

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

**Contract:** \_\_\_\_\_ **Project No.:** 202000179

**Project Description:** Installation of approximately 925 LF of 12", 10", and 8"DIP watermain with two (2) hydrant assemblies and related appurtenances to serve a proposed commercial and retail development along West Main Street, Village of Lancaster.

**Item Description:**




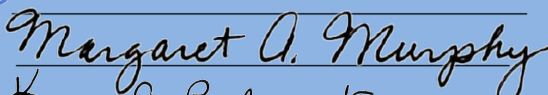


- |   |  |   |                                       |
|---|--|---|---------------------------------------|
| <input checked="" type="checkbox"/> Agreement                 | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment          | <input type="checkbox"/> Change Order |
| <input 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 type="checkbox"/> Other _____                          |  |   |                                       |

**Action Requested:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Board Authorization to Execute            | <input checked="" 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 checked="" type="checkbox"/> Sr. Distribution Engineer |   | Date: 6/23/2020  |
| <input checked="" type="checkbox"/> Chief Operating Officer   |   | Date: 6/23/2020  |
| <input checked="" type="checkbox"/> Executive Engineer        |   | Date: 06/23/2020 |
| <input type="checkbox"/> Director of Administration           |  | Date: _____      |
| <input checked="" type="checkbox"/> Risk Manager              |  | Date: 06/23/2020 |
| <input checked="" type="checkbox"/> Chief Financial Officer   |   | Date: 06/23/2020 |
| <input checked="" type="checkbox"/> Legal                     |  | Date: 06/23/2020 |

**APPROVED FOR BOARD RESOLUTION:**

- |  |  |                  |
|--|--|------------------|
| <input checked="" type="checkbox"/> Secretary to the Authority |  | Date: 06/23/2020 |
|--|--|------------------|

**Remarks:** Cooperative Agreement

No insurance requirements; payment and maintenance bonds when project is completed

**Resolution Date:** \_\_\_\_\_

**Item No:** \_\_\_\_\_



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

June 22, 2020

To: Terrence D. McCracken, Secretary to the Authority

From: Leonard F. Kowalski, Executive Engineer

A handwritten signature in blue ink, appearing to be "LFK", is written over the name Leonard F. Kowalski.

Subject: West Main Street Extension  
Village of Lancaster  
ECWA File No. LNVL-947-2001  
ECWA Project No. 202000179

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Please find attached a copy of the proposed cooperative agreement between the Authority and the Village of Lancaster. The Village is planning a public road construction project to extend West Main Street and will also extend the watermain in the road as a part of the construction. The Village of Lancaster will fund the project which will include the materials, installation, inspecting, and testing of the new watermain. Approximately 925 linear feet of new watermain consisting of 12-inch, 10-inch, and 8-inch DIP, two public fire hydrants, and 14 valves will be installed. The Village of Lancaster is a direct service area, therefore, ECWA will agree to accept the watermain along with all appurtenances once the conditions of the agreement are met.

ARM:jmf  
Attachment  
cc: R.Stoll  
A.Massaro  
LNVL-947-2001

**COOPERATIVE AGREEMENT**

This Cooperative Agreement ("Agreement") is made and entered into July 2, 2020 ("Effective Date"), among the following parties:

**ERIE COUNTY WATER AUTHORITY**

295 Main Street, Room 350  
Buffalo, New York 14203

hereinafter referred to as the "Authority" and

**VILLAGE OF LANCASTER**

5423 Broadway  
Lancaster, New York 14086

hereinafter referred to as the "Village" and

and

**4<sup>TH</sup> GENERATION CONSTRUCTION, INC.**

5650 Simmons Avenue  
Niagara Fall, New York 14304

Hereinafter referred to as the "Contractor."

**Recitals**

**WHEREAS**, the Village has initiated a capital improvement project, known as the West Main Street Extension Project, to develop West Main Street between Aurora Street and Central Avenue into a mixed-use business district (the "Project");

**WHEREAS**, as the recipient of a grant from Empire State Development, the Village has competitively bid and awarded a construction contract to extend West Main Street and to install new street lighting, sidewalks, curbing, hydrants and water main;

**WHEREAS**, the Village will fund and the Contractor will construct an extension of the Authority's existing water main, installing approximately 925 linear feet of new water main between Aurora Street and Central Avenue, to service the new mixed-use business district (the "Water Main Project"); and

**WHEREAS**, the Authority's Engineering Department has reviewed and approved the plans and specifications for the Water Main Project located within the Authority's direct service area;

**NOW, THEREFORE**, in consideration of the mutual promises set forth in this Agreement, the parties agree as follows:

## **ARTICLE 1 THE WATER MAIN PROJECT**

**1.01** The Village, through the Contractor, will have installed approximately 925 +/- linear feet of 12-inch ductile iron pipe ("DIP") water main, approximately 925 +/- linear feet of 10-inch DIP water main, and approximately 925 +/- linear feet of 8-inch DIP water main, as well as two (2) hydrants, nine (9) 12-inch butterfly valves, two (2) 12-inch gate valves, one (1) 10-inch butterfly valve, and two (2) 8-inch gate valves.

