

OLD SENECA TURNPIKE WATER LINE UPGRADES

SKANEATELES, NEW YORK

C&S PROJECT #103.101.003

ADDENDUM #2

JULY 7, 2017

To All Holders of Contract Documents:

Your attention is directed to the following interpretations of, changes in, and additions to the Contract Documents for the above-referenced project. All bid adjustments caused by the content of the Addendum shall include the cost of materials and labor related to the items herein and for any subsequent adjustments to the contract documents to accommodate the work stated herein.

This Addendum is part of the Contract Documents in accordance with the provisions of the specification section, Information to Bidders. Contractors shall be responsible for the full context of changes, interpretations, and clarifications to both the drawings and specifications and shall take the same into consideration when preparing their bids. Indicate receipt of this Addendum in the space provided within the Proposal.

BID DOCUMENTS

- 1) Please insert the following pages into the bid documents:
 - a) Agreement – pages AG1 – AG12
 - b) Exhibit A – Performance and Other Bonds – 5 pages total
 - c) Exhibit B – Certificates of Insurance – 2 pages total
 - d) Exhibit C – Notice of Award & Notice to Proceed – 3 pages total
 - e) Exhibit D – Identification of Contract Drawings – 2 pages total

END OF ADDENDUM #2

AGREEMENT

AGREEMENT

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the ____ day of _____ in the year 2017 by and between the Town of Skaneateles, hereinafter called (OWNER), and _____, (hereinafter called CONTRACTOR).

OWNER AND CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall perform and complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Construction of approximately 1,790 lineal feet of 8-inch DR-11 HDPE water line, approximately 460 lineal feet of ¾ inch DR-11 HDPE services, and 3 fire hydrants and appurtenances to serve residents along Old Seneca Turnpike in the Town of Skaneateles.

ARTICLE 2 - ENGINEER

The Project has been designed by C&S Engineers, Inc., who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIMES

3.1 The Work shall be substantially complete within 75 calendar days from the date when the Contract Times commence to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within 90 calendar days from the date when the Contract Times commence to run.

3.2 Damages for Delay in Completion

3.2.1 **Engineering Charges:** If the Work is not substantially completed, or is not completed and ready for final payment, within the respective maximum allowable times specified in paragraph 3.1, including any extensions allowed in accordance with Article 12 of the General Conditions, engineering charges incurred by the OWNER after

the aforesaid completion time will be charged to the CONTRACTOR in accordance with section 3.2.2.

3.2.2 Per Diem Charges for Delay: For each calendar day or fraction thereof that expires after the time specified in paragraph 3.1 for Substantial Completion until the work is substantially complete, the Contractor shall pay the owner agreed-upon damages as follows:

Original Contract Amount		Agreed-Upon Damages
From More Than	To and Including	Per Calendar Day
\$ 0	\$ 25,000	\$ 50
\$ 25,000	\$ 50,000	\$ 100
\$ 50,000	\$ 100,000	\$ 200
\$ 100,000	\$ 500,000	\$ 300
\$ 500,000	\$ 2,000,000	\$ 500
\$ 2,000,000	\$ 5,000,000	\$ 600
\$ 5,000,000	\$ 10,000,000	\$ 800
\$ 10,000,000		\$ 1,000

The date of actual Substantial Completion shall be determined as the date of issuance of the Notice of Substantial Completion.

Such sums shall be in addition to any engineering and inspection charges as provided for in paragraph 3.2.1 above and shall not be in the nature of a penalty, but agreed-upon damages to the Owner in such case and shall be a part of the consideration of the Contract. Any sum levied against the Contractor under this Section shall be compensation to the Owner for inconvenience suffered by the public as a result of the Contractor's delay. Both parties hereto understand and agree that time is of the essence and timely performance is part of the consideration of the Contract.

After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER the agreed-upon damages as listed above for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

The sums and charges specified above shall be deducted from moneys due or to become due the Contractor and the amount still owing, if any, shall be paid on demand by the Contractor or the Surety. Such payments shall not relieve the Contractor or the Surety from any other obligation under the Contract.

Before assessing engineering and inspection charges, or per diem charges for damages, the Owner will give due consideration to any and all Supplementary Agreements and Change Orders as well as extenuating circumstances beyond control of the Contractor including any delays due to any preference, priority or allocation order duly issued by the Government. Such charges will be assessed, however, in cases in which the Owner considers the Contractor liable as the result of slow work, inefficient operation,

insufficient labor, equipment or material, the removal and replacement of poor work, or other unwarranted reasons.

ARTICLE 4 - CONTRACT PRICE

4.1 The OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents the amount of the Total Bid Price stated in the CONTRACTOR's Bid Proposal, hereby identified as the Contract Price.

4.2 When unit bid price items are included in the Contract Price, the quantities of various units contained in the Bid Proposal are estimated and payment will be made only for the actual quantities of units that are incorporated in the Work, as determined by the ENGINEER in accordance with paragraph 9.10 of the General Conditions.

