

Seneca Nation of Indians
Contract Specifications
For
Clear Creek Watermain Replacement Project

June 2017



Prepared by:
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Seneca Nation Health System
987 R.C. Hoag Dr.
Salamanca, NY 14779

**Notice to Contractors For
Clear Creek Watermain Replacement Project
On the Cattaraugus Territory of the Seneca Nation**

The project involves horizontally directionally drilling a new creek crossing under Clear Creek and miscellaneous water main work located in the Bucktown Community on Route 438 at Clear Creek on the Cattaraugus Territory.

Bids for the construction of the creek crossing will be received until 10:30 a.m. local time on Thursday July 13, 2017 (and publicly opened and read aloud at 10:30 a.m.) at the office of the Owner (Joel Merrill, P.E.) at the Seneca Nation of Indians Health System at 987 R.C. Hoag Drive, Salamanca NY 14779. This work will be conducted under one prime contract. Each Bid must be made using the **forms provided in the Contract Documents.** **All forms within the Contractor's Bid Proposal portion of the Contract Documents are required to be filled out.** **Minimum Wage Rates shall be as determined by the Davis-Bacon wage rates available at <http://www.wdol.gov/Index.aspx>**

Contract Documents may be reviewed at the Seneca Nation Health Dept, 987 R.C. Hoag Dr., Salamanca, NY 14779. Copies may be obtained at the office of the Owner (Joel Merrill, P.E.):

- Seneca Nation Health System
987 R.C. Hoag Dr.
Salamanca, NY 14779
(716) 945-5894 x5277
- Online at:
<http://www.senecahealth.org/2015/environmental/index.asp>

A pre bid walkthrough is scheduled for Thursday July 6th at 10am, at the project site.

Bids must be submitted in sealed envelopes with the Project Name plainly written on the outside at address above. No Bidder may withdraw his Bid within 45 days after the Bid Opening. The successful Bidder must furnish Performance and Payment Bonds, each in an amount at least equal to the Total Bid, issued by a surety company acceptable to the Seneca Nation of Indians. Bidders are not to include in their Bid, sales and compensating use taxes of the State of New York and of counties or cities on materials, equipment, and supplies to be incorporated into the Project. The Seneca Nation of requires that Bidders certify, under penalty of perjury, that the Bids have been prepared without collusion with other Bidders, subcontractors, suppliers, etc. A certification is included with the Bid Proposal which each Bidder must sign in the space provided.

The Seneca Nation of Indians reserves the right to reject any or all bids offered.

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INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS

Terms used in these Instructions to Bidders, which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1990 Edition), have the meanings assigned to them in the General Conditions. The term "Bidder" means one who submits a Bid directly to Owner, as distinct from a sub-bidder, who submits a bid to a Bidder. The term "Successful Bidder" means the lowest, qualified, responsible and responsive Bidder to whom Owner makes an award. The term "Bidding Documents" includes the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

2. COPIES OF BIDDING DOCUMENTS

2.1 Complete sets of the Bidding Documents stated in the Advertisement or Invitation to Bid may be obtained at the locations stated therein.

2.2 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.3 Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

3. QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days after Bid opening upon Owner's request written evidence, such as financial data, previous experience, present commitments, and other such data as may be called for in the Bid Proposal. Each Bid must contain evidence of Bidder's qualification to do business in the jurisdiction where the Project is located or covenant to obtain such qualification prior to award of the contract.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

4.1 It is the responsibility of each Bidder before submitting a Bid:

4.1.1 To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents (including "technical data" referred to below);

4.1.2 To visit the site to become familiar with and satisfy Bidder as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;

4.1.3 To consider federal and Nation laws and regulations that may affect cost, progress, performance or furnishing of the Work;

4.1.4 To study and carefully correlate Bidder's knowledge and observations with the Contract Documents and such other related data; and

4.1.5 To promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.

4.2 Reference is made to the Supplementary Conditions for identification of:

4.2.1 Those reports of explorations and tests of subsurface conditions at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such reports but not upon other data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

4.2.2 Those drawings of physical conditions in or relating to existing surface and subsurface conditions (except Underground Facilities) which are at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such drawings but not upon other data, interpretations, opinions or information shown or indicated in such drawings or otherwise relating to such structures, nor upon the completeness thereof for the purposes of bidding or construction.

