

# ERIE COUNTY WATER AUTHORITY

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ENSURING SAFE AND PLENTIFUL WATER SUPPLY FOR  
THE PEOPLE AND INDUSTRY OF ERIE COUNTY.



## MAIN EXTENSION AGREEMENTS

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FOR NEW SUBDIVISIONS

STEP-BY-STEP GUIDE FOR  
BUILDERS-CONTRACTORS-DEVELOPERS



## ERIE COUNTY WATER AUTHORITY MAIN EXTENSION AGREEMENTS FOR BUILDERS, CONTRACTORS & DEVELOPERS

### **Mission:**

As a public benefit corporation, the Erie County Water Authority's mission is to provide safe, clean and affordable water for domestic, commercial and fire-protection purposes.

### **Acquiring Water Systems:**

The New York State Legislature empowered the Erie County Water Authority (the "Authority") to acquire:

any water supply system, water distribution system, including plants, works, instrumentalities or parts thereof and appurtenances thereto, lands, easements, rights in land and water rights, rights-of-way, contract rights, franchises, approaches, connections, dams, reservoirs, water mains and pipe lines, pumping stations and equipment, or any other property, real, personal or mixed, incidental to and included in such system or part thereof, and any improvements, extensions, and betterments, situated within the county of Erie

Pub. Auth. Law § 1054(4). Furthermore, the Authority may acquire from a builder, contractor, or developer a water system built for the delivery of water within a commercial or residential development or subdivision. Specifically, its enabling statute states:

[T]he owner of any properties, which the authority is authorized to acquire, is hereby authorized to sell or otherwise transfer the same to the authority, whereupon the authority shall become charged with the performance of all public duties with respect to such properties with which such owner was charged and such owner shall become discharged from the performance thereof . . . .

*Id.*

### **ECWA Tariff:**

Under its statutory powers, the Authority may make:

rules for the sale of water and the collection of rents and charges therefor. Such rules may provide for the discontinuance or disconnection of the supply of water for nonpayment of water rents, rates or charges.

Pub. Auth. Law § 1054(10). Annually, these rules known as the Tariff are reviewed, revised and re-adopted by the Authority's Board of Commissioners. A copy of the Tariff, as amended, is duly certified by the Secretary of the Authority and filed in the office of the Erie County Clerk. The Tariff, as amended, is also published annually in two newspapers of general circulation in the County. Currently, the Authority publishes the Tariff in *The Buffalo News* and *Business First* prior to the start of a new calendar year. The Authority also published a copy of the Tariff on its website. [https://my.ecwa.org/pdf/ECWA\\_Tariff.pdf](https://my.ecwa.org/pdf/ECWA_Tariff.pdf)

Section 10.00 of the Tariff sets forth the process by which a builder, contractor and/or developer may request an extension of an Authority-owned water main to provide water service to a new development. A copy of this section may be found in the Appendix.

### **Step-by-Step Process:**

If you represent a builder, contractor or developer attempting to obtain water service for a new subdivision, or to an extension of an existing subdivision, the following is intended to be a step-by-step guide for the delivery of public water from the Erie County Water Authority:

1. A builder, contractor and/or developer ("Applicant[s]") contacts the Authority's Distribution Engineer, in charge of water main extensions.

Erie County Water Authority  
Attention: Adam Massaro  
3030 Union Road  
Cheektowaga, New York 14227-1097  
Telephone: (716) 685-8207  
Email: [amassaro@ecwa.org](mailto:amassaro@ecwa.org)

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2. The Distribution Engineer will coordinate with the Applicant to begin the process of obtaining water service to the subdivision.

NOTE: Generally, both the developer and the contractor are the Applicants seeking to enter into a Main Extension Agreement with the Authority. As joint Applicants, both will be subject to the terms and conditions of any agreement, including the provisions relating to the implementation of the plans and specifications for the water system.

3. The Applicant is required to provide the Authority with two prints of the subdivision drawings, completed by a New York State licensed engineer, showing the proposed water main installation. **All designs and drawings of the water system must meet the Authority's standards and specifications.**

NOTE: If an easement or right-of-way is necessary for the installation, operation and maintenance of the water service requested, a certificate of title and the proposed easement or right-of-way must be provided to the Authority.

4. Upon submission of the subdivision drawings, the Authority assigns an ECWA File Number and Project Number. The drawings are reviewed for compliance with Authority standards and specifications. If corrections are required, the Applicant must resubmit two prints of the corrected subdivision drawings until the drawing have been approved by the Authority's Engineering Department.

5. After the Authority approves the drawings, the Applicant provides the following to the Engineering Department:

- i. A certified copy of the resolution of the town, city or other appropriate governmental body authorizing and approving the installation of hydrants. The resolution shall set forth that the town, city or other appropriate governmental body shall pay the annual rates for the hydrants to be installed as provided for in the Authority's Tariff; and
- ii. Two reproducible drawings which show the town, city or other appropriate governmental body's final approval of the subdivision

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drawings. The Authority's Executive Engineer signs the drawings.

6. The Authority's Legal Department will draft a proposed Builder-Contractor-Developer Main Extension Agreement ("BCD Agreement"). The terms of the BCD Agreement are set forth in the Authority's Tariff and cannot be altered or changed without the approval of the Authority's Board of Commissioners (the "Board").

7. Necessary for the drafting of the proposed BCD Agreement, the Distribution Engineer will send the following information to the Authority's Legal Department:

- i. The names of each Applicant, the role of each Applicant (i.e., builder, contractor or developer), the address of each Applicant, contact information (including email addresses and phone numbers for each Applicant's representative), and the name and title of all persons who will be signing the BCD Agreement (as provided by the Applicant to the Distribution Engineer);
- ii. A BCD Construction Form (prepared internally by Authority personnel);
- iii. A description of the water system improvements;
- iv. A copy of the Applicant's cost estimates;
- v. A copy of the Application for Approval of Plans for Public Water Supply Improvement (DOH-348) (signed by Executive Engineer and submitted to NYS Dept. of Health); and
- vi. A copy of the drawings of subdivision.