ARTICLE 5 - PAYMENT PROCEDURES

5.1 CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions and Article 14 of the Supplementary Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions and Supplementary Conditions.

5.2 **Progress Payments:** OWNER will make monthly progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment, as recommended by ENGINEER during construction. Payments will be on the basis of the progress of the Work measured, by the schedule of values established in paragraph 2.9 of the General Conditions, and in the case of unit price items, on the basis of quantities incorporated in the Work. Payments will be in an amount equal to:

95% of the Work completed (with the balance being retained) and 95% of the value of undamaged materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to OWNER in accordance with paragraph 14.2 of the General Conditions and Supplementary Conditions, less in each case the aggregate of payments previously made, and less such amounts which may be lawfully deducted.

5.3 **Final Payment:** After the Certificate of Substantial Completion has been issued by the ENGINEER, and upon final completion and acceptance of the Work in accordance with paragraph 14.12 and 14.13 of the General and Supplementary Conditions, OWNER will pay an amount sufficient to increase total payments to CONTRACTOR to 100% of the final Contract Price, less retained amounts set forth as the "Final Payment" in accordance with paragraph 14.13 of the Supplementary Conditions.

5.4 **Release of Final Payment:** OWNER shall release retained monies due the CONTRACTOR within 45 days after the date when the requirements for and conditions

associated with the release of such amounts have been met, as provided in paragraphs 14.12 and 14.13 of the General and Supplementary Conditions.

5.5 Withholding of Payments: OWNER may withhold any payment which ENGINEER refuses to recommend as a result of one or more citations made by ENGINEER under paragraph 14.7 of the General Conditions and paragraph 14.7 of the Supplementary Conditions, or because claims have been made against OWNER or Liens have been filed in connection with the Work. OWNER may continue to withhold such payment until said citations have been removed or remedied to ENGINEER's satisfaction or until the claims have been settled and liens discharged to OWNER's satisfaction.

ARTICLE 6 - INTEREST

All moneys not paid when due as provided in Article 14 of the General and Supplementary Conditions shall bear interest at the legally allowable rate at the place of the Project.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In executing this Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 8) and the other related data identified in the Bidding Documents including "technical data".

7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes

responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto: CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

7.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.8 If this Project utilizes multiple prime contracts, the CONTRACTOR has examined the Contract Documents for all prime contracts and has acquired sufficient knowledge of the required work of the other prime contractors to the extent that CONTRACTOR clearly understands his own obligations and responsibilities relative to the other prime contracts.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

8.1 Project Manual

8.1.1 This Agreement (pages AG-1 to AG-10, inclusive).

8.1.2 Exhibits to this Agreement as follows:

- a. Exhibit A; Performance and Other Bonds (pages A-1 to A-4, inclusive).
- b. Exhibit B; Certificates of Insurance.

c. Exhibit C; Notice of Award and Notice to Proceed.

d. Exhibit D; Identification of Contract Drawings (page D-1).

8.1.3 CONTRACTOR's Bid Proposal (pages BP-1 to B-21, inclusive) together with attachments identified at end of Bid Form.

8.1.4 General Conditions as follows:

a. Standard General Conditions of the Construction Contract, pages 1 to 42, inclusive.

8.1.5 Supplementary Conditions, as follows:

a. Supplementary Conditions, pages SC-1 to SC-25, inclusive.

b. Exhibit A1 - "Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative"

c. Exhibit C - "Prevailing Wage Rate Schedule and Labor Regulations"

8.1.6 Specifications consisting of separate Sections individually identified by number, title and numbered pages, as listed in the Table of Contents thereof.

8.1.7 Addenda numbers ___ to ___, inclusive.

8.2 Contract Drawings

8.2.1 Contract Drawings, as identified in Exhibit "D" to this Agreement.

8.3 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER or CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

ARTICLE 10 - SPECIAL PROVISIONS

COMPLIANCE WITH AIR AND WATER ACTS

This agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR 15, as amended from time to time.

In compliance with said regulations, the Municipality shall cause or require to be inserted in full in all contracts and subcontracts with respect to any non-exempt transaction thereunder funded with assistance provided under this Agreement the following requirements:

- A. A stipulation by the contractor or subcontractor that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- B. Agreement by contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 USC 1857 c-8 and Section 308 of the Federal Water Pollution Control Act, as amended, requirements of Section 114 of the Clean Air Act, as amended, 33 USC 1318 relating to inspection, monitoring, entry, reports and information as well as other requirements specified in said Section 114 and Section 308 and all regulations and guidelines issued thereunder.

- C. A stipulation that as a condition for the award of the contractor, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

- D. Agreement by the contractor that he will include or cause to be included the criteria and requirements in Paragraph A. through D. of this section in every non-exempt subcontract and requiring that the contractor will take such action as the United States government may direct as a means of enforcing such provisions. In no event shall any amount of funds provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 309 (c) of the Federal Water Pollution Control Act.