Copies of such reports and drawings have been made available by Owner to any Bidder in the Appendices to the Technical Specifications. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained herein upon which Bidder is entitled to rely as provided in Paragraph 4.2 of the General Conditions has been identified and established in Paragraph SC-4.2 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.3 Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

4.4 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Contract Documents due to differing or unanticipated conditions appear in Paragraphs 4.2 and 4.3 of the General Conditions.

4.5 Before submitting a Bid, each Bidder will be responsible to obtain such additional or 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 or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.6 On request in advance, and after indemnifying Owner from any and all claims of any kind whatsoever arising directly, indirectly, or consequently as a result of Bidder or its representative having access to the site, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.

4.7 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by the Engineer is acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

5. AVAILABILITY OF LANDS FOR WORK, ETC.

5.1 The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

6. INTERPRETATION AND ADDENDA

6.1 All questions about the meaning or intent of the Bidding Documents are to be directed to the Project Manager in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed, sent by facsimile, or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than five (5) days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.

6.3 Failure of a Bidder to receive any Addendum, or to acknowledge receipt thereof, will not relieve such Bidder from conforming with the requirements which such Addendum imposes on his Bid or the Contract Documents, and may subject his Bid to disqualification by Owner.

7. BID SECURITY

7.1 No Bid Security is required for this project

8. CONTRACT TIMES

The number of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the Contract Times) are set forth in the Agreement. Intermediate stages to be completed by prescribed Milestone Dates are also set forth in the Agreement.

9. LIQUIDATED DAMAGES AND ENGINEERING CHARGES

Provisions for liquidated damages, if any, and engineering charges resulting from delay in completion, are set forth in the Agreement.

10. SUBSTITUTE OR "OR-EQUAL" ITEMS

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraphs 6.7.1, 6.7.2 and 6.7.3 of the General Conditions, Supplementary Conditions, and in the General Requirements. Disapproval or rejection of an "or-equal" or substitute by Engineer shall not result in any modification to the Contract amount as originally bid.

11. BID FORMS AND CERTIFICATION

11.1 The Bid forms, certificates, etc., required for preparing a Bid appear in the Contractor's Bid Proposal section of the bound Bidding Documents. All bidders shall utilize the Contractor's Bid Proposal pages in preparing and submitting their Bid. Forms must be completed by printing neatly in black ink.

11.2 Fill in blanks on Page BP-1, including identification of Contract for which a Bid is being submitted, Bidder's Name, and listing of Addenda received by Bidders.

11.3 Fill out the appropriate blanks in the Schedule of Prices by inserting amounts, both in words and in figures, consistent with the Contract for which a Bid is being submitted. Compute and enter Total Bid Price or Prices, as set forth in the Schedule of Prices.

11.4 Bids by corporations must be executed in the corporate name by the President or Vice-President (or other authorized corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

11.5 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear above the signature and the official address of the partnership must be shown below the signature.

11.6 All names must be typed or printed above the signature.

11.7 The address and telephone number for communications regarding the Bid must be shown in the space provided.

11.8 Attach Bid security. Have Surety Company execute attached Statement of Surety's Intent.

11.9 Execute the certifications, assurances or affidavits which are attached to the Bid Form and which are identified therein.

12. SUBMISSION OF BIDS

12.1 Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), and the name and address of the Bidder and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

12.2 The Bid constitutes all elements of the Bid Form and its attachments, as furnished to prospective Bidders, and as amended by applicable Addenda, if any, during the bidding period.

13. MODIFICATION AND WITHDRAWAL OF BIDS

13.1 A Bidder may withdraw his bid where a unilateral error or mistake is discovered in the bid, after a showing of the following:

13.1.1 The mistake is known or made known to the OWNER prior to the awarding of the Contract or within three days after the opening of the bid, whichever period is shorter; and

13.1.2 The price bid was based on an error of such magnitude that enforcement would be unconscionable; and

13.1.3 The bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and

13.1.4 The error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the bid, which can be shown by objective inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and

13.1.5 It is possible to place the OWNER in status quo ante; the same position he enjoyed prior to bid.

13.2 The sole remedy for a bid mistake shall be withdrawal of the bid and the return of the bid bond or other security, if any, to the Bidder. Thereafter, the OWNER may, in its discretion award the Contract to the next lowest bidder or rebid to Contract.