8. The Legal Department will then draft and forward a copy of the proposed BCD Agreement to the Applicants for review. A sample of a proposed BCD Agreement may be found in the Appendix.

9. The proposed BCD Agreement must be reviewed and approved by the Authority's Board.

10. After the Legal Department has forwarded the proposed BCD Agreement to the Engineering Department, the Distribution Engineer will initiate the process to have the agreement placed on the Board's agenda.

NOTE: The Authority has implemented strict filing deadlines for submitting items for Board approval. The filing deadlines is set for NOON, six business days prior to the Board meeting. The Authority publishes on its websites the dates scheduled for upcoming Board meetings.

<https://www.ecwa.org/community/open-meetings/>

11. The Distribution Engineer must obtain written approval of the Authority's Chief Operating Officer, its Executive Engineer, its Chief Financial Officer, its Risk Manager, its General Counsel and the Secretary of the Authority before an item can be placed on the Board's agenda.

12. The Board must approve by resolution the BCD Agreement and authorize the Board Chair to execute the agreement. An example of such a resolution may be found in the Appendix.

13. The effective date for all BCD Agreements is the date the Board approves the agreement by resolution.

14. After the resolution is adopted, the Chair signs an original BCD Agreement for each Applicant and two for the Authority.

15. The Authority's General Counsel will send the Applicant(s) the following:

- i. Extract from the minutes of the Authority's Board meeting authorizing the execution of the BCD Agreement signed by the Secretary of the Authority;
- ii. The original BCD Agreements executed by the Authority's Chair;
- iii. A copy of Section 10.00 of the Authority's Tariff; and
- iv. A copy of the approved terms and conditions for the Payment Bond and Maintenance Bond, which will be signed and executed

by the Applicant's surety and the BCD Contractor as a condition of acceptance by the Authority of the water system. Copies of the approved terms and conditions for Payment and Maintenance Bonds may be found in the Appendix.

16. Prior to beginning installation of the water mains and appurtenances, the Applicant must provide the Authority's Distribution Engineer with the following:

- i. The names of all contractor(s) and sub-contractors involved in the installation;
- ii. Shop drawings showing that all materials used in the construction of the water mains and appurtenances meet the Authority's specifications;
- iii. The name of the engineer who will inspect and certify the water system was built in conformity with the Authority-approved plans and specifications; and
- iv. Five-day, advance-written notice of the starting date of construction.

17. Authority personnel will attend a pre-construction meeting and an Authority inspector is assigned to the project to provide site observations.

18. Following installation of the water mains & appurtenances, the Applicant shall arrange for water samples and bacterial tests to be taken and tested by an approved laboratory. The results shall be submitted to the Authority for approval. The results are then forwarded to the Erie County Department of Health. If the results are satisfactory, the Erie County Department of Health will submit a Certificate of Acceptance to the Authority.

19. Authority personnel will operate the valves on existing water mains for the required leakage and pressure tests and the disinfection of the water mains and appurtenances. Tests will be conducted following any necessary corrective measures until satisfactory results are obtained.

20. Following testing, the mains are shut off until the Erie County Health Department has issued a Certificate of Acceptance, all legal and administrative

requirements are satisfied, and the Board has accepted by resolution the water system improvements.

21. Before the Board accepts the water system improvements, the Applicant must provide the Authority with the following:

- i. A Maintenance Bond, in the amount of the actual costs of construction and under the terms & conditions as approved by the Authority, and that covers a period of twenty-four (24) months following the date of acceptance by the Board of the water system improvements.
  - a. The date of acceptance is the date of the Board meeting when the improvements are accepted by resolution.
  - b. See Appendix for the terms and conditions of an approved Maintenance Bond.
- ii. A Payment Bond, in the amount of the actual costs of construction and under the terms & conditions as approved by the Authority, and that covers a period of twelve (12) months following the date of acceptance by the Board of the water system improvements.
  - a. The date of acceptance is the date of the Board meeting when the improvements are accepted by resolution.
  - b. See Appendix for the terms and conditions of an approved Payment Bond.
- iii. Actual Costs and Bill of Sale with Schedule of Inventory;
  - a. The Authority reserves the right to review and verify the actual costs of construction.
- iv. A certified statement signed and sealed by the Applicant's engineer confirming:



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- a. That all the work involved in the installation of water mains and appurtenances was completed in accordance with the drawings approved by the Authority and in accordance with the Authority's specifications;
  - b. That all valves, hydrants and appurtenances are in satisfactory operating condition, as determined to the satisfaction of Authority personnel; and
  - c. That the Applicant's engineer provided full-time resident inspection of the work.
- v. One reproducible and electronic file, AutoCad 200 version, of record drawings, showing the as-built conditions of the water system; and
- vi. Detailed records of valves, fire hydrants and any other appurtenances.

22. After Board approval, the Secretary of the Authority sends a Certification and Extract to the Minutes and a copy of the resolution accepting the water systems improvement to the Applicant(s). An example of such a resolution may be found in the Appendix.

