,500.00.
- f. WHEREAS, on or about April 10, 2019, Oconee County issued payment to SEI in the amount of \$75,000.00, which was received and accepted by SEI.
- g. WHEREAS, SEI has submitted Prime Contract Change Order #3. to Oconee County, attached hereto as Exhibit A, to reconcile all outstanding payment issues.
- h. WHEREAS, SEI has previously submitted the following close-out documents to Precision Planning, which have been received and accepted by Oconee County:
 1. Statement of Substantial Completion;
 2. NPDES Permit Notice of Termination;
 3. Affidavit and Lien Waiver;
 4. Consent of Surety;
 5. Warranty Statement; and
 6. Sewer Inspection Videos

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and other undertakings set forth herein, and for other good and valuable consideration, and intending to be legally bound hereby, the Parties hereto agree to the following terms of settlement of any and all claims in connection with the Project, as follows:

1. **Acknowledgement of Recitals.** The Parties hereby acknowledge, to the best of their knowledge and belief, the accuracy of the recitals set forth above which are incorporated herein by reference.
2. **Acceptance of Change Order No. 3.** Upon receipt of Change Order No. 3, signed by SEI, Oconee County agrees to accept and execute Change Order No. 3.
3. **Exchange of Final Documents.** On or before the Effective Date, SEI, or its counsel, shall deliver the following documents to Precision Planning: (1) Revised Pay Request No. 17 incorporating Change Order No. 3; and (2) final As-Built Plans.
4. **Payment by Oconee County.** Within seven (7) days of the Effective Date, Oconee County will deliver a final payment to counsel for SEI in the amount of \$62,500.00, in current funds (the "Final Payment").
5. **Release by SEI.** In consideration of the Final Payment and all previous payments, SEI, on behalf of itself and its owners, parent companies, subsidiaries, and affiliates, releases Oconee County, members, officers, directors, partners, affiliates, employees, consultants, insurers, agents, representatives, from any and all claims, bonds, liens (including but not limited to materialman or mechanic's liens), demands, actions, causes of action, rights, damages, liabilities, losses, alleged delays, costs or expenses arising out of its work on the Project, and all facts and circumstances that have occurred in connection with the Project as of the Effective Date.
6. **Release by Oconee County.** Oconee County, on behalf of itself and its subsidiaries, affiliates, members, officers, directors, partners, affiliates, employees, consultants, insurers, agents, and representatives, releases SEI, and its members, officers, directors, partners, affiliates, lenders, employees, consultants, insurers and Sureties (specifically, Travelers Casualty and Surety Company of America), agents, and representatives, from any and all claims, demands, actions, causes of action, rights, damages, liabilities, losses, alleged delays, costs or expenses arising out of its work on the Project, and all facts and circumstances that have occurred in connection with the Project as of the Effective Date. This Release does not release any warranty claims that would otherwise be in effect under the terms of the Prime Contract, but does not increase, alter, or extend any such warranty terms. The term of warranty remains one year from the date of substantial completion recited above. This Release does not release claims from defective Work appearing after substantial completion, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents
7. **Unreleased Retainage.** The balance of the Prime Contract funds, in the amount of \$139,562.90, will become the property of Oconee County upon the Effective Date, and

represents full satisfaction for any and all claims for liquidated damages or other delay related damages, under the Prime Contract.

8. **Miscellaneous**

- a. **Governing Law.** This Release will be construed in accordance with and governed by the laws of the State of Georgia. The venue for any action brought by any party to enforce this Release will be before any court of competent jurisdiction in Georgia.
- b. **Voluntary Agreement.** The parties confirm that they understand and accept the terms of this Release. By voluntarily executing this Release, the parties represent and warrant that they have relied upon their own individual judgment and the legal advice received from their attorneys, and not upon recommendations or representations of the opposite party, except as expressly set forth in this Release.
- c. **Section Headings.** The section headings in this Release are for the convenience of the parties only, and will not be construed so as to modify or limit the substantive provisions of the sections.
- d. **Binding Effect.** This Release shall be binding upon the Parties and their heirs, administrators, executors, successors, and assigns.
- e. **Execution in Counterparts.** This Release may be executed in counterparts, including facsimile counterparts, each of which will constitute an original, but which collectively will form one and the same instrument.

IN WITNESS WHEREOF, this Release is acknowledged, agreed, to, and accepted, under seal, as of the Effective Date.

Site Engineering, Inc. [SEAL]



By: Paxton Billingsley
Title: Authorized Signatory



Oconee County Board of Commissioners,
Oconee County, Georgia [SEAL]



By:
Title: Authorized Signatory

