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BEFORE THE WEST VIRGINIA STATE BOARD OF  
REGISTRATION FOR PROFESSIONAL ENGINEERS

WV PE BOARD

IN RE: NEW HORIZON SITE SERVICES, INC.

C2015-03

**CONSENT ORDER**

Comes now the West Virginia State Board of Registration for Professional Engineers by Edward L. Robinson, P.E., its President, (hereinafter "the Board") for the purpose of agreeing to resolve a Complaint seeking disciplinary action against New Horizon Site Services, Inc. (hereinafter "Respondent Firm"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of such agreement, does hereby **FIND** the following:

1. The matters set forth herein are within the jurisdiction of the Board, which is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia.
2. Respondent Firm is organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Sharpsville, and Mark Sylvester is its President.
3. As a result of a renewal audit by the Board, Respondent Firm claimed an exemption for the Board's COA requirement and was advised that the Firm was not exempt from the requirement.
4. Respondent Firm submitted an application for reinstatement of its COA, which was approved on August 14, 2014, after which Respondent Firm was issued COA C05034.
5. Upon further investigation by the Board, Respondent Firm indicated that it had seven (7) telecommunication projects in the eastern panhandle area of West Virginia.

6. The engineering was performed by an employee of Respondent Firm who has been a Professional Engineer in good standing since 2010 and was named as Respondent Firm's engineer in responsible charge on its COA.
7. The Board initiated complaint number C2015-03 at its regular meeting on September 15, 2014, which was served on September 18, 2014.
8. Respondent Firm promptly notified the Board and initiated settlement negotiations in addition to submitting a response to the Complaint.
9. The Board accepts Respondent Firm's representation that it made no offers of engineering in West Virginia since it did similar work for a company in other states and was asked by that company to perform engineering services in this state.
10. Respondent Firm admits it practiced engineering on seven (7) projects in West Virginia prior to obtaining the required COA.
11. The Board has taken into account the following factors in reaching this settlement: an amount that will be an economic deterrent to the violation; the representation that it did not initiate an offer of engineering; the number of instances of the practice of engineering; the fact that the engineering work was performed by a professional engineer licensed in this State and there was no risk of harm to the public; and that Respondent Firm is a relatively new company with no history of previous violations, promptly took steps to be in good standing with the Board and cooperated with the Board in the investigation and resolution of this Complaint.
12. The Board, in its discretion, will not assess administrative costs although West Virginia engineering law authorizes the Board's power to assess such costs.

### CONCLUSIONS OF LAW

13. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and matters related to such practice are within the jurisdiction of the Board. W. Va. Code § 30-13-1 et seq.
14. Mark Sylvester, the President of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
15. West Virginia engineering law allows a firm to practice or offer to practice engineering only upon the issuance of a certificate of authorization by the Board. W. Va. Code § 30-13-17.
16. The Board is authorized to “assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an amount determined by the board.” W. Va. Code § 30-13-21(b); see also W. Va. Code § 30-13-21(d)(4).
17. Practicing or offering to practice engineering, as defined by W. Va. Code § 30-13-1 et seq., without a valid Certificate of Authorization is an action that may subject a firm to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5000.00). W. Va. Code R. § 7-1-15.1.
18. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as:
  - (a) Whether the amount imposed will be a substantial economic deterrent to the violation;
  - (b) The circumstances leading to the violation;
  - (c) The nature and severity of the violation and the risk of harm to the public;
  - (d) The history of previous violations;
  - (e) The extent to which the cited person or firm has cooperated with the Board and the Board’s investigation;
  - (f) The economic benefits gained by the violator as a result of the noncompliance;
  - (g) The interest of the public; and
  - (h) Other matters as may be appropriate.

W. Va. Code R. § 7-1-15.4.

19. The assessment of administrative costs is within the Board's sole discretion. W. Va. Code § 30-13-21(d)(4) and W. Va. Code R. § 7-1-14.4.