# APPENDIX

Section 10.0 of the ECWA Tariff (Extensions of Mains) . . . . .	A-1
Sample Builder-Contractor-Development (BCD) Main Extension Agreement . . . . .	A-10
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# **ERIE COUNTY WATER AUTHORITY**

## **TARIFF**

**THE RULES AND REGULATIONS HEREIN PRESCRIBED WERE FIRST ADOPTED BY THE ERIE COUNTY WATER AUTHORITY AT A MEETING HELD ON DECEMBER 8, 1953, TO BECOME EFFECTIVE DECEMBER 23, 1953, AND WERE THEREAFTER DULY AMENDED BY PREVIOUS RESOLUTIONS OF THE AUTHORITY AND ADVERTISED PURSUANT TO SECTION 1054, SUBDIVISION 10 OF THE PUBLIC AUTHORITIES LAW OF THE STATE OF NEW YORK, MOST RECENTLY ADOPTED BY RESOLUTION NOVEMBER 21, 2019 TO BECOME EFFECTIVE JANUARY 1, 2020.**

## **10.00 EXTENSIONS OF MAINS**

- 10.01** All extensions of or from the Authority-owned mains will be made at the expense of the applicant from the nearest existing main appropriate to the service requested pursuant to the following contract or agreement to be provided by the Authority:

### **MAIN EXTENSION AGREEMENT (BUILDER- CONTRACTOR-DEVELOPER) MAIN EXTENSION CONTRACT (OWNER-OCCUPANT) SPECIAL AGREEMENT**

which shall contain such terms, conditions and provisions necessary to effectuate the Rules and Regulations prescribed herein. The terms of every Main Extension Contract shall be for a period of ten (10) years after the date of its execution by the Authority.

### **AVAILABILITY OF MAIN EXTENSION CONTRACTS**

- 10.02** Main extensions pursuant to a Main Extension Agreement (Builder-Contractor-Developer), will be made by the Builder-Contractor-Developer in accordance with the provisions contained herein. Main Extensions pursuant to a Main Extension Contract (Owner-Occupant) will be made by the Authority in accordance with the provisions contained herein, upon written application of an owner, other than a developer, contractor or builder, or occupant of a premises fronting on or numbered on a street wherein there is no Authority owned main appropriate to the service requested, or where the existing main does not extend across the full frontage of the premises to be served. Main Extensions pursuant to Special Agreements may be made by the Authority as contracted with an applicant for service at a cost which will make the service economically feasible.

### **GENERAL PROVISIONS**

- 10.03** All applicants for main extension shall execute and deliver, without cost to the Authority, a Certificate of Title issued by a title company licensed by the State of New York and permanent easements or rights-of-way when necessary for the installation, operation and maintenance of water service connections, main extensions or subsequent additions thereto.

- 10.04** The Authority shall not be obliged to extend any main until satisfactory certificate of title, issued by a title company licensed by the State of New York, easements or rights-of-way have been obtained or the applicant shall have agreed to pay such costs as may be incurred if at their request the Authority obtains the same from persons who are not applicants for service.
- 10.05** In lieu of such permanent easements, the Authority will accept certifications, in writing, from the proper officials of municipal corporations that a deed to such street has been recorded and that the street has been dedicated and accepted by the municipality.
- 10.06** Every main extension shall be of such length as to provide access to each premises to be served and for footage of main across the entire frontage thereof.
- 10.07** The Authority reserves the right to determine and specify the diameter and type of pipe required to provide the service requested and, subject to the requirements of public authorities, its location within or without the limits of a street. The minimum size main shall be eight (8) inches unless the Authority determines that a smaller size main will provide the necessary service.
- 10.08** The Authority further reserves the right to install or have installed a main larger in diameter than required to render the service requested in which case the Authority will install or have installed the main and charge the cost of the main required for the service requested to the applicant.
- 10.09** Title to all main extensions shall be vested in the Authority and the Authority shall have the right to further extend any main installed pursuant to the terms of a Main Extension Contract (Owner-Occupant); Main Extension Agreement (Builder-Contractor-Developer) or Special Agreement in or to other streets or premises without repayment or refund to any applicant other than those provided for herein.
- 10.10** On and after ten (10) years from the date of each Main Extension Contract, all rights to receive the refunds and repayments provided for in the paragraph hereof numbered 10.30 shall cease and be at an end and any amounts not then repaid shall belong to and be retained by the Authority. The aggregate amount to be repaid and refunded by the Authority shall not exceed the total amount advanced by the applicant for the installation of the main extension. The right to receive refunds and repayments provided for herein shall be personal to the applicant and shall be unassignable either as collateral security or otherwise.

## **MAIN EXTENSION AGREEMENT (BUILDER-CONTRACTOR-DEVELOPER)**

- 10.11** Before the Authority will enter into a Main Extension Agreement, the applicant (Builder-Contractor-Developer) must submit two (2) prints of subdivision drawings showing the proposed water main installation to the Authority's Plan Review Section for review. One (1) print will be returned either approved or marked for correction. If corrections are required, two (2) prints of the revised drawings shall be resubmitted to the Engineering Department for review and approval.
- 10.12** After Authority approval has been received, final approval of the subdivision drawings must be obtained from the town or appropriate governing body. Two reproducible of the approved drawings shall then be submitted to the Authority for signature of the Authority's Executive Engineer. Two reproducible of the signed drawings will be returned to the applicant (Builder-Contractor-Developer) upon execution of the Main Extension Agreement.
- 10.13** Prior to beginning installation of the water mains and appurtenances, the applicant (Builder-Contractor-Developer) shall provide the Authority with the following:
- A. Name of contractor who will be installing water mains and appurtenances;
  - B. Shop drawings showing that all materials used in the construction of the water mains and appurtenances meet the Authority's specifications;
  - C. Name of engineer who will do the full-time inspection;
  - D. Five (5) days advance written notice of the starting date of construction.
- 10.14** The installation of water mains and appurtenances shall be in strict accordance with Authority specifications, copies of which will be provided. All taps to existing mains and all tie-in connections to ends of existing mains will be made by the applicant (Builder-Contractor-Developer) at his expense under the direction and full-time inspection of a representative of the Authority.

