



TOWN OF NORTH CASTLE

WATER & SEWER DEPARTMENT

15 Business Park Drive
Armonk, New York 10504

www.northcastleny.com

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Member

American Water Works Association

N.Y. Rural Water Association

N.Y. Water Environment Association

Westchester Water Works Conference

Sal Misiti

Director of Water & Sewer Operations

smisiti@northcastleny.com

watersewer@northcastleny.com

MEMORANDUM

To: Supervisor Schiliro & North Castle Town Board

From: Sal Misiti

Date: March 5, 2015

Cc: Joan Goldberg, Town Administrator

Re: North Castle Water District No.2
Distribution System Replacement Project
Bilotta Construction Corporation Change Order No.3

The following is a request for authorization of Change Order No.3 to Bilotta Construction Corporation. This includes a change to the contract requiring additional fill for unstable trenches in areas throughout the entire project for work completed thus far and the remainder of the construction. The change adds \$150,000 to the initial contract, this change order results from a settlement negotiated as a result of Bilotta's filing of a Notice of Claim which has effectively been withdrawn.

Our consultants for the project GHD Engineering have reviewed the attached documentation and approved and signed the change in the contract requirements. The documents have also been signed by the contractor.

I have reviewed the attached documentation. I concur with our consultant and hereby respectfully request that the Board approve Change Order No.3 and authorize the Supervisor to sign the documents.

Cc: Joseph Awald, P.E., GHD

SM:sm

Attachment

WD2Dist.Sys.Bilotta.changeorder3.doc

SETTLEMENT AGREEMENT

Agreement made this day of April, 2015, by and between The Town of North Castle, 15 Bedford Road, Armonk, New York, 10504 ("Town") and Bilotta Construction Corp., 296 Purchase Street, Rye, New York 10580 ("Bilotta").

WHEREAS, on or about July 11, 2014, the Town and Bilotta entered into a written agreement for Water District No. 2, Distribution System Replacement, Contract No. 1 – General ("Contract 1");

WHEREAS, claims and disputes arose between the Town and Bilotta in connection with Contract 1;

WHEREAS, on or about December 31, 2014, Bilotta served a Verified Notice of Claim on the Town, ("Notice of Claim"), a copy of which is attached hereto as Exhibit "A";

WHEREAS, the Town and Bilotta desire to settle the claims and disputes set forth in the Notice of Claim;

NOW THEREFORE, the parties hereto intending to be legally bound hereby, in consideration of the mutual promises hereinafter stated, agree as follows:

1. The Town will pay Bilotta a total amount of \$12,000.00 for installing the 4" Water Meter Pit. Bilotta will include this work on its application for payment and will bill for the work when the work is performed.

2. The Town will pay Bilotta a total amount of \$150,000 for performance of the work on Change Order No. 3, a copy of which is attached hereto as Exhibit "B". The parties agree that half of the work has already been performed, so that upon approval of this settlement agreement by the Town, Bilotta will submit a payment application for half

of the value of the work (\$75,000.00) and the Town will pay Bilotta that amount.

Thereafter, for the balance of the work on Change Order #3, Bilotta will include the work performed on its future payment applications. The Town will hold back 5% as retainage for the work performed on Change Order No. 3.

3. The dispute and claims noted in the Notice of Claim under paragraphs designated "A)" (4" Water Meter Pit), and "B)" (addition excavation and backfill due to subsurface soil and bolder conditions encountered), are hereby released by Bilotta; except that Bilotta does not release the Town with respect to its obligations to pay Bilotta in accordance with this settlement agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day, month and year first above written.

THE TOWN OF NORTH CASTLE



(Authorized Signature)

BILOTTA CONSTRUCTION CORP.


Joseph Bilotta, President

In the Matter of the Claims of

BILOTTA CONSTRUCTION CORP.

-against-

THE TOWN OF NORTH CASTLE

**VERIFIED NOTICE
OF CLAIM**

RECEIVED

DEC 3 2014

TOWN OF NORTH CASTLE, N.Y.
CLERK OF THE TOWN

To: Anne Curran
Clerk of the Town of North Castle
15 Bedford Road
Armonk, New York 10504

PLEASE TAKE NOTICE, that the claims of Bilotta Construction Corp., a corporation duly organized and existing under the laws of the State of New York, maintaining a principal place of business at 296 Purchase Street, Rye, New York 10580 is herewith presented to you under and pursuant to Town Law §65(3) for damages resulting from breaches of an agreement entered into between the Town of North Castle (hereinafter "Town") and Bilotta Construction Corp. (hereinafter "Claimant"), whereby Claimant agreed to furnish certain labor and materials in connection with the Water District No. 2 Distribution System Replacement, Contract No. 1 – General (the "Project"). The said agreement was entered into on or about July 11, 2014.