**1.02** The installation of the Water Main Project will begin at the existing water main on the north side of West Main Street east of Aurora Street thence easterly approximately 700 linear feet and terminating at the existing water main on Central Avenue.

**1.03** The installation of the Water Main Project will be as shown and noted on plans and drawings submitted by Wendel, approved by the Village's Engineer and Fire Chief on April 23, 2020, and approved by the Authority's Executive Engineer on May 11, 2020, a copy of which is attached to, and incorporated in, this Agreement as Appendix A.

**1.04** During construction, the Village will perform resident inspection services and will immediately notify the Authority's Executive Engineer, or his designated project engineer, of any unanticipated problems associated with the Water Main Project.

**1.05** In accordance with the General Municipal Law § 103, the Village has solicited sealed bids and has awarded a construction contract to the Contractor, as the lowest responsible, responsive bidder for the Water Main Project.

## **ARTICLE 2 COSTS**

**2.01** The Village has received grant funding from Empire State Development relative to the West Main Street Extension Project. The Water Main Project is included under the West Main Street Extension Project. All costs relative to the Water Main Project will be borne by the Village. The Authority will not bear any of the costs related to the Water Main Project.

## **ARTICLE 3 ACCEPTANCE OF THE WATER SYSTEM BY THE AUTHORITY**

**3.01** The Village 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.

**3.02** 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.

- A. 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.
- B. 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.

**3.03** 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, the Village and the Contractor shall provide the Authority with the following:

A. Performance/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. A sample performance/maintenance bond in a form acceptable to the Authority is attached and made a part of this Agreement as Appendix B.
- 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 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 defaults on its 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. A sample payment bond in a form acceptable to the Authority is attached and made a part of this Agreement as Appendix C.

2. The Contractor 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 Village's Engineer and the Contractor, that all work involved in the installation of water mains and appurtenances was completed in accordance with plans and 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 Village's Engineer provided full time resident inspection of the work.
- E. 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 Village's Engineer. The Village's 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.
- F. 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.

**3.04** Water service connections will be installed by the Authority, at the time requested by the Village. The Village will arrange for the water service connection as well as meter installation and payment.

**3.05** The Village shall notify the Authority when customer service is desired at an individual premise so that a meter can be installed. If the Village fails to notify the Authority that a meter should be installed, the Village 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 will be calculated from the date of issue of the Certificate of Occupancy or the date of sale by the Village 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.

**3.06** 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.

**3.07** 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.

**3.08** Title to all water mains, hydrants, services, and appurtenances shall vest in the Authority and the Authority shall provide service to the Village in the same manner as if the mains were originally installed by the Authority.

**3.09** 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.

**3.10** 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 the Village 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 Village 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.

#### **ARTICLE 4**

#### **GENERAL PROVISIONS**

**4.01 Independent Status:** Nothing contained in the agreement shall be construed to render the Authority, the Village or the Contractor, employee or agent of the other, nor shall any party have authority to bind the other in any matter, other than set forth in this agreement. It is intended that each party shall remain independent and separate from the other, and fully responsible for its own actions.

**4.02 Insurance:** The Contractor for the Water Main Project shall secure and maintain such insurance necessary to protect itself, the Village, and the Authority, from claims under the Workmen's Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or any person other than its employees; and from claims of damages because of injury to or destruction of property including loss of use resulting thereof in the amount as approved by the parties. The Contractor shall provide and maintain insurance certifying that each party is insured under the policy. The issuance of the insurance policy shall not release the Contractor from any claims in excess of the insurance coverage.

