



CITY OF PATASKALA

RESOLUTION 2024-021

Passed February 20, 2024

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY ADMINISTRATOR TO EXECUTE A SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH VERDANTAS LLC AND PRIME AE GROUP, INC.

WHEREAS, Hull and Associates, Inc. as predecessor in interest to Verdantas LLC, entered into an agreement with the City of Pataskala for a project known as the City of Pataskala Water Reclamation Facility-Oxidation Ditch & Phosphorus Reduction Improvements (“the Project”); and

WHEREAS, Hull, as predecessor in interest to Verdantas, entered into a Master Service Agreement with PRIME AE Group, Inc. to perform certain task orders for the Project.

WHEREAS, disputes arose regarding the Project and the City Pataskala raised concerns related to the Project; and

WHEREAS, before resorting to litigation, the City of Pataskala, Verdantas, and Prime agreed to try to resolve all claims by and between them arising from, or related to, the Project; and

WHEREAS, representatives from the City of Pataskala, Verdantas, and Prime attended a mediation on January 18, 2024. After a long day of mediation, the Parties came to a tentative agreement; and

WHEREAS, Council for the City of Pataskala is satisfied with the terms of the tentative agreement and now wants to approve formally and officially the same.

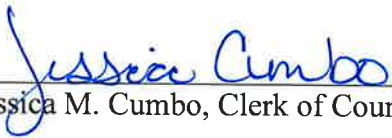
NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PATASKALA, COUNTY OF LICKING, STATE OF OHIO, A MAJORITY OF MEMBERS PRESENT CONCURRING THAT:

Section 1: The City Administrator is hereby authorized and directed to execute a Settlement Agreement and Mutual Release, in substantially the same form and content as the Agreement attached hereto as Exhibit A and incorporated herein by reference, with Verdantas LLC and Prime AE Group, Inc.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements of the laws of the State of Ohio.

Section 3: This Resolution shall take effect at the earliest time allowed by the Charter of the City of Pataskala.

ATTEST:



Jessica M. Cumbo, Clerk of Council



Michael W. Compton, Mayor

APPROVED AS TO FORM:



Brian M. Zets, Law Director

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release hereinafter sometimes referred to as the "Agreement" as entered into by and between City of Pataskala ("Pataskala"), Hull & Associates, Inc. *nka* Verdantas LLC ("Verdantas") and PRIME AE Group, Inc. ("PRIME") hereinafter collectively referred to as the "Parties" or the "Settling Parties".

Any reference herein to any of the Settling Parties by name either collectively, individually or jointly shall include such Party's or Parties' respective affiliates, subsidiaries, partners, officers, directors, shareholders, members, employees, agents, representatives, insurers, successors, assigns, attorneys and all other persons acting in active concert or participation with it, him, her or them and their heirs and beneficiaries.

RECITALS

WHEREAS, Hull and Associates, Inc. ("Hull") as predecessor in interest to Verdantas, entered into an agreement with Pataskala for a project known as the City of Pataskala Water Reclamation Facility-Oxidation Ditch & Phosphorus Reduction Improvements ("the Project"); and

WHEREAS, Hull, as predecessor in interest to Verdantas entered into a Master Service Agreement with PRIME and certain task orders thereunder for the Project; and

WHEREAS, disputes arose regarding the Project and concerns of Pataskala related to same; and

WHEREAS, Verdantas (and Hull) and PRIME provided additional engineering services to address issues at the project; and

WHEREAS, the Settling Parties desire to compromise and resolve all claims by and between them arising from or related to the Project, including any claims that were or could have been asserted by and between the Parties; and

WHEREAS, this Agreement is the compromise of disputed claims, and any payments made by or on behalf of any of the Settling Parties are not to be construed as an admission of liability, fault or culpability on the part of those Parties, by whom liability, fault or culpability is expressly denied; and

WHEREAS, these recitals are intended to and shall be construed as substantive provisions of this Agreement.