14. OPENING OF BIDS

14.1 Bids will be opened as indicated in the Advertisement or Invitation to Bid. Only the total bid prices and major alternate prices will be read aloud.

15. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

15.1 All Bids will remain subject to acceptance for forty-five days after the day of Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

16. AWARD OF CONTRACT

16.1 Owner reserves the right to reject any and all Bids, including without limitation, the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bid and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work and Award a Contract to the Successful Bidder. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words. Bids containing incomplete or no price information for any Bid item which thus prevents evaluation of the extended total for that Bid item will be rejected.

16.2 In evaluating Bids, Owner will consider the qualifications of the Bidders, compliance with the Tribal Employment Rights Ordinance (“TERO”), whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

16.3 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

16.4 If the Contract is to be awarded, it will be awarded to the responsible Bidder who submits the lowest Bid Price, consistent with TERO, and whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project.

16.5 If the Contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within forty-five days after the day of the bid opening.

17. CONTRACT SECURITY

17.1 Paragraphs 5.1 of the General Conditions and the Supplementary Conditions set forth Owner's requirements as to Performance and Payment Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required Performance and Payment Bonds for the full amount of the Contract Price.

17.2 Article 5 of the General Conditions and the Supplementary Conditions set forth the Owner's requirements as to the types and extent of insurance coverage's which are to be furnished and maintained by the Contractor. When the Successful Bidder delivers the executed Agreement to Owner, the required Certificate of Insurance shall be submitted at that time.

18. SIGNING OF AGREEMENT

18.1 The required number of the unsigned counterparts of the Agreement, together with attached Contract Documents, will be forwarded to the Successful Bidder following issuance of the Notice of Award. Within fifteen days thereafter, the Contractor shall sign and deliver to the Owner all counterparts of the Agreement, together with attached Contract Documents, the required Contract Security, and duly executed acknowledgement of signatures. Within ten days thereafter, provided that signatures are in order and Contract Security is acceptable, Owner will sign all counterparts of the Agreement, including duly executed acknowledgment of signature, and return one executed copy thereof to Contractor with attached Contract Documents. Each counterpart is to be accompanied by a complete set of Drawings with appropriate identification.

19. COPIES OF DOCUMENTS

19.1 Paragraph 2.2 of the Supplementary Conditions identifies the number of copies of Contract Documents which OWNER will furnish to CONTRACTOR and the way for CONTRACTOR to obtain additional copies.

Additional copies of Contract Documents may be purchased at ENGINEER's normal rates for reproduction.

20. PRE-BID CONFERENCE

20.1 A pre-bid conference will be held if indicated in the Advertisement. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

21. SALES AND USE TAXES

21.1 Owner is exempt from State and County Sales and Use Taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Contract Price. Refer to Supplementary Conditions; paragraph SC-6.15 for additional information.

22. NOT USED

23. IDENTITY OF SUBCONTRACTORS AND SUPPLIERS

23.1 The identity of certain subcontractors, suppliers, and other person and organizations (including those who are to furnish the principal items of material and equipment) is to be submitted to Owner in advance of the specified date prior to the Effective Date of the Agreement. Therefore, the apparent Successful Bidder and any other Bidder so requested, shall within seven days after the Bid opening, submit to Owner a list of such subcontractors, suppliers, and other persons and organizations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each subcontractor, supplier, person or organization if requested by Owner.

24. EQUAL OPPORTUNITY

24.1 The Successful Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap or national origin. The Successful Bidder will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, handicap or national origin. Such action shall include but not be limited to, employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Successful Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non discrimination clause.

24.2 The Successful Bidder will state in all solicitations or advertisements for employees placed by or on behalf of the Bidder that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, age, sex, marital status, national origin, ancestry, present or past history of mental disorder, mental retardation or physical disability, including, but not limited to, blindness.

24.3 The Successful Bidder will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Successful Bidder's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

25. NATIVE AMERICAN UTILIZATION POLICY

25.1 The Successful Bidder shall acknowledge by the Seneca Nation of Indians Tribal Employment Rights Ordinance (“TERO”). Each Bidder will be required to maximize their efforts to involve Native American owned firms as well as Native American trade persons in each phase of the Project and to be bound by and fully comply with TERO and any amendments or modifications thereto, including but not limited to any actions taken by the Seneca Nation of Indians pursuant to TERO.