- 10.15** After the installation is completed, the applicant (Builder-Contractor-Developer) shall contact the Authority's Engineering Department to arrange for inspection of the work. A representative of the applicant (Builder-Contractor-Developer) and the applicant's (Builder-Contractor-Developer) engineer shall be present during the inspection. After the inspection, the applicant's (Builder-Contractor-Developer) engineer shall conduct the required leakage and pressure tests and the disinfection of the water mains and appurtenances. Authority personnel shall direct the operation of valves on existing water mains during the required leakage and pressure test and the disinfection of the water mains and appurtenances. Upon completion of these tests, the mains shall be shut off and not placed into service until approved by the Authority, all legal and administrative requirements have been satisfied and the work has been accepted by resolution of the Authority, then the Authority will turn on the new mains and service can begin.
- 10.16** If the main should fail the pressure or leakage test, the necessary corrective measures shall be taken and the tests repeated until satisfactory results are obtained.
- 10.17** The applicant (Builder-Contractor-Developer) shall arrange for bacteriological testing. The testing laboratory shall submit test results directly to the Authority.
- 10.18** Within four (4) weeks of the date the Erie County Health Department certificate of acceptance is received, and prior to the date water service is begun, the applicant (Builder-Contractor-Developer) shall provide the Authority with the following:
- A. Maintenance bond in form satisfactory to the Authority and issued by a carrier satisfactory to the Authority in an amount of one hundred (100%) percent of the actual construction cost of the water mains and appurtenances. Said bond shall cover a period of twenty-four (24) months following completion of the installation of water mains and appurtenances. The completion date shall be established as the date of acceptance of the work by resolution of the Authority. During this period, the applicant (Builder-Contractor-Developer) agrees to maintain and repair the watermains and appurtenances accepted by the resolution of the Authority. If the applicant defaults on its obligation, the Authority may seek to recover the cost for maintenance and repair from the carrier of the maintenance bond.
  - B. Payment bond in form satisfactory to the Authority and issued by a carrier satisfactory to the Authority in an amount of one hundred (100%) percent of the actual construction cost of the water mains and appurtenances. Said bond shall cover a period of twelve (12) months following completion of the installation of water mains and appurtenances. The completion date shall be established as the date of acceptance of the work by resolution of the Authority. The applicant (Builder-Contractor-Developer) will provide the payment bond to insure all labor and materials supplied for the construction and installation of the watermains and appurtenances have been fully paid and that the Authority accepts such watermains and appurtenances without liens and other encumbrances.

- C. Statement, signed and sealed by the applicant's (Builder-Contractor-Developer) engineer, that all work involved in the installation of water mains and appurtenances was completed in accordance with drawings approved by the Authority and in accordance with the Authority's specifications, that all valves, hydrants and appurtenances are in satisfactory operating condition and that the applicant's (Builder-Contractor-Developer) engineer provided full time resident inspection of the work.
- D. One (1) print, one (1) reproducible mylar and one (1) AutoCAD electronic file on CD of the record drawings, to a scale determined by the Authority, showing the constructed location of all mains with at least three readily identifiable ties to all fittings, valves and services. This drawing shall be marked "Record Drawing" and bear the seal and license number of the applicant's (Builder-Contractor-Developer) engineer licensed to practice in the State of New York. The applicant's (Builder-Contractor-Developer) engineer shall certify by seal and signature that he has measured or has supervised the measurement of all dimensions shown on the "record" drawing.
- E. A cost estimate and bill of sale to the Authority for the water mains and appurtenances installed. A completed "Schedule of Inventory" shall be attached to the bill of sale on the form provided by the Authority.

**10.19** The Authority will review and verify the actual construction cost of the main and appurtenances. The actual cost will be used to determine the amount of the maintenance and payment bonds mentioned above, and for all other legal and administrative purposes. The actual cost shall include the furnishing and installing of the pipe, valves, hydrants, paving and all other appurtenances required to be completed before the work is accepted by resolution of the Authority.

**10.20** Water service connections will be installed by the Authority.

**10.21** Meter installations will be in accordance with the provisions of Section 6.00 herein.

**10.22** Before the Authority will install water service connections from a main, the main and appurtenances must be accepted by a resolution of the Authority and payment for all water service connections must be made to the Authority.



- 10.23** If the Authority requires that a main greater than eight (8") inches in diameter be installed for the Authority's convenience in a subdivision, the Authority will install the main. The applicant (Builder-Contractor-Developer) will be required to pay the Authority the cost of an eight (8") inch main for that section of main which provides service for the applicant's (Builder-Contractor-Developer) subdivision. If the applicant (Builder-Contractor-Developer) requires a main larger than an eight (8") inch for service to the subdivision, he shall pay the Authority the estimated cost of the main required for the subdivision. The Authority must receive the payment set forth above before the Authority will provide service to the houses in the subdivision.
- 10.24** Vacant lots in new subdivisions which are to receive water service from an existing main appropriate to the service requested will not be included in the Main Extension Agreement. Applications for these services are to be made individually as each structure is erected. These services will be installed by the Authority in accordance with the provisions of Section 4.00 herein.

#### **MAIN EXTENSION CONTRACT (OWNER-OCCUPANT)**

- 10.25** Applicants (Owner-Occupant) for Main Extension Contracts shall be required to advance the entire estimated cost of the extension. If the entire actual cost of the extension exceeds the estimated cost thereof, the applicant (Owner-Occupant) will be required to pay to the Authority the amount of such excess upon receipt of a statement in writing of the amount thereof.
- 10.26** The Authority will extend its main pursuant to a Main Extension Contract (Owner-Occupant) upon receipt in advance from the applicant or applicants (Owner-Occupant) of an amount equivalent to the entire estimated cost of the main extension, excepting such portions of the cost thereof as the Authority shall, in said contract, assume and agree to pay as provided in paragraph 10.28 hereof. The applicant (Owner-Occupant) may be a group of owners and/or occupants.
- 10.27** In the event the applicant (Owner-Occupant) requests a field survey be made to determine the estimated cost of the extension, the Authority will cause such survey to be made upon payment in advance from the applicant (Owner-Occupant) the sum of the estimated cost of the work, which is not refundable.

