

ERIE COUNTY WATER AUTHORITY  
AUTHORIZATION FORM  
For Approval/Execution of Documents  
(check which apply)

**Contract:** \_\_\_\_\_ **Project No.:** 2016000125  
**Project Description:** Revised Main Extension Agreement (Builder-Contractor-Developer) for  
Chancellor Lane/Princeton Park Subdivision and Resolution Accepting  
water mains, hydrants and appurtenances for the Subdivision

**Item Description:**

- |  |  |   |                                       |
|--|--|---|---------------------------------------|
| <input type="checkbox"/> Agreement   | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment          | <input type="checkbox"/> Change Order |
| <input checked="" type="checkbox"/> BCD  | <input type="checkbox"/> NYSDOT Agreement              | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum     |
| <input type="checkbox"/> Recommendation for Award of Contract                      | <input type="checkbox"/> Recommendation to Reject Bids |   |                                       |
| <input type="checkbox"/> Request for Proposals                                     |  |   |                                       |
| <input checked="" type="checkbox"/> Other <u>Resolution accepting improvements</u> |  |   |                                       |

**Action Requested:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Board Authorization to Execute            | <input type="checkbox"/> Legal Approval                              |
| <input type="checkbox"/> Board Authorization to Award                         | <input checked="" type="checkbox"/> Execution by the Chairman        |
| <input type="checkbox"/> Board Authorization to Advertise for Bids            | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals |  |
| <input type="checkbox"/> Other _____  |  |

**Approvals Needed:**

**APPROVED AS TO CONTENT:**

<input type="checkbox"/> Distribution Engineer	_____	Date: _____
<input checked="" type="checkbox"/> Chief Operating Officer	<i>Russell J. Stoll</i>	Date: <u>2/5/20</u>
<input checked="" type="checkbox"/> Executive Engineer	<i>James F. Kovalich</i>	Date: <u>2/5/2020</u>
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input type="checkbox"/> Claims Rep/Risk Manager	_____	Date: _____
<input checked="" type="checkbox"/> Chief Financial Officer	<i>Karen A. Bendugast</i>	Date: <u>2/5/2020</u>
<input checked="" type="checkbox"/> Legal	<i>Margaret A. Murphy</i>	Date: <u>2/5/2020</u>
<b>APPROVED FOR BOARD RESOLUTION:</b>		
<input checked="" type="checkbox"/> Secretary to the Authority	<i>T. J. [Signature]</i>	Date: <u>2/5/2020</u>

**Remarks:** \_\_\_\_\_  
\_\_\_\_\_

**Resolution Date:** \_\_\_\_\_ **Item No:** \_\_\_\_\_

**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 **THE MARRANO/MARC EQUITY CORPORATION**, 2730 Transit Road, West Seneca, New York 14224 and **CIMATO BROS. CONSTRUCTION, INC.**, 9220 Transit Road, East Amherst, New York 14051, hereinafter called 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. This Agreement supersedes the agreement approved by the Authority’s Board of Commissioners on October 26, 2017.
3. On November 4, 2016, the Authority’s Engineering Department approved plans and specifications submitted by the BCD Applicants for the installation of water mains, hydrants and appurtenances for the subdivision known as Chancellor Lane/Princeton Park Subdivision in the Town of West Seneca, State of New York (hereinafter the “Subdivision”).
4. The BCD Applicants affirm the Subdivision plans have been reviewed and approved by the Town of West Seneca and the Erie County Department of Health.
5. The BCD Applicants have installed water mains, hydrants and appurtenances, for Phase 2A, pursuant to the subsequent plans and specification approved by the Authority, as described as follows:

**INSTALLATION** of 2539± linear feet of 8-inch PVC, 60± linear feet of 8-inch DIP and 20± linear feet of 6-inch DIP of watermains in the Subdivision.

**INSTALLATION** of five (5) hydrants, five (5) 6-inch hydrant valves, and five (5) 8-inch line valves in the Subdivision.

**BEGINNING** at the existing end of Chancellor Lane thence southerly approximately 1,600 LF to terminate in a cul-de-sac. Also, from approximately 675’ south of the starting location, heading easterly approximately 500 LF to terminate in a cul-de-sac (Proposed Road 2).