26. TRIBAL HISTORIC PRESERVATION POLICY

26.1 The Seneca Nation adheres to the Seneca Nation of Indians Tribal Historic Preservation Officer Policies and Procedures (“THPO”), a copy of which will have been furnished to the Successful Bidder. Bidder agrees that the Nation’s THPO will be incorporated in all contracts pertaining to the construction of the Project. The Successful Bidder, including its employees, Subcontractors, agents, material men and vendors, will be required to comply with the requirements of THPO, including strict adherence to THPO protocol in the event of the discovery of human remains and associated funerary objects.

27. CONFIDENTIALITY

Successful Bidder shall not disclose to third parties technical or other information disclosed by Owner or Owner’s agents or authorized representatives to Successful Bidder during performance of construction Work by Successful Bidder provided such information is not in the possession of Successful Bidder at the time of disclosure, or is not then and does not become a part of the public knowledge or literature. Technical Information includes all drawings, specifications, notes, letters, verbal communications, and any information relating to the product, process, or Project name. Successful Bidder represents that all technical and administrative employees of Successful Bidder have signed confidentiality agreements with Successful Bidder which bind them to observe this confidentiality requirement. If in the performance of Work for Owner, it is necessary for Successful Bidder to disclose confidential information to third parties, such disclosure shall be made only after prior written approval by Owner and Successful Bidder shall require such third parties to sign similar confidentiality agreements.

28. EXTRA-NATION COMMUNICATIONS

28.1 The Successful Bidder acknowledges the sovereignty of the Seneca Nation of Indians as separate and apart from the United States and state and local governments. The Successful Bidder shall not communicate in any way, directly or indirectly, with any federal, state or local government or other instrumentality relating to any matter related to the Project, including but not limited to the Bidding Documents, except to the extent the Successful Bidder has received the prior written authorization of Owner. This prohibition is intended to and shall extend to all those acting through or under the Successful Bidder, including but not limited to the Successful Bidder's employees, Subcontractors, agents, material men and vendors. Notwithstanding any other provision of these Instructions, if the Successful Bidder, or its employees, Subcontractors, agents, material men and vendors, fail to comply with this prohibition regarding extra-Nation communications, Owner shall have the right to immediately terminate the Contract and pursue any and all other rights available at law or in equity.

29. SALVAGEABLE MATERIALS

29.1 Owner shall have the right of first refusal to any salvageable materials removed from the Project site, including to but not limited to any steel, copper and scrap iron. Successful Bidder shall inform Owner at least one week prior to the expected date(s) of availability of any such salvageable materials.

CONTRACTOR'S BID PROPOSAL
Clear Creek Watermain Replacement Project

This Bid is submitted to the Seneca Nation of Indians

By: _____
(Name of Bidder)

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Times included in this Bid and the Agreement, respectively, and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for forty-five days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of OWNER's Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:
 - (a) BIDDER has examined and carefully studied the Bidding Documents and the following Addenda, receipt of all which is hereby acknowledged:

Date	Number
_____	_____
_____	_____
_____	_____
_____	_____

- (b) BIDDER 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 and furnishing of the Work.
 - (c) BIDDER is familiar with and is satisfied as to all federal and Nation regulations that may affect cost, performance and furnishing of the Work.
 - (d) BIDDER acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the

Bidding Documents with respect to Underground Facilities at or contiguous to the site. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or 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 BIDDER and safety precautions and programs incident thereto. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.

- (e) BIDDER is aware of the general nature of Work to be performed by OWNER and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
- (f) BIDDER has correlated the information known to BIDDER, 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.
- (g) BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which the Bid is submitted.
- (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

4. (a) BIDDER will complete the Work for the prices entered in the Schedule of Bid Items which follows.
 - (b) The BIDDER has included the cost of all Work described in the Contract Documents and if any Work is not listed in the Bid Item Descriptions, the BIDDER has included the cost in the Bid Item under which it most logically ought to have been included.
 - (c) Unit Prices have been computed in accordance with paragraph 11.9.2 of the General Conditions. BIDDER acknowledges that quantities are not guaranteed and final payment will be based on actual quantities determined as provided in the Contract Documents.
5. BIDDER agrees that the Work will be completed within the time periods stipulated in the Agreement from the date when the Contract Time commences to run as provided in paragraph 2.3 of the General and Supplementary Conditions.