**10.28** Applicants (Owner-Occupant) for main extensions pursuant to a Main Extension Contract will not be required to advance the estimated unit cost per foot for the following portions of main extensions, and such costs will be assumed and paid for by the Authority:

- A. The Authority will assume and pay the cost of that portion of the main extension which is installed within the limits of an intersecting street.
- B. The Authority may assume and pay for that portion of the cost of the main extension which is required to be installed across the remaining footage of a premises other than applicant, then served with water from the main agreed to be extended, but not to exceed the distance of one hundred (100) feet.
- C. If the main is required to be extended along a flanking corner premises, then served from another Authority owned main, the Authority will assume and pay for that portion of the main extension which is equivalent to twice the front footage of the premises so served, but not to exceed a distance of one hundred (100) feet.

**10.29** The estimated actual costs to be borne by the applicant or applicants (Owner-Occupant) shall be advanced to the Authority at the time of execution of the Main Extension Contract. If after the completion of a main extension pursuant to a Main Extension Contract and the ascertainment of the entire actual cost thereof, the actual cost is less than the estimated actual cost of the extension advanced by the applicant or applicants (Owner-Occupant), the Authority will repay to the applicant or applicants (Owner-Occupant) the difference between said amounts. The entire actual cost of each main extension shall be arrived at by accumulating all of the costs and expenses incurred in the installation of the main and appurtenances, which sum shall be divided by the total footage of main installed. The actual unit cost per foot arrived at as aforesaid shall be applied to the total footage of main for which the applicant was required to advance the estimated actual cost.

**10.30** The Authority will refund, without interest, to the applicant or applicants who have advanced the cost of a main extension pursuant to a Main Extension Contract (Owner-Occupant), portions of the amounts by them deposited whenever water service is subsequently furnished to a premises which is connected to the footage of the extended main covered by said deposit. The amount of such refund or refunds will be a sum equivalent to the actual unit cost per foot of the extended main which is required for each premises for which the applicant or applicants have not previously received refund. Such refund or refunds will be made by the Authority after the completion of the main extension and the ascertainment of the entire actual cost thereof.

**10.31** The Authority may install a main greater than 8-inches in diameter at the Authority's discretion. In this case, the applicant or applicants (Owner-Occupant) will be required to pay the estimated cost of an 8-inch main. The additional cost due to the larger main will be borne by the Authority.

## **SPECIAL AGREEMENTS**

- 10.32** Main Extension by Special Agreements may be made by the Authority when service to the applicant can be installed at a cost which will make the service economically feasible. The terms of the Special Agreement shall be as contracted by the Authority and the applicant.

## **EXTENSION OF MAINS IN LEASE MANAGED AREAS**

- 10.33** The extension of mains in lease-managed areas will be done in accordance with the standard procedures of the Special Improvement Districts in which they are to be installed. All work shall be in accordance with the Authority's specifications, copies of which will be provided upon request.
- 10.34** All water service connections shall be installed by the Authority and paid for by the applicant pursuant to paragraph 14.16.
- 10.35** Prior to the start of construction, the governing body of the lease-managed district shall submit two (2) prints of the proposed work to the Authority for review. One (1) print will be returned either approved or marked for correction. If corrections are required, two (2) prints of the revised drawings shall be resubmitted to the Authority. No construction shall start without a plan approved by the Authority.
- 10.36** Upon completion of the construction, the governing body shall submit to the Authority one (1) print, one (1) reproducible mylar and one (1) AutoCAD electronic file on CD of the record drawings, to a scale determined by the Authority, showing the constructed location of all mains, services and appurtenances with at least three readily identifiable ties to all fittings, valves and appurtenances. This drawing shall be marked "Record Drawing" and bear the seal and license number of an engineer licensed to practice in the State of New York. The engineer shall certify by seal and signature that he has measured or has supervised the measurement of all dimensions shown on the "record" drawings.

**ERIE COUNTY WATER AUTHORITY  
MAIN EXTENSION AGREEMENT  
(Builder-Contractor-Developer)**

The **ERIE COUNTY WATER AUTHORITY**, a public benefit corporation created and existing under the laws of the State of New York, with its principal office at 295 Main Street, Room 350, Buffalo, New York, 14203, hereinafter called the “Authority”, and **ABC DEVELOPER**, (hereinafter “Developer - BCD Applicant) and **XYZ CONTRACTOR**, (hereinafter “Contractor - BCD Applicant,” collectively with Developer-BCD Applicant as “BCD Applicants”). The BCD Applicants agree as follows:

1. This Agreement is made pursuant to Subdivision 10, Section 1054 of the Public Authorities Law and Title 10.00, “Extensions of Mains” of the Authority’s Tariff.
2. The BCD Applicants desire to install water mains, hydrants and appurtenances as follows:

**INSTALL** approximately 550 +/- linear feet of 8” PVC water main in Sunshine Subdivision, Town of Hamburg, under an Erie County Water Authority Builder-Contractor- Developer (BCD) Agreement.

**INSTALL** two (2) hydrants in Sunshine Subdivision, Town of Hamburg, under an Erie County Water Authority Builder, Contractor, Developer (BCD) Agreement.

Tulip Lane

**BEGINNING** at the existing road of Tulip Lane and heading westerly approximately 550 +/- linear feet to reconnect to Tulip Lane.

**AS SHOWN** and noted on Engineering Firm drawing of Sunshine Subdivision, approved February 1, 2020.

3. The BCD Applicants must be business entity registered with the New York Secretary of State to do business in the State of New York.
4. The BCD Applicants shall submit two (2) prints of subdivision drawings showing the proposed water main installation, hydrants, and appurtenances to the Authority’s Plan Review Section for review. One (1) print will be returned either approved or marked for correction. If corrections are required, two (2) prints of the revised drawings shall be resubmitted to the Engineering Department for review and approval. The same procedure shall be followed until the drawings are approved.

