

LOUDOUN COUNTY SANITATION AUTHORITY
PERFORMANCE, PAYMENT AND MAINTENANCE BOND

BOND NO. _____	DATE BOND EXECUTED: _____
<u>PRINCIPAL(S)/CO-PRINCIPAL(S)</u> (Legal Name(s), Status, and Business Address(es) and <u>Telephone Number(s)</u>) _____ _____ _____ _____ _____ (Hereinafter "Principal" whether one or more than one)	TYPE OF ORGANIZATION: (Check One) <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Corporation <input type="checkbox"/> Other (Specify) _____ _____ STATE OF INCORPORATION OR ORGANIZATION: _____
<u>SURETY(IES):</u> (Name(s) and Business Address(es) and <u>Telephone Number(s)</u>) _____ _____ _____ _____ _____ (Hereinafter "Surety" whether one or more than one)	SUM OF BOND Million(s) Thousand(s) Hundred(s) _____ _____ _____ DATE OF AGREEMENT: _____ LCSA PROJECT ID #: _____ PROJECT NAME: _____ _____

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety hereto recite and declare that:

1. We are held and firmly bound to the obligee the Loudoun County Sanitation Authority, d.b.a Loudoun Water (hereinafter called "**Authority**"), in the sum written above in lawful money of the United States of America, to be paid to the Authority, its successors or assigns, for the payment whereof Principal(s), Co-Principal(s) and Surety(ies) bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by this Bond. Provided, however, that the Sum of Bond amount shall increase as required by the terms of the Agreement identified above (the "**Agreement**").

2. Upon the Principal making written request, and Authority's issuance of a written determination that the facilities are sufficiently complete to be placed into service, this Bond may be reduced to 20% of the above written sum.

3. Upon the Authority's issuance of a written determination that the facilities have been deeded to and accepted by the Authority, this Bond may be reduced to 5% of the above written sum to cover the warranty and maintenance of the facilities installed, pursuant to the Agreement identified above, and shall remain in effect for one (1) year thereafter.

4. The condition of this Bond is that if the Principal shall in every respect perform all of its obligations per the terms of the Agreement, as such Agreement may be subsequently modified, which Agreement is incorporated herein by reference, then this Bond shall be void; otherwise, this Bond shall remain in full force and effect until released by the Authority.

5. Surety expressly WAIVES any right to receive notice, review, and/or approve any revisions, modifications or changes to the Agreement or to the plans, profiles, and specifications referred to in the Agreement and any such revision, modification and/or change shall not in any way relieve the obligations of the Surety under this Bond.

6. Surety shall be deemed to consent to any extension of time granted to Principal to permit performance of the obligations of the Agreement, whether or not Surety receives notice of such extension of time, and the liability of Surety under this Bond shall not be discharged or affected by any such extension of time.

7. **DEFAULT:**

A. Default may be deemed to have occurred on the part of the Principal if Principal shall fail to complete its obligations under the Agreement within the time set forth therein or any time extension thereof;

B. Default shall be deemed to have occurred on the part of the Principal prior to the expiration of such time period, or time extension, if, in the judgment of the Authority, the Principal has:

- i. Abandoned the performance of its obligations under the Agreement; or,
- ii. Renounced or repudiated its obligations under the Agreement; or,
- iii. Demonstrated that Principal is unable to complete its obligations under the Agreement within the time frame required by the Agreement; or,
- iv. Demonstrated through insolvency, or otherwise, including, without limitation, the involuntary or the voluntary filing for bankruptcy, that its obligations under the Agreement cannot be completed within the time allotted under the Agreement. Should the Principal file for bankruptcy, or be placed into bankruptcy, it shall provide prompt written notice of such filing to the Authority. The filing for bankruptcy by the Principal, or the placement of principal into bankruptcy, shall not relieve Surety of all of any of its obligations under this Bond; or,
- v. Committed a default as described in the Agreement.

C. Default shall be deemed to have occurred on the part of the Principal if Principal shall fail to renew this bond or to have this bond reissued prior to the completion of the Improvements covered by the Agreement.

D. The Authority will provide Principal with a Notice of Default as required by the Agreement.

E. In the event of default, the Authority may terminate whatever rights the Principal may have to construct or correct any of the work required under the Agreement.

8. In the event of default by the Principal, the Authority will send a Notice of Default to the Principal which will provide for a time period to cure the default not to exceed 30 days, except in the event the default poses an immediate risk to the health, safety or welfare of the public in which event the cure period may be less than 30 days as determined by the Authority. A copy of the Notice of Default will be sent to the Surety. Should the Principal fail to cure the default in the time allotted, if any, the Authority shall give written notice of same to the Surety. In the event of such default and notice, the Surety shall either:

A. Within 7 days from the expiration or the cure period set forth in the Notice of Default, Surety shall pay over the full face value sum of the Bond to the Authority or such lesser sum as may be determined by the Authority in its sole discretion to cover all costs and expenses set forth in paragraph 9(B) of this Bond. If the Authority agrees to payment of less than the full amount of the Bond and the cost and expenses of completing the work set forth in paragraph 9(B) of this Bond exceed such payment, then the Authority may seek such additional costs and expenses from the Surety, not to exceed the face amount of the Bond; or

B. Within 7 days from the expiration or the cure period set forth in the Notice of Default, Surety shall give written notice to the Authority that it will retain a contractor(s) at Surety's sole cost and expense, subject only to amounts, if any, due the Principal under the Agreement, to promptly perform and complete the work and obligations under the Agreement according to its terms and provisions or such other term as may be approved by Authority. The Authority shall have the right to approve in its sole discretion any contractor(s) proposed by Surety to complete the work and obligations under the Agreement. In the event that Surety elects this option and then fails, or the contractor(s) Surety selects to complete the work under the Agreement fails, to fully and timely perform all or any part of the work and/or obligations under the Agreement, then the Authority may proceed as provided in paragraph 9 of this Bond.