The name and post office address of Claimant's attorney is: Welby, Brady & Greenblatt, LLP, 11 Martine Avenue, 15th Floor, White Plains, New York 10606.

That the nature of the claims against the Town, include the following:

A) Pursuant to Addendum No. 1 to the aforementioned Contract No. 1, the Town deleted the basis for the Claimant to make application for and receive payment for providing 4" Meter Pits. Addendum No. 1 provided (in relevant part), "Bid Item B-30. REVISE the title of the Bid Item to be 'Meter Pits (1" Service)". Prior to the issuance of

Addendum No. 1, Bid Item B-30 was not limited to Meter Pits for 1" Service.

Addendum No. 1 provided no means for Claimant to include unit pricing for larger Meter Pits for 4" Service. As a result of not having a unit price for 4" Meter Pits, Claimant is not able apply for payment for the work to provide 4" Meter Pits. By reason of the foregoing, the Claimant suffered damages, which are not fully ascertainable, but are reasonably estimated to be in the amount of at least \$14,500.00.

B) Claimant was and still is being forced to perform additional excavation and to furnish and install excessive amounts of backfill material due to subsurface conditions at the Project site that differ materially from the information provided by the Town at the time of bid. Claimant, as a reasonably prudent bidder, in assessing the information provided by the Town at the time of bid, relied upon that information. Claimant actually encountered subsurface soil and bolder conditions which were not ascertainable at the time of bid, which caused the trenches to cave in. Both of these conditions caused Claimant to excavate trenches significantly wider than Claimant expected from the information the Town represented was sufficiently accurate for Claimant to provide pricing for the work. Claimant also encountered rock conditions where the rock broke back a considerable distance beyond the designated trench limits. These conditions, which were not ascertainable at the time of bid, resulted in additional excavation for the pipe trenches and for furnishing and installing various selected backfill materials. The information provided by the Town was misleading and inaccurate, causing Claimant to perform unanticipated additional work. By reason of the foregoing, the Claimant suffered damages, which are not fully ascertainable at this time, but which are reasonably estimated to be in the amount of at least \$480,000.00.

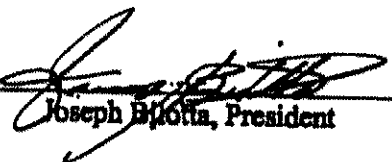
C) Claimant's work is still on-going. Accordingly, Claimant reserves the right to modify its Notice of Claim to include additional items of claim that are not yet known to Claimant, but which may arise as Claimant's work is performed.

WHEREFORE, claimant Bilotta Construction Corp. is due and owing an amount which is not yet fully ascertainable, but is reasonably estimated at this time to be in the amount of \$494,500.00, and claim is hereby made and presented for payment from the Town of North Castle.

Dated: Rye, New York
December 29, 2014

BILOTTA CONSTRUCTION CORP.

By:


Joseph Bilotta, President

CORPORATE VERIFICATION

State of New York)
) ss.:
County of Westchester)

JOSEPH BILOTTA, being duly sworn, deposes and says:

Deponent is the President of Bilotta Construction Corp., the claimant herein. Deponent has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein alleged upon information and belief, and those matters deponent believes to be true. The grounds of deponent's belief as to all matters not stated upon deponent's own knowledge are as follows: Records of Bilotta Construction Corp. pertaining to the Project and conversations with employees of Bilotta Construction Corp.


Joseph Bilotta

Sworn to before me this
29 day of December 2014


NOTARY PUBLIC

PATRICIA A. CONDON
Notary Public, State of New York
No. 01CO4974019
Qualified in Westchester County
Commission Expires November 5, 2018

Change Order No. 3

Date of Issuance: <u>February 12, 2015</u>	Effective Date: <u>February 12, 2015</u>
Project: Water District No. 2: Water Distribution System Replacement	Owner: Town of North Castle, NY
Contract: 1 - General	Owner's Contract No.: 1 - General
Contractor: Bilotta Construction Corporation	Date of Contract: July 11, 2014 (NTP)
Engineer's Project No.: 8616265.23.1	
The Contract Documents are modified as follows upon execution of this Change Order:	
Description: See Attachment A for detailed description.	