5. If the Authority requires a main greater than eight (8") inches in diameter be installed in a subdivision for the Authority's convenience, the Authority will either install the main, or pay the BCD Applicants the cost difference between installing an eight (8") main and installing the larger main. If the Authority installs a main greater than eight (8") inches in diameter, the BCD Applicants will be required to pay the Authority only the cost for installing an eight-inch main. The Authority must receive payment in advance before the Authority will install any such main. This provision only applies when the Authority directs the installation of a main greater than 8" inches for reasons unrelated to the water needs and demands of the BCD Applicants' subdivision.
6. If the BCD Applicants require a main larger than an eight (8") inch to service the subdivision, the BCD Applicants shall install such main.
7. In the event a water main(s) is (are) required to reach the subdivision, the BCD Applicants will be required to submit a plan in compliance with provisions 10.02 through 10.10 of the Authority's Tariff subject to the approval of the Authority.
8. Vacant lots in new subdivisions which are to receive water service for an existing main appropriate to the service requested will not be included in this Main Extension Agreement. Applications for these services are to be made individually as each structure is erected. Those services will be installed by the Authority in accordance with the provisions of Section 4.00 of the Authority's Tariff in effect at the time the application is made.
9. After the Authority has approved the subdivision drawings, final approval of the subdivision drawings must be obtained from the town, city or other appropriate governmental body. Two reproducible approved drawings shall then be submitted to the Authority for signature of the Authority's Executive Engineer. Two reproducible signed drawings will be returned to the BCD Applicants upon execution of the Main Extension Agreement.
10. Prior to beginning installation of the water mains, hydrants and appurtenances, BCD Applicants shall provide the Authority with the following:
  - a. Names of all sub-contractor, if any, who will be installing water mains and appurtenances;
  - b. Shop drawings showing that all materials used in the construction of the water mains and appurtenances meet the Authority's specifications;
  - c. Name of engineer who will do the full-time inspection;
  - d. Five (5) days advance written notice of the starting date of construction;
  - e. A certified copy of the resolution of the town, city or other appropriate

governing body authorizing and approving the installation of hydrants. Such resolution shall set forth that the town, city or other appropriate governing body shall pay the annual rates for the hydrants to be installed as provided for in the Authority's Tariff.

11. The BCD Applicants shall arrange for water samples and bacterial tests to be taken and tested by an approved laboratory. The results shall be submitted to the Erie County Health Department for approval, and if all tests are satisfactory, the County Health Department shall submit a Certificate of Acceptance to the Authority.
12. Authority personnel shall direct the operation of valves on existing water mains during the required leakage and pressure tests and the disinfection of the water mains and appurtenances. If the mains and appurtenances should fail the pressure or leakage tests, the necessary corrective measures shall be taken, and the tests repeated until satisfactory results are obtained. Upon completion of these tests, the mains shall be shut off and not placed into service until the County Health Department issues a Certificate of Acceptance, all legal and administrative requirements have been satisfied, and the work has been accepted by resolution of the Authority. The Authority will then turn on the mains, which have been accepted by the Authority, and service can begin.
13. Within four (4) weeks of the date the Erie County Health Department Certificate of Acceptance is received, and prior to both acceptance by the Authority and the date water service is begun, BCD Applicants shall have the Contractor - BCD Applicant provide the Authority with the following:
  - a. Maintenance bond.
    - (1) A maintenance bond in form satisfactory to the Authority and issued by a carrier satisfactory to the Authority in an amount of one hundred (100%) percent of the actual construction cost of the water mains and appurtenances.
    - (2) Said bond shall cover a period of twenty-four (24) months following the completion of the installation of water mains and appurtenances. During this 24-month period, the Contractor – BCD Applicant agrees to maintain and repair the water mains and appurtenances accepted by the resolution of the Authority.
    - (3) The completion date shall be established as the date of the acceptance of the work by resolution of the Authority.
    - (4) If the Contractor – BCD Applicant defaults on its/his/her obligation, the Authority may seek to recover the cost of maintenance and repair from the carrier/surety of the maintenance bond.

- b. Payment bond.
  - (1) A payment bond in form satisfactory to the Authority and issued by a carrier satisfactory to the Authority in an amount of one hundred (100%) percent of the actual construction cost of the water mains and appurtenances.
  - (2) The Contractor - BCD Applicant will provide said payment bond to insure all labor and materials supplied for the construction and installation of the water mains and appurtenances have been fully paid, ensuring the Authority accepts such water mains and appurtenances without liens or encumbrances.
  - (3) Said bond shall cover a period of twelve (12) months following completion of the installation of water mains and appurtenances.
  - (4) The completion date shall be established as the date of acceptance of the work by resolution of the Authority.
- c. The Authority may review and verify the actual construction cost of the mains and appurtenances. The actual cost will be used to determine the amount of the maintenance and payment bonds mentioned above, and for all other legal and administrative purposes. The actual cost shall include the furnishing and installing of the pipe, valves, hydrants, paving and other appurtenances required to be completed before the work is accepted by resolution of the Authority.
- d. A statement, signed and sealed by the BCD Applicants' engineer, that all work involved in the installation of water mains and appurtenances was completed in accordance with drawings approved by the Authority and in accordance with the Authority's specifications, that all valves, hydrants and appurtenances are in satisfactory operating condition and that the BCD Applicants' engineer provided full time resident inspection of the work.
- d. One (1) reproducible and electronic file AutoCad 2000 version on CD Rom or diskette record drawing, to a scale determined by the Authority, showing the constructed location of all mains with at least three readily identifiable ties to all fittings, valves and services. The record drawing shall be marked "As-Built" and bear the seal and license number of the BCD Applicants' engineer. The BCD Applicants' engineer shall certify by seal and signature that he has measured or has supervised the measurement of all dimensions shown on the "As-Built" drawing.
- e. A cost estimate and bill of sale to the Authority for the water mains and

appurtenances installed. A completed "Schedule of Inventory" shall be attached to bill of sale on the form provided by the Authority.