BIDDER accepts the provisions of the Agreement as to Engineering Charges for Delays in Completion and provisions for Liquidated Damages, if any, and other definable damages, if any in the event of failure to complete the Work on time.

Cattaraugus Pump Stations Improvements Project

6. BIDDER and his surety, where appropriate, have completed and executed the following documents which are attached to and made a condition of this Bid:

- (a) Required BIDDERS's Qualification Statement with supporting data.
- (b) Non-Collusive Bidding Certification
- (c) Statement of Surety's Intent

7. Communications concerning this Bid shall be addressed to:

The address of BIDDER indicated below.

The following address: _____

8. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

THIS BID SUBMITTED ON _____, 20____.

Clear Creek Watermain Replacement Project

9. Signature of BIDDER and other appropriate information, if BIDDER is:

AN INDIVIDUAL

By: _____
(SEAL)

(Individual's Typed or Printed Name)

(Signature)

doing business as _____

Business address: _____

Phone No.: _____

A PARTNERSHIP

By: _____
(SEAL)

(Firm Name)

(Partner's Typed or Printed Name)

(Signature)

Business address: _____

Phone No.: _____

A CORPORATION

By: _____
(Corporation Name)

(State of Incorporation)

By: _____
(Typed or Printed Name & Title of Person Authorized to Sign)

(Signature)

(Corporate Seal)

Attest: _____
(Secretary)

Business Address: _____

Phone No.: _____

A JOINT VENTURE

By: _____
(Typed or Printed Name)

(Signature)

(Address)

By: _____
(Typed or Printed Name)

(Signature)

(Address)

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be as indicated above.)

ATTACHMENTS

BIDDER and his surety, where appropriate, have completed and executed the attached documents which are identified below.

BASE BID FORM

BIDDER'S QUALIFICATION STATEMENT

NON-COLLUSIVE BIDDING CERTIFICATION

STATEMENT OF SURETY'S INTENT

BASE BID

CLEAR CREEK WATERMAIN REPLACEMENT PROJECT

CONTRACTOR NAME: _____

ITEM NO.	ESTIMATED QUANTITIES	UNITS	ITEMS WITH LUMP SUM BID PRICES WRITTEN IN WORDS	AMOUNT BID (DOLLAS/CENTS)
1	1	LS	Clear Creek Watermain Replacement Project, lump sum price of: _____ _____	\$ _____

- Note:
- 1.) Amounts are to be shown on both words and figures. In the event of a discrepancy, the amount(s) shown in words shall govern.
 - 2.) The bidder's attention is called to the fact that the OWNER reserves the right to reject any and all bids received. Also, the OWNER reserves the right to compare bids on the basis of available funding. In addition, the OWNER reserves the right to negotiate time schedules for construction based on the work qualifications of the successful bidder.

BIDDER'S QUALIFICATION STATEMENT

To induce the making of this Contract, the Bidder represents to the Owner the following, as evidence of Bidder's Qualifications to perform the work herein specified:

1. How many years has your organization been in business under the name in which you propose to execute this Contract?
_____ Years
2. What projects of character similar to that proposed has your present organization completed? Give the information indicated by the following tabulations.

Name, Address, and Phone No. of Owner for whom work was done	Description of Work	Approximate Amount of Contract	Approximate Date Work was done

3. Has your present organization ever failed to complete any work awarded to it? If so, state when, where and why. _____

4. Do you have, or can you procure the necessary personnel, equipment, facilities and financial resources to immediately undertake and satisfactorily complete the work contemplated in this Contract? _____

NON-COLLUSIVE BIDDING CERTIFICATION

BY SUBMISSION OF THIS BID OR PROPOSAL, THE BIDDER CERTIFIES THAT:

1. This bid or proposal has been independently arrived at without collusion with any other bidder or with any other competitor or potential competitor.
2. This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids or proposals for this project, to any other bidder, competitor or potential competitor.
3. No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal.
4. The person signing this bid or proposal certifies that he/she fully informed himself/herself regarding the accuracy of the statements contained in this certification, and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as to the person signing in its behalf.