SIGNATURES AND ACKNOWLEDGMENTS

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed five copies of this Agreement. One counterpart each has been delivered to OWNER, OWNER'S COUNSEL, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed, initialed, or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on _____, 2017.

OWNER

CONTRACTOR

Town of Skaneateles

James Lanning, Supervisor

By: _____

By: _____

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

Janet L. Aaron, Town Clerk

24 Jordan Street, Skaneateles, NY 13152

License No. _____

Agent for process:

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)

**STATE OF NEW YORK
COUNTY OF ONONDAGA**

On the _____ day of _____ in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared James Lanning, Supervisor, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

**STATE OF NEW YORK
COUNTY OF ONONDAGA**

On the _____ day of _____ in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that ____ executed the same in _____ capacity, and that by _____ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

EXHIBIT A

PERFORMANCE AND OTHER BONDS

1. Commentary to Accompany Construction Bonds (one page)
2. Construction Performance Bond (Pages A-1 and A-2)
3. Construction Payment Bond (Pages A-3 and A-4)
4. Power of Attorney (to be attached by Surety)

Commentary to Accompany Construction Bonds

A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.

- Construction Performance Bond Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the rewriting of construction bond forms was to make them more understandable and to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of a pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default meetings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds, and there is no reduction in premium for using a combined form or for issuing one bond without the other.

B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state, and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of contract.

To accompany the Construction Performance Bond (EJCDC No. 1910-28A) and the Construction Payment Bond (EJCDC No. 1910-2B)

**ATTACH PERFORAMNCE BOND
TO THIS PAGE**

**ATTACH PAYMENT BOND
TO THIS PAGE**

**ATTACH POWER OF ATTORNEY
TO THIS PAGE**

EXHIBIT B

CERTIFICATES OF INSURANCE

**ATTACH CERTIFICATES OF INSURANCE
TO THIS PAGE**

EXHIBIT C

NOTICE OF AWARD

NOTICE TO PROCEED

NOTICE OF AWARD

Date: _____ Re: Notice of Award: 103.101.003

To: _____ Contract For: Old Seneca Turnpike Water Line

Address: _____ Contract No. 1, Water Line Upgrades

Ladies and Gentlemen:

You are notified that your bid dated, _____ for the above Contract has been considered by the Town of Skaneateles Town Board. You are the apparent successful Bidder and have been awarded a contract for Old Seneca Turnpike Water Line Contract No.1 Water Line Upgrades.

The Contract Price of your contract is:

Five copies, one for OWNER; one for OWNER's Counsel; one for CONTRACTOR; one for ENGINEER and one for County of Onondaga Community Development Division each of the conformed Project Manual, which together with the Drawings constitutes the proposed Contract Documents, will be delivered to you by the Engineer. Each Project Manual will bear the stamp "Conformed Copy". Copies of the Drawings will be delivered separately or otherwise made available to you immediately, as provided in the Instructions to Bidders.

You must comply with the following conditions precedent within fifteen days of the date of receiving the Project Manual from the Engineer:

1. You must execute and deliver to the Owner's Counsel, all copies of the executed counterparts of the Agreement.
2. You must deliver the executed Contract Security (Bonds) as specified in the General Conditions (paragraph 5.1) and Supplementary Conditions (paragraph SC-5.1). The Bond forms are included at the end of the Agreement under Exhibit A.
3. You must deliver with the executed Agreement the required copies of the original insurance policy (No Accords or Certificates of Insurance will be accepted), which are to be attached to Exhibit B. Insurance requirements are specified in Article 5 of the General Conditions and Article 5 of the Supplementary Conditions. **The insurance requirements as specified must be strictly adhered to, any variations in these requirements will not be accepted.**

Upon completion, the above listed items are to be delivered to

Within ten days after you comply with the above conditions, the Owner will return to you one of the executed Project Manuals, which will include the fully signed counterpart of the Agreement and such other attachments as may be required from the Owner.

By: _____

Title: _____

EXHIBIT D

IDENTIFICATION OF CONTRACT DRAWINGS

IDENTIFICATION OF CONTRACT DRAWINGS

The Contract Drawings show the character and scope of the work to be performed and have been prepared or approved by ENGINEER. The drawings, all of which constitute an integral part of the Contract Documents as approved for construction on the date so designated on said drawings, carry the ENGINEER's identifying Job No. 103.101.003 and are listed below by sheet number and title:

<u>SHEET NO.</u>	<u>TITLE</u>
G-001	Title Sheet
C-001	General Plans
C-002	General Notes, Abbreviations & Symbols
C-100	Old Seneca Turnpike Water Line Plan
C-101	Masters Road Water Line Plan
C-501	Details
C-502	Details
C-503	Details