### **CONSENT OF RESPONDENT FIRM**

Mark Sylvester, as the President of New Horizon Site Services, Inc., by affixing his signature hereon, agrees to the following:

20. Respondent Firm is aware of its right to be represented by counsel and pursue this matter through appropriate administrative and/or court procedures, including its right to a formal hearing before the Board, and Respondent Firm intelligently and voluntarily waives its rights provided the Board accepts the terms and conditions set forth in this Consent Order.
21. Respondent Firm admits that it did not have a Certificate of Authorization to practice or offer to practice engineering in the State of West Virginia until August 14, 2014.
22. Respondent Firm accepts the findings set forth above and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
23. Respondent Firm acknowledges that entering into the negotiation of this Consent Order constitutes a waiver of any and all objections regarding the timeliness of Board action on Complaint Number C2015-03. This paragraph is binding upon Respondent Firm even in the event that the Board does not approve this Consent Order.
24. Respondent Firm acknowledges that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to the above-styled matter. In this regard, Respondent Firm authorizes the Board to review and examine all investigative file materials concerning Respondent Firm's activities in West Virginia in consideration of this Consent Order.

25. Should the Board not approve this Consent Order, Respondent Firm waives any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on Respondent Firm even if the Board does not approve this Consent Order.
26. Respondent Firm acknowledges that the Board may reject this proposal, notice and hold a hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.
27. Respondent Firm understands that this Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order, but that nothing in this Consent Order prohibits the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future disciplinary matter involving Respondent Firm which may be before this Board.
28. Respondent Firm understands that the complaint and this Consent Order are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.
29. Respondent Firm agrees that the sum and substance of the Complaint and this agreement in part or in their entirety will be set forth in Board publications and on the Board website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
30. Respondent Firm acknowledges that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any certification issued to Respondent Firm by the Board, and the addition

of any other charges which may arise or ensue from Respondent Firm's non-compliance with this Consent Order.

31. Respondent Firm acknowledges that proof of any material misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any certification issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia engineering law.

### **ORDER**

1. On the basis of the foregoing, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint number C2015-03 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for the first offense of practicing engineering in West Virginia without a certificate of authorization.
3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of One Hundred Fifty Dollars (\$150.00) for each of the subsequent six offenses of practicing engineering in West Virginia without a certificate of authorization, for a total of Nine Hundred Dollars (\$900.00).
4. The civil penalties totaling One Thousand One Hundred and Fifty Dollars (\$1,150.00) shall be paid in full within thirty (30) days of entry of this Consent Order, such amount to be made payable to the W. Va. P.E. Board, and shall be transferred to the general fund of the State of West Virginia upon receipt.
5. The sum and substance of the Complaint and this agreement in part or in their entirety shall be set forth in Board publications and on the Board website, as well as other

appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

6. Any violation of the terms of this Consent Order by Respondent Firm shall be immediate cause for further disciplinary action by the Board.
7. If the civil penalties imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent Firm upon application by the Board for the entry of a Judgment Order for the total amount of the outstanding balance of the amount agreed to herein (\$1,150.00), together with pre-judgment interest from the date of the Vice President's signature hereon, post-judgment interest from the date of entry of the Judgment Order and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.
8. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties agreed to herein.
9. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order. This shall not prohibit the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future disciplinary matter involving Respondent Firm which may come before this Board.
10. This Consent Order relates solely to matters set forth in West Virginia engineering law and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

[signature line appears next page]

AGREED TO BY:

  
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NEW HORIZON SITE SERVICES, INC.  
By MARK SYLVESTER, its PRESIDENT

10/31/14  
\_\_\_\_\_  
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 24 day of NOVEMBER, 2014.

WEST VIRGINIA STATE BOARD OF REGISTRATION  
FOR PROFESSIONAL ENGINEERS

By:   
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EDWARD L. ROBINSON, P.E.  
BOARD PRESIDENT