Bidder

By: _____
Signature

Print Name

Title

Date: _____

Statement of Surety's Intent

To the Seneca Nation of Indians (Owner):

We have reviewed the Bid of _____
(Contractor)

of _____
(Address)

for the construction of Cattaraugus Pump Stations Improvements Project, Bids for which will be received on _____
(*bid opening date*)

and wish to advise that should this Bid of the Contractor be accepted and the Contract awarded to him, it is our present intention to become surety on the performance bond and the payment bond required by the Contract.

Any arrangement for the bonds required by the Contract is a matter between the Contractor and ourselves and we assume no liability to you or third parties if for any reason we do not execute the requisite bonds.

We are duly authorized to do business in the State of _____

Attest:

Surety's Authorized Signature(s)

Attach Power of Attorney

(Corporate seal if any. If no seal, write "No Seal" across this place and sign.)

(This form must be completed prior to submission of the bid)

Agreement



AGREEMENT

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the ____ day of _____ in the year 20__ by and between the Seneca Nation of Indians (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:

Clear Creek Watermain Replacement Project on the Cattaraugus Territory.

ARTICLE 2 - ENGINEER

The Project has been designed by Seneca Nation Health Engineer who is hereinafter called ENGINEER, 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 Time is of the essence of this agreement. The Work shall be substantially complete within 45 calendar days* from the date when the Contract Times commence to run as provided in paragraph 2.3 of the General and Supplementary Conditions.

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 addition to the total amount of liquidated damages and other definable damages to be assessed pursuant to paragraphs 3.2.2 and 3.2.3 below and deducted from monies owed the CONTRACTOR. The amount will be determined by OWNER, based on ENGINEER's accounting records and fee invoices submitted to OWNER for services rendered by ENGINEER under Article 9 of the General Conditions during the applicable time periods.

3.2.2 Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence in this Agreement, and that OWNER will suffer financial loss in addition to extra engineering costs if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER five-hundred dollars (\$500) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete, plus any engineering charges assessed pursuant to paragraph 3.2.1 above.

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 five-hundred dollars (\$500) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

The calculated amounts of liquidated damages will be deducted from payments made to CONTRACTOR beginning with the payment period within which liquidated damages have begun. However, at his option, OWNER may deduct the total amount of such damages from CONTRACTOR's final payment.

Other Definable Damages: CONTRACTOR agrees that, to the extent that fines may be imposed on OWNER by any governmental authorities due to missed completion dates, water quality violations, the cost of which cannot be known at the outset of the project, but will be easily determined at the time they are incurred, and such fines are imposed on OWNER due to CONTRACTOR's failure to meet contract requirements, CONTRACTOR shall pay OWNER the actual cost of such fines imposed.

ARTICLE 4 - CONTRACT PRICE

- 4.1 The OWNER will pay CONTRACTOR for completion of the Work in accordance with the Contract Documents the amount of the Bid Price stated in the CONTRACTOR's Bid Proposal, attached hereto as Attachment 1, 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 and Supplementary 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 90% of the Work completed (with the balance being retained) and 90% 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. At such time as the Project is deemed by OWNER to be ninety percent (90%) complete, OWNER shall, in accordance with the payment terms set forth in the Contract Documents, pay to CONTRACTOR an amount equal to fifty percent (50%) of the full amount of retainage withheld by OWNER to date, and thereafter the amount to be withheld from each payment (other than the final payment) due hereunder shall be five percent (5%), rather than ten percent (10%). At the time of final payment, OWNER shall pay to CONTRACTOR the full amount of the retainage withheld by OWNER to date, less an amount equal to two percent (2%) of the Contract price. OWNER shall release the full amount of any retainage held by the OWNER at the later of the expiration of the correction period or any correction period extension as described in Section 13.12 of the General and Supplementary Conditions.
- 5.3 Payment After Substantial Completion: Once the project is deemed substantially complete in accordance with paragraph 14.8 of the General Conditions, OWNER will

pay as its next progress payment to CONTRACTOR an amount sufficient to increase total payments to CONTRACTOR to 100% of the final Contract price, less two percent (2%) of such Contract price to be held as a retainage through the correction period as described in paragraph 5.2; less a retained amount which shall equal two times the dollar value of any work remaining to be completed, as determined by ENGINEER and agreed to by OWNER; less retained amounts necessary to satisfy any claims, liens or judgments against the CONTRACTOR which have not been suitably discharged; less amounts previously paid the CONTRACTOR; and less any other sums which may be lawfully deducted, the net retained amount being termed the "Final Payment", all in accordance with paragraph 14.8.1 of the Supplementary Conditions.