14. Water service connections will be installed by the Authority at the time requested by the BCD Applicants. The BCD Applicants shall make arrangements for the water service connection as well as meter installation and payment.
15. The BCD Applicants shall notify the Authority when customer service is desired at an individual premise so that a meter can be installed. If the BCD Applicants fail to notify the Authority that a meter should be installed, the BCD Applicants shall be required to pay three (3) times the monthly minimum charge for the size of meter to be installed for each month or part thereof that water has been used at the premise. This period of time will be calculated from the date of issue of the Certificate of Occupancy or the date of sale by the BCD Applicants of said premises, whichever is earlier, to the date the meter is installed. Meter installations will be in accordance with the provisions of Section 6.00 of the Authority's Tariff.
16. No hydrant shall be used for any purpose other than the extinguishing of fires, periodic tests of the fire protection system, or periodic drills by legally constituted fire companies, unless written authorization is given by the Authority. The Authority shall be notified in advance of the time of all tests and drills, so that if desired, the Authority may have a representative present.
17. At the completion of all the work, labor and service as well as installation of all materials and after all the conditions hereinabove set forth are complied with to the satisfaction of the Authority, the Authority agrees to accept said water mains, hydrants, services, and other appurtenances.
18. Title to all water mains, hydrants, services, and appurtenances shall vest in the Authority and the Authority shall provide service to BCD Applicants in the same manner as if the mains were originally installed by the Authority.
19. The Authority reserves the right at any time, without notice to shut off the water in its mains to make repairs, extensions or for other purposes, and it is expressly agreed that the Authority shall not be liable for deficiency or failure in the supply of water, water pressure or for any damage caused thereby or by the bursting or breaking of any main or service pipe or any attachment to the Authority's property, other than through the gross negligence of the Authority. In the interest of public health, the Authority will not permit its mains or services to be connected with any service pipe or piping which is connected with any other source of water supply not approved by the Department of Health of the State of New York.
20. It is mutually understood and agreed:



- a. The mains laid or to be laid pursuant to this Agreement shall be and remain the property of the Authority, its successors and assigns, and the Authority retains and shall have the right to extend any mains installed by it pursuant to the terms of the Agreement in or to other lands, streets or avenues, but BCD Applicants shall not by reason thereof be entitled to any repayment.
- b. Any authorized representative of the Authority shall have free access to the premises of the BCD Applicants at any reasonable time for the purpose of reading the meter or inspecting said construction.
- c. Only a town, village or legally constituted water district is permitted to resell water supplied by the Authority except as provided in Section 11.05 of the Authority's Tariff.
- d. Water Service may be disconnected for the reasons enumerated in Section 2.32 of the Authority's Tariff.
- e. This extension shall be made in accordance with provisions of the Authority's Tariff.

**IN WITNESS WHEREOF**, the parties hereto have duly caused their seals to be hereunto affixed and these presents to be signed by their duly authorized officers with the effective date of this Agreement to be the **24th** day of **March, 2020**, the date of the Authority's resolution authorizing its execution.

**ABC DEVELOPER**

---

MICHAEL BRADY, President

**XYZ CONTRACTOR**

---

JACK PEARSON, President

**ERIE COUNTY WATER AUTHORITY**

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JEROME D. SCHAD, Chair

OF NEW YORK        )  
  ) ss:  
COUNTY OF ERIE        )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me personally came MICHAEL BRADY, to me known, who being by me duly sworn, did depose and say that he resides at West Seneca, New York; that he is President of ABC Developer the corporation described in, and which executed, the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he/she signed his name thereto by like order.

\_\_\_\_\_  
Notary Public - State of New York

STATE OF NEW YORK        )  
  ) ss:  
COUNTY OF ERIE        )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me personally came JACK PEARSON, to me known, who being by me duly sworn, did depose and say that he resides at Grand Island, New York; that he is President of XYZ Contractor, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his/her name thereto by like order.

\_\_\_\_\_  
Notary Public - State of New York

STATE OF NEW YORK        )  
  ) ss:  
COUNTY OF ERIE        )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me personally came JEROME D. SCHAD, to me known, who being by me duly sworn did depose and say that he resides in Amherst, New York, that he is the Chairman of the ERIE COUNTY WATER AUTHORITY, the corporation named in the foregoing indenture; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by a duly adopted resolution of the said Authority and that he signed his name thereto by like resolution.

\_\_\_\_\_  
Notary Public - State of New York

**ITEM 3 - AUTHORIZATION TO ENTER INTO A MAIN EXTENSION AGREEMENT (BUILDER-CONTRACTOR-DEVELOPER) WITH LEGACY WOODS LLC AND KANAKA CONSTRUCTION MANAGEMENT, LLC FOR THE CONSTRUCTION AND INSTALLATION OF APPROXIMATELY 3,350 LINEAR FEET OF EIGHT (8") INCH PVC, 50 LINEAR FEET OF EIGHT (8") INCH DIP WATERMAIN, SEVEN (7) HYDRANTS, ELEVEN (11) LINE VALVES AND APPURTENANCES IN LEGACY WOODS SUBDIVISION, TOWN OF AMHERST, NEW YORK, PROJECT NO. 2018000153, EC NO. 7077**

Motion by                      seconded by

**WHEREAS**, the Erie County Water Authority ("Authority") desires to enter into a Main Extension Agreement (Builder-Contractor-Developer) with Legacy Woods LLC and Kanaka Construction Management, LLC for the construction and installation of approximately 3,350 linear feet of eight (8") inch PVC, 50 linear feet of eight (8") inch DIP watermain, seven (7) hydrants, eleven (11) line valves and appurtenances in Legacy Woods Subdivision, Town of Amherst, New York; and

**WHEREAS**, the materials, work, labor and services for said installation shall be supplied and paid for by the applicant; and