C. As used in this Bond, completion of the work specifically includes performance of every obligation of the Principal under the Agreement.

9. Should Surety fail to elect either option in paragraphs 8(A) and (B), above, within 7 days from the expiration or the cure period set forth in a Notice of Default, or upon election of either option should then fail to promptly and fully perform its obligations under the option chosen by the Surety, in either such event, then the Authority may:

A. Take over and complete all or any part of the work not completed under the Agreement by whatever means determined by the Authority and recover from Surety all the costs incurred in completing such work, including all items set forth in paragraph 9(B) and any other damages; or

B. File suit to enforce the provisions of this Bond. In the event that any such suit, action, or proceeding is brought by the Authority, it is expressly agreed and understood that,

the Authority shall be entitled to recover from Surety all costs of completion or correction, or both, of the work and other obligations required by the Agreement including, without limitation, all administrative costs inspection or testing costs, design or engineering costs, and project management costs. Additionally, the Authority shall be entitled to recover from Surety all damages arising from the failure of Principal to perform its obligations under the Agreement, including, without limitation, loss of use and delay damages and all litigation costs, including expert witness costs and attorney's fees.

C. Should the Authority complete the work, the Authority shall not be bound by the Principal's approved construction plans if unforeseen conditions require the Authority to deviate from the approved plans, or the Authority reasonably determines that deviations from the approved plans are necessary for the timely completion of the work and obligations of the Principal under the Agreement. Such deviations shall not relieve Surety of its obligations under the Bond and shall be at the sole discretion of the Authority.

10. Nothing in this Bond shall be construed as creating an obligation upon the Authority to pay for the completion or correction of the work guaranteed under the provisions of this Bond.

11. By signatures hereto the Principal and the Surety do hereby expressly WAIVE any objection that they, or either of them, might interpose to the authority of the Authority to require each and every provision of the foregoing Bond.

12. If any provision of this Bond is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reason, such provision shall be fully severable and this Bond shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of this Bond, and the remaining provisions of this Bond shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from this Bond.

13. The failure or refusal of the Authority to take any action, proceeding, or step to enforce any remedy or exercise any right under the Agreement or under this Bond, or the taking of any action, proceeding, or step by Authority, shall not in any way release Principal or Surety, or any of them, or their respective executors, administrators, successors or assigns from liability under this Bond. Surety hereby WAIVES notice of any amendment, indulgence, or forbearance, made, granted or permitted by the Authority.

14. In any action or proceeding initiated in connection with this Bond and any and all obligations arising hereunder, the venue shall be the Circuit Court of County of Loudoun, Virginia, and it is hereby further understood and agreed that this Bond shall be governed by the laws of the Commonwealth of Virginia, both as to interpretation and performance.

15. All notices sent to the Principal and Surety shall be sent to the addresses set forth on page 1 of 7 of this bond unless said Principal or Surety notify the Authority in writing of any change. If an address of either Principal or Surety as shown on the signature page hereof is different from the address for that party as shown on page 1 of 7, notices shall be effective if sent to either address. If the addresses of any Principal or Surety change, the said Principal or Surety shall immediately notify the Authority of such change. Failure to notify the Authority of any change in

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address is deemed to be a waiver of any requirement of notice under this Bond to the Principal and Surety. All written notice to the Authority under this Bond shall be sent certified or registered mail, return receipt requested and addressed to the Authority.

[REMAINDER OF THIS PAGE PURPOSELY BLANK. SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, under seal, as of the day and year on the date set forth above.

PRINCIPAL(S)

TYPED, PRINTED NAME:

SIGNATURE: _____ (SEAL)

NAME AND TITLE: _____
(Typed)

SIGNATURE: _____ (SEAL)

NAME AND TITLE: _____
(Typed)

STATE OF _____
COUNTY OF _____, to wit:

I, _____, a Notary Public in and for the State and Authority aforesaid, do hereby certify that _____ and _____ as _____ and _____, respectively of the _____, whose names are signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged their signatures affixed above, and the Corporate Seal as the genuine seal of the said corporation.

Given under my hand the _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

Notary Registration Number: _____

CORPORATE SURETY

NAME, ADDRESS STATE OF INCORPORATION: _____
AND TELEPHONE NUMBER:

_____ LIABILITY LIMIT: : _____

SIGNATURES: 1. _____ (SEAL) 2. _____ (SEAL)

NAME(S) AND 1. _____ 2. _____
TITLE(S): _____
(Typed) _____

STATE OF _____
AUTHORITY OF _____, to wit:

I, _____, a Notary Public in and for the State and Authority aforesaid,
do hereby certify that _____ and _____ as _____
and _____, respectively of the _____, whose names are signed
to the foregoing, this day personally appeared before me in my State and County aforesaid and
acknowledged their signatures affixed above, and the Corporate Seal as the genuine seal of the
said corporation.

Given under my hand the _____ day of _____, 20__.

Notary Public

My Commission Expires: _____
Notary Registration Number: _____

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Countersigned by Virginia Resident Agent [unless current certificate of good standing and certificate to transact surety business in Virginia has been filed with and approved by the Authority]:

Signature: _____
Name, Title, Business Address
and Telephone Number:
(Typed)

STATE OF _____

COUNTY OF _____

The foregoing signature was acknowledged before me this ___ day of _____, 20__ by
_____ on behalf of the corporation.

Notary Public

My Commission Expires: _____
Notary Registration Number: _____