**4.03 Indemnification:**

- A. To the fullest extent permitted by law, the Village agrees to indemnify and hold the Authority harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees, and cost of defense) to which the Authority, its officers, directors, employees and agents may be subject to, arising out of the death or bodily injury to any person or the destruction or damage to any property to the extent caused by the negligent acts, errors or omissions, or willful misconduct of the Village, its officers, directors, employees and agents under this Agreement and those of its contractors or subcontractors or anyone for whom the Village is legally liable.
- B. To the fullest extent permitted by law, the Contractor agrees to indemnify and hold the Authority harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees, and cost of defense) to which the Authority, its officers, directors, employees and agents may be subject to, arising out of the death or bodily injury to any person or the destruction or damage to any property to the extent caused by the negligent acts, errors or omissions, or willful misconduct of the Contractor, its officers, directors, employees and agents under this Agreement and those of its subcontractors or anyone for whom the Contractor is legally liable.
- C. To the fullest extent permitted by law, the Authority agrees to indemnify and hold the Village and/or the Contractor harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees and cost of defense) to the extent caused by the negligent acts, errors or omissions of the Authority, its



contractors, engineers, or anyone for whom the Authority is legally liable.

**4.04 Amendments and Modifications:** No modification, amendment or changes in the Water Main Project shall be valid unless the Authority is given prior written notice by the Village and/or the Contractor and the Authority gives the Village and the Contractor prior written approval of same.

**4.05 Notice:** Any notices required by this Agreement or otherwise shall be delivered by United States Postal mail or personal delivery upon the addresses stated above. Any change in such addresses shall be required to be in writing to the other party and acknowledged as such.

**4.06 Entire Agreement:** This Agreement contains the entire Agreement between the parties relating to its subject matter. All prior or contemporaneous contracts, understandings and statements are merged herein.


**4.07 Approval:** This Agreement is subject to approval by the respective parties in accordance with the authority granted to each party.

**IN WITNESS WHEREOF,** the parties hereto have set their hands and seals as of the Effective Date.

**VILLAGE OF LANCASTER**

  
WILLIAM C. SCHROEDER, Mayor

**4<sup>TH</sup> GENERATION CONSTRUCTION, INC.**

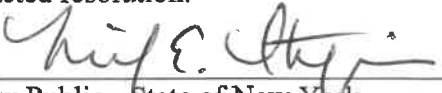
  
KRISTINE YARUSI, President

**ERIE COUNTY WATER AUTHORITY**

\_\_\_\_\_  
JEROME D. SCHAD, Chair

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

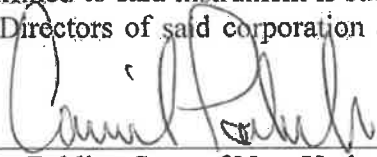
On the 23<sup>rd</sup> day of June, in the year 2020, before me personally came WILLIAM C. SCHROEDER, to me known, who being by me duly sworn did depose and say that he resides in Lancaster, New York, that he is the Mayor of the Village of Lancaster, described in the above instrument, and he signed his name thereto by the authorization of the Village Board of the Village of Lancaster pursuant to a duly enacted resolution.

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

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

MICHAEL E. STEGMEIER  
NOTARY PUBLIC, STATE OF NEW YORK  
REGISTRATION No. 01ST6155616  
QUALIFIED IN ERIE COUNTY  
My Commission Expires November 13, 2022

On the 18<sup>th</sup> day of June, in the year 2020, before me personally came KRISTINE YARUSSI, to me known, who being by me duly sworn, did depose and say that she resides in Niagara Falls, New York; that she is President of 4<sup>TH</sup> GENERATION CONSTRUCTION, INC., the corporation described in, and which executed, the foregoing instrument; that 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 she signed her name thereto by like order.

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

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

CAMIL PACHUCKI  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01PA6209994  
Qualified in Erie County  
Commission Expires August 10, 2021

On this \_\_\_\_ day of June, 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

**APPENDIX A**  
**APPROVED PLANS & DRAWINGS**

## **APPENDIX B**

### **SAMPLE PERFORMANCE/MAINTENANCE BOND**

## 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):

4<sup>th</sup> Generation Construction, Inc.  
5650 Simmons Avenue  
Niagara Falls, New York 14304

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.: 201400042

Date: July 2, 2020

Amount:

Description: Cooperative Agreement by and among the Erie County Water Authority, the Village of Lancaster and  
4<sup>th</sup> General Construction, Inc. (West Main Street Extension Water Main Project)

### 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.

**APPENDIX C**  
**SAMPLE PAYMENT BOND**

## Payment Bond

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

**CONTRACTOR (Name and Address):**

4<sup>th</sup> Generation Construction, Inc.  
5650 Simmons Avenue  
Niagara Falls, New York 14304

**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.: 201400042

Date: July 2, 2020

Amount:

Description: Cooperative Agreement by and among the Erie County Water Authority, the Village of Lancaster and 4<sup>th</sup> General Construction, Inc. (West Main Street Extension Water Main Project)

**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.