**WHEREAS**, said installation of main and hydrants has been assigned Work Authorization No. EC-7077; and

**WHEREAS**, Leonard F. Kowalski, Executive Engineer advised that the materials, work, labor and services for said installations, as proposed to be supplied and installed by the applicant, meet with the Authority's specifications;

**NOW, THEREFORE, BE IT RESOLVED:**

That the Authority accepts the proposal of Legacy Woods LLC and Kanaka Construction Management, LLC for the construction and installation of approximately 3,350 linear feet of eight (8") inch PVC, 50 linear feet of eight (8") inch DIP watermain, seven (7) hydrants, eleven (11) line valves and appurtenances in Legacy Woods Subdivision, Town of Amherst, New York; and be it further

**RESOLVED:** That the Chairman is hereby authorized to execute said Main Extension Agreement (Builder-Contractor-Developer) between the Authority and Legacy Woods LLC and Kanaka Construction Management, LLC covering the abovementioned subdivision.

Ayes:

Noes:

01/30/20-pjf

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 Address of Principal Place of Business):

**NAME OF CONTRACTOR**  
**CONTRACTOR ADDRESS**

OWNER (Name and Address):

Erie County Water Authority  
295 Main St., Room 350  
Buffalo NY 14203

**CONTRACT**

Project No: \_\_\_\_\_

Date: **INSERT DATE OF BCD AGREEMENT**

Amount:

Description: Main Extension Agreement (Builder-Contractor-Developer)

**SUBDIVISION NAME**

Town of **NAME**

BCD: **##-##; EC #\*\*\*\***

ECWA Project No.: **20#####**

**BOND**

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and CONTRACTOR, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

**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 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 Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses 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 addresses 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 had 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 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 Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any 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 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 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 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 paragraph 4.1 or paragraph 4.2.3. 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 addresses 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 Contract 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 of 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 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. 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 Contract or to perform and complete or comply with the other terms thereof.

# Maintenance Bond

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

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CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place  
of Business):

**NAME OF CONTRACTOR**  
**CONTRACTOR ADDRESS**

OWNER (Name and Address):

Erie County Water Authority  
295 Main St., Room 350  
Buffalo NY 14203

CONTRACT

Project No: \_\_\_\_\_

Date: **INSERT DATE OF BCD AGREEMENT**

Amount:

Description: Main Extension Agreement (Builder-Contractor-Developer)

**SUBDIVISION NAME**

Town of **NAME**

BCD: **##-##; EC #\*\*\*\***

ECWA Project No.: **20#####**

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and CONTRACTOR, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

SURETY

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

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 Contract, which is incorporated herein by reference.
2. If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 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 the addresses 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 Contract. If the OWNER, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the 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 paragraph 3.1; and
  - 3.3. The OWNER has agreed to pay the Balance of the Contract Price to:
    - 3.3.1. The Surety in accordance with the terms of the Contract; or
    - 3.3.2. Another contractor selected pursuant to paragraph 4.3 to perform the Contract.
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 Contract; or
  - 4.2. Undertake to perform and complete the 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 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 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 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;
    - 4.4.1. 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
    - 4.4.2. 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 paragraph 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 Contract, and if the Surety elects to act under paragraph 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 Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To a 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 Contract, the Surety is obligated without duplication for:
  - 6.1. The responsibilities of the CONTRACTOR for correction of defective Work and completion of the 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 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 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 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 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 Contract was performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here-from 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.
12. Definitions.
  - 12.1. Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the 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 Contract.
  - 12.2. 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 Contract.
  - 12.4. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

**ITEM 2 - AUTHORIZATION TO ACCEPT THE CONSTRUCTION AND INSTALLATION OF 4 LF OF SIX (6") INCH DIP, 1160 LF OF EIGHT (8") INCH C-900 WATERMAIN, TWO (2) HYDRANTS, THREE (3) VALVES AND APPURTENANCES IN SHERWOOD MEADOWS SUBDIVISION PART 4, PHASE 1, TOWN OF HAMBURG, PROJECT NO. 201600216, EC NO. 7022**

Motion by                      seconded by

**WHEREAS**, the Erie County Water Authority ("Authority"), by resolution dated March 26, 2019, identified as Item No. 27, of the Minutes of that meeting, accepted the proposal of Dato Development, LLC., and Russo Development, Inc. for the construction and installation of approximately 1115+ lf of 8-inch PVC watermain, two (2) hydrants, and one (1) valve in Sherwood Meadows Subdivision Part 4, Phase 1, Town of Hamburg, New York, identified by Work Authorization No. EC 7022; and

**WHEREAS**, the Bill of Sale and the Schedule of Inventory have been approved by Leonard F. Kowalski, Executive Engineer and the construction and installation of 4 lf of six (6") inch DIP, 1160 lf of eight (8") inch C-900 watermain, two (2) hydrants, three (3) valves and appurtenances in Sherwood Meadows Subdivision Part 4, Phase 1, Town of Hamburg, New York have been installed in accordance with the specifications of the Authority; and

**WHEREAS**, the Division of Environmental Health of the Health Department of the County of Erie has approved the completed works for public water supply improvement for Sherwood Meadows Subdivision Part 4, Phase 1, Town of Hamburg, New York; and

**WHEREAS**, Joyce A. Tomaka, Comptroller has reviewed the costs of the main and hydrants and finds them reasonable and correct; and

**WHEREAS**, Leonard F. Kowalski, Executive Engineer recommends approval and acceptance of said main, hydrants and valves;

**NOW, THEREFORE, BE IT RESOLVED:**

That the Authority accept the construction and installation of 4 lf of six (6") inch DIP, 1160 lf of eight (8") inch C-900 watermain, two (2) hydrants, three (3) valves and appurtenances in Sherwood Meadows Subdivision Part 4, Phase 1, Town of Hamburg, New York, and said main, hydrants and valves be added to the property records of the Authority.

Ayes:

Noes:

02/28/20-pjf