Attachments (list documents supporting change):
Attachment A

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: \$9,935,194.00	Original Contract Times: <input type="checkbox"/> Working days <input checked="" type="checkbox"/> Calendar days Substantial completion (days or date): <u>380</u> Ready for final payment (days or date): <u>400</u>
[Increase] [Decrease] from previously approved Change Orders No. 1 to No. 2: \$15,550.00	[Increase] [Decrease] from previously approved Change Orders No. 1 to No. 2: Substantial completion (days): <u>0</u> Ready for final payment (days): <u>0</u>
Contract Price prior to this Change Order: \$9,948,644.00	Contract Times prior to this Change Order: Substantial completion (days or date): <u>380</u> Ready for final payment (days or date): <u>400</u>
[Increase] [Decrease] of this Change Order: \$150,000.00	[Increase] [Decrease] of this Change Order: Substantial completion (days or date): <u>0</u> Ready for final payment (days or date): <u>0</u>
Contract Price incorporating this Change Order: \$10,098,644.00	Contract Times with all approved Change Orders: Substantial completion (days or date): <u>380</u> Ready for final payment (days or date): <u>400</u>

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u>[Signature]</u>	By: _____	By: <u>[Signature]</u>
Engineer (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized)
Date: <u>2/12/15</u>	Date: _____	Date: <u>2-19-2015</u>

Approved by Funding Agency (if applicable):

Date: _____

EXHIBIT "B"



Attachment A

Change Order No. 3

**WATER DISTRIBUTION SYSTEM REPLACEMENT
CONTRACT NO. 1 - GENERAL
TOWN OF NORTH CASTLE WATER DISTRICT NO. 2
GHD NO. 8818265.23.1**

Additional Work Items (Bid Item A-1):

Lump sum compensation for additional excavation and backfill, for all pipe, fittings, hydrants, services, and appurtenant work, added to Bid Item A-1; General Construction. This compensation shall be paid out based on a percentage complete of total linear foot of 8-inch and 6-inch diameter water main installed, tested, accepted, and in service.

Change in Work Scope:

Use of on-site materials for trench backfill, not including pipe bedding and road subbase, in lieu of Select Backfill beneath the roadway.

Use of On-site Materials Requirements

1. Type A, Excavated Material - Material under this classification shall be derived solely from excavations necessary to construct the project to the lines and grades specified. If the excavated material on-site is approved for reuse and is suitable, it shall be used for filling or backfilling purposes.
 - A. Type A-1 - Referred to as "excavated material" and from which all frozen material, boulders, trash and foreign debris greater than 6 inches in any dimension has been removed. Approved Type A-1 material shall be used for all backfilling except under structures.
 - B. Type A-2 - Referred to as "select excavated material" and from which all frozen material, humus, peat, roots, vegetation, ashes, trash, debris, and rocks or stones greater than 2 inches in any dimension have been removed.
 - C. Classified Excavated Material - Where the Contract Documents allow the reuse of excavated on-site materials as a substitute for off-site sources of gravel or sands, the minimum requirements for each of those excavated materials shall be the same as required for the equivalent off-site material. If such materials are used, submit for approval in writing the proposed methods of excavation, location of stockpiles, quantities of required sand and gravels, estimated excavation quantities and proposed excavation limits within the accepted excavation area. Provide a demonstration at least 10 days prior to commencement of excavation that the methods will provide consistent quantity and quality of material as specified for off-site gravels and sands. The Engineer will require subsurface investigations, sampling, and testing to confirm the extent and quality of the proposed material. Cost of all investigations, sampling, and testing shall be the Contractor's responsibility.
2. All replaced or surplus material shall be removed from the site.
3. Compaction and testing of excavated material shall be in accordance with Specification Section 01400 and 02226.
4. If the material installed within the trench does not meet the compaction specification, the Contractor shall remove and dispose of the material off-site at his expense. The trench shall then be backfilled with Select Backfill, per Specification Section 02225.

Q:\05\16289\WPF\Forms\Change Orders\03-Bid Item A - Attach A.docx

GHD Consulting Services Inc. One Remington Park Drive Cozenovia NY 13033 USA
T 315 679 5800 F 315 679 5801 E cazmell@ghd.com W www.ghd.com



Attachment A

Change Order No. 3

Summary Table

Bid Item	Work Item Description	Unit	Estimated Quantity	Unit Cost	Total Cost
A-1	Compensation for additional excavation and backfill for the entire project.	LS	1	\$150,000.00	\$150,000.00
Total Change Order Cost					\$150,000.00