**AS SHOWN** and noted on Nussbaumer & Clarke, Inc. drawings of previously named Croglia Estates Subdivision approved October 3, 2016.

6. The BCD Applicants has submitted 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 has been marked as approved by the Authority, submitted by its Executive Engineer and been returned to the BCD Applicants.

7. Vacant lots in any subsequent phase 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.
8. The BCD Applicants have collected water samples on June 12, 2019 and June 13, 2019 for bacterial testing and have submitted these samples to McAndrews Testing Laboratories ("McAndrews"). McAndrews submitted its results to the Erie County Health Department. Based on these test results, the Erie County Health Department approved the test results and issued a Certificate of Acceptance to the Authority.
9. Authority personnel directed the operation of valves on existing water mains during the required leakage and pressure tests and the disinfection of the water mains and appurtenances. Upon completion of these tests, the mains were shut off and not placed into service until the Erie County Health Department issued a Certificate of Acceptance. All other legal and administrative requirements have been satisfied, and the work has been accepted by the Authority's Engineering Department.
10. The BCD Applicants have provided 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 covers a period of twenty-four (24) months following the completion of the installation of water mains and appurtenances. During this 24-month period, the BCD Applicants agree 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 BCD Applicants default 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 BCD Applicants has provided 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 covers 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. 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 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 has been marked "As-Built" and bears the seal and license number of the BCD Applicants' engineer. The BCD Applicants' engineer has certified by seal and signature that he has measured or has supervised the measurement of all dimensions shown on the "As-Built" drawing.

e. An actual cost 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.

11. Water service connections will be installed by the Authority at the time requested by the BCD Applicants. The BCD Applicants has arranged with the Authority for the water service connection as well as meter installation and payment.
12. No hydrant has been or will 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.
13. Given the completion of all the work, labor and service, as well as installation of all materials, and the conditions set forth in the Tariff having been complied with to the satisfaction of the Authority by the BCD Applicants, the Authority agrees to accept said water mains, hydrants, services, and other appurtenances.
  14. 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.
  15. 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.
  16. The mains laid and acknowledged by 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

**IN WITNESS WHEREOF**, the parties hereto have duly caused their seals to be hereunto affixed and these presents to signed by their duly authorized officers with the effective date of this Agreement to be **13th** day of **February 2020**, the date of the Authority's resolution authorizing its execution.

**THE MARRANO/ MARC EQUITY  
CORPORATION**

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DAVID A. DePAOLO, Executive Vice President

**CIMATO BROS. CONSTRUCTION, INC.**

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FERDINANDO A. CIMATO, President

**ERIE COUNTY WATER AUTHORITY**

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JEROME D. SCHAD, Chair

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

On this \_\_\_\_ day of February, 2020, before me personally came DAVID A. DePAOLO, to me known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_; that he is Executive vice President of THE MARRANO/MARC EQUITY CORPORATION, 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/she 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 February, 2020, before me personally came FERDINANDO A. CIMATO, to me known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_;that he is President of CIMATO BROS. CONSTRUCTION, INC., 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/she 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 February, 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.

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Notary Public - State of New York



## Payment 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):**

Cimato Bros. Construction, Inc.  
9220 Transit Road  
East Amherst, New York 14051

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

**OWNER (Name and Address):**

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

**CONTRACT**

Project No.: 2016000125  
Date: February 13, 2020  
Amount:  
Description: Main Extension Agreement (Builder-Contractor-Developer)  
Chancellor Lane/Princeton Park  
Town of West Seneca  
EC # 6916  
ECWA File No.: BCD-16-01

**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:

EJCDC No. 1910-28-B (1996 Edition) as modified by ECWA (02-11-19).

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.

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):

Cimato Bros. Construction, Inc.  
9220 Transit Road  
East Amherst, New York 14051

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

OWNER (Name and Address):

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

## CONTRACT

Project No.: 2016000125  
Date: February 13, 2020  
Amount:  
Description: Main Extension Agreement (Builder-Contractor-Developer)  
Chancellor Lane/Princeton Park  
Town of West Seneca  
EC # 6916  
ECWA File No.: BCD-16-01

## 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:

EJCDC No. 1910-28-A (1996 Edition) as modified by ECWA (02-11-19).

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

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 pliability, 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.