NOW, THEREFORE, for and in consideration of the promises and covenants mutually made and exchanged herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, the Parties covenant and agree as follows:

I. SETTLEMENT AGREEMENT

A. Considerations:

1. Verdantas and/or its professional liability insurer shall pay the sum of Sixty-Five Thousand Dollars (\$65,000.00) to Pataskala as directed by Pataskala's legal counsel within thirty (30) days of the execution of this Agreement.
2. Except as described in this paragraph, Verdantas and PRIME waive all claims for additional services related to the Project. Pataskala and Verdantas agree Verdantas may be requested to perform additional services (i.e., close out documentation, submittal review, and/or construction inspection), after this Agreement is signed, for which Verdantas will be compensated at a rate agreed to by Pataskala and Verdantas.
3. PRIME and/or its insurer shall issue payment to Pataskala in the amount of Three Hundred Ten Thousand Dollars (\$310,000.00) to Pataskala as directed Pataskala's legal counsel within thirty (30) days of the date of execution of this Agreement.
4. Pataskala waives any and all claims that it has or could have against Verdantas (and Hull) and/or PRIME as set forth herein related to the Project and any and all remedial designs or installations related to same.

B. Release:

1. The Parties, and each of their respective agents, representatives, insurers, successors, assigns, attorneys and all other persons acting in active concert or participation with them hereby irrevocably and unconditionally release, acquit and forever discharge the other Parties to this Agreement and their respective affiliates, subsidiaries, partners, officers, members, employees, agents, representatives, insurers, successors, assigns, attorneys and all other persons acting in active concert or participation with them from any and all obligations arising from or relating in any way to the Project and any remediation and/or redesign or additional work related to same, as well as all claims that were raised or could have been raised in regards to the claims by and between the Parties, including any and all past, present and future charges, complaints, claims liabilities, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses including attorney fees and costs actually incurred of any nature whatsoever whether known or unknown which they now have, own or hold or claimed to have owned or held or which they may at any time hereafter own or hold or claimed to have owned or held against the other Parties related to the Project and its remediation and/or redesign or additional work related to same.
2. Pataskala shall provide a copy of City Council approval for this Agreement.

II. REPRESENTATIONS AND WARRANTIES

- A. The Parties warrant and represent that this Agreement constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes any prior or contemporaneous oral or written agreements, proposed agreements, negotiations and discussions with respect to the subject matter hereof.
- B. The Parties warrant and represent that no promises or inducements have been offered except as set forth in this Agreement, and that this Agreement is executed without reliance upon any statement or representation by any of the Parties to this Agreement or any of their respective representatives or attorneys concerning the nature and extent of the claims, damages or legal liability.
- C. The Parties warrant and represent that any individuals executing this Agreement on their behalf fully understand this Agreement and are authorized to execute this Agreement on their behalf.
- D. The Parties also warrant and represent that except as set forth above, this Agreement evidences the full and final settlement of any and all past, present and future claims by and among them relating in any way to the claims released herein which were and remain disputed both as to liability and amount, and the consideration of such shall not be construed as an admission of liability by any Party to this Agreement, as the same is and always has been expressly denied.
- E. The Parties further warrant and represent that:
 - 1. They have carefully read and reviewed the full contents of this Agreement, and they are voluntarily entering into this Agreement with the advice and assistance of their attorneys;
 - 2. They have investigated the facts pertaining to this Agreement and all matters pertaining thereto, to the full extent they deem necessary for the purpose of executing this Agreement;
 - 3. Each term of this Agreement is contractual and not merely a recital; and,
 - 4. The Parties will execute all such additional documents as may be necessary to carry out the provisions of this Agreement.

III. ADDITIONAL TERMS

- A. This Agreement shall for all purposes be deemed to have been executed and delivered within the State of Ohio, and the rights and obligations of the Parties

hereto shall be construed and enforced in accordance with and governed by the laws of the State of Ohio.

- B. Each Party has cooperated and participated in the drafting and preparation of this Agreement.
- C. This Agreement shall not be altered, amended, or modified by oral representation made before or after the execution of this Agreement. All amendments or changes of any kind must be in writing, executed by all Parties.
- D. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts. The Parties further agree that facsimile signatures and signatures provided electronically in .pdf format by the Parties shall be binding to the same extent as an original signature

IN WITNESS WHEREOF, the Parties have voluntarily executed this Settlement Agreement and Release on the date noted below.

PRIME AE GROUP, INC.

By: _____

Its: _____

Date: _____

VERDANTAS LLC

By: _____

Its: _____

Date: _____

CITY OF PATASKALA

By: *Janet Hill*

Its: *City Administrator*

Date: *2/21/24*