- 5.4 Release of Final Payment: OWNER will release retained monies due the CONTRACTOR, except for the retainage to be held by OWNER during the correction period pursuant to paragraph 5.2, 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 - (NOT USED)

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 applicable federal, state and Nation 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.

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, Notice to Proceed.

8.1.3 CONTRACTOR's Bid Proposal (Attachment 1).

8.1.4 General Conditions, consisting of the 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-26, inclusive.

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

8.2 Contract Drawings, as Identified on the Cover Drawing titled: Clear Creek Watermain Replacement Project

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 Except as otherwise provided under this paragraph 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. Notwithstanding the foregoing, OWNER may, without consent of CONTRACTOR, assign this Agreement to the Nation, or any other instrumentality or department of the Nation, upon written notice to the CONTRACTOR, if the assignee assumes OWNER's rights and obligations under the Contract Documents. CONTRACTOR shall execute all consents reasonably required to facilitate such assignment.

- 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.

SIGNATURES AND ACKNOWLEDGMENTS

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, 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 _____, 20__.

OWNER

CONTRACTOR

By: _____

By: _____

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

(Attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement.)

License No. _____

Agent for process:

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

SIGNATURES AND ACKNOWLEDGMENTS

(ACKNOWLEDGMENT OF CONTRACTOR, IF A CORPORATION)

STATE OF _____)
)ss:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came and appeared _____ to me known, who, being by me duly sworn, did depose and say that he resides at _____ that he is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the impressions affixed to said instrument is an impression of such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

(SEAL)

* * * * *

(ACKNOWLEDGMENT OF CONTRACTOR, IF A PARTNERSHIP)

STATE OF _____)
)ss:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came and appeared _____ to me known and known to me to be one of the members of the firm of _____ described in and who executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of said firm.

(SEAL)

SIGNATURES AND ACKNOWLEDGMENTS

(ACKNOWLEDGMENT OF CONTRACTOR, IF AN INDIVIDUAL)

STATE OF _____)
) ss:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____ who resides in _____, to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

(SEAL)

Notary Public

* * * * *

(ACKNOWLEDGMENT OF OFFICER OF OWNER)

STATE OF _____)
) ss:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came and appeared _____ to me known, who, being duly sworn, did depose and say that he is the _____ of the _____ described in, and which executed the foregoing instrument, that he knows the seal of said OWNER; that one of the impressions appearing on said instrument is a true and correct impression of such seal; and that he affixed it thereto and attested the same over his signature by virtue of authority in him vested.

(SEAL)

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)

Construction Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: _____ **(Corp. Seal)**

Signature: _____
Name and Title:

SURETY

Company: _____ **(Corp. Seal)**

Signature: _____
Name and Title:

CONTRACTOR AS PRINCIPAL

Company: _____ **(Corp. Seal)**

Signature: _____
Name and Title:

SURETY

Company: _____ **(Corp. Seal)**

Signature: _____
Name and Title:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - 3.1. The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2. The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1. Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or
 - 4.2. Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1. The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 6.2. Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3. Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a security bond and not as a common law bond.
12. Definitions.
 - 12.1. Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 12.2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3. Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
 - 12.4. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

Construction Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company:

(Corp. Seal)

Signature: _____
Name and Title:

SURETY

Company:

(Corp. Seal)

Signature: _____
Name and Title:

CONTRACTOR AS PRINCIPAL

Company:

(Corp. Seal)

Signature: _____
Name and Title:

SURETY

Company:

(Corp. Seal)

Signature: _____
Name and Title:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2. Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1. Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2. Claimants who do not have a direct contract with the Contractor:

1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1. Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2. Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract

and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4, or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

15.1. **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2. **Construction Contract:** The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3. **Owner Default:** Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

EXHIBIT B

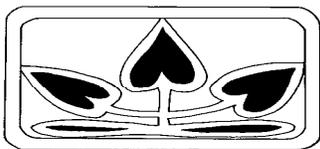
CERTIFICATE OF INSURANCE

**ATTACH CERTIFICATES OF INSURANCE
TO THIS PAGE**

EXHIBIT C

SAMPLE NOTICE OF INTENT TO AWARD

SAMPLE NOTICE TO PROCEED



The Seneca Nation of Indians

HEALTH DEPARTMENT

Please reply to:

Joel A. Merrill, P.E.
Lionel R. John Health Center
987 R.C. Hoag Dr.
Salamanca, New York 14779

Telephone (716) 945-5894 x5277
Fax (716) 945-5889
Email: joel.merrill@senecahealth.org

NOTICE OF INTENT TO AWARD

Date: _____

Re: Owner's Contract No.: _____

To: _____

Contract For: Cattaraugus Pump
Stations Improvements Project

Address: _____

Gentlemen:

You are notified that your Bid dated _____, 20__, for the above Contract has been considered. You are the apparent successful Bidder and are being considered for award of a contract for _____

The Contract Price of your contract is _____ Dollars (\$ _____).

Four (4) copies (1 for OWNER; 1 for OWNER's Counsel; 1 for CONTRACTOR; 1 for ENGINEER) each of the conformed Project Manual, which together with the Drawings constitutes the proposed Contract Documents, will be delivered to you. Copies of the Drawings will be delivered separately or otherwise made available to you promptly, 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:

1. You must execute and deliver to the Owner 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 Certificates of Insurance, 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.

Failure to comply with these conditions within the time specified will entitle Owner to consider your bid abandoned, to annul this Notice of Intent to Award and to declare your Bid Security forfeited.

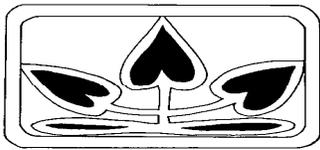
Within ten days after you comply with the above conditions, the Owner intends to return to you one of the executed Project Manuals, which will include the fully signed counterpart of the Agreement and such other attachments as may be required from the Owner.

OWNER: _____

By: _____
(Authorized Signature)

Copy to Engineer

Title: _____



HEALTH DEPARTMENT

Please reply to:

Joel A. Merrill, P.E.
Lionel R. John Health Center
987 R.C. Hoag Dr.
Salamanca, New York 14779

Telephone (716) 945-5894 x5277
Fax (716) 945-5889
Email: joel.merrill@senecahealth.org

NOTICE TO PROCEED, SUSPEND, OR RESUME WORK ORDER

Date issued: _____

Re: Owner's Contract No.: _____

Contract For: Cattaraugus Pump
Stations Improvements Project

To: _____

Address: _____

THIS IS YOUR NOTICE TO PROCEED, SUSPEND, OR RESUME WORK ON THE CONTRACT AS NOTED

_____ NOTICE TO PROCEED

THIS IS YOUR NOTICE TO PROCEED WITH THE WORK ON THE ABOVE CONTRACT FOR THE FOLLOWING ITEMS: _____

THE TIME OF THE CONTRACT WILL START AT THE BEGINNING OF BUSINESS ON _____

SUSPENSION OF WORK

YOUR ARE TO SUSPEND WORK FOR THE FOLLOWING REASONS: _____

EFFECTIVE CLOSE OF BUSINESS _____ ITEM NUMBERS _____

TYPE OF SUSPENSION: _____ TOTAL _____ PARTIAL

_____ NO CHARGE WILL BE MADE AGAINST CONTRACT TIME FOR PERIOD OF SUSPENSION

_____ FULL COUNT OF CONTRACT TIME WILL CONTINUE

_____ AN EQUITABLE ADJUSTMENT OF CONTRACT TIME WILL BE MADE FOR THE PERIOD OF THE PARTIAL SUSPENSION UPON RESUMPTION OF WORK.

DO NOT RESUME WORK UNTIL YOU ARE NOTIFIED TO DO SO IN WRITING

_____ RESUMPTION OF WORK

ITEM NUMBERS ____ . EFFECTIVE BEGINNING OF BUSINESS _____ .

TIME CHARGED DURING PERIOD OF PARTIAL SUSPENSION _____ CALENDAR DAYS

SIGNATURE: _____ TITLE: _____ DATE: _____

PLEASE ACKNOWLEDGE RECEIPT BY RETURNING SIGNED COPY

SIGNATURE: _____ TITLE: _____ DATE: _____