

**PERFORMANCE, PAYMENT AND MAINTENANCE BOND**

BOND NO. _____	DATE BOND EXECUTED: _____
PRINCIPAL(S)/CO-PRINCIPAL(S) (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: _____ _____
SURETY(IES): (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, Loudoun County Sanitation Authority, d/b/a Loudoun Water (hereinafter called "**Authority**" or "**Obligee**"), in the sum written above (the "**Penal Sum**") in lawful money of the United States of America, to be paid to the Authority or its successors or assigns, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by this Bond. In no event shall the aggregate liability of the Surety under this Bond exceed the Penal Sum. Provided, however, that the Penal Sum shall increase as required by the terms of the agreement between the Authority and the Principal (the "**Agreement**"). The Agreement is incorporated herein by reference.

2. Upon the Principal making written request and the Authority's issuance of a written determination that the work under the Agreement is sufficiently complete for the purpose of placing the facilities to be constructed into service, this Bond may be reduced to 20% of the Penal Sum.

3. Upon the Principal making written request and the Authority's issuance of a written determination that the work under the Agreement has reached final completion and that the ownership of the facilities to be constructed has been deeded or transferred to and accepted by the Authority, this Bond may be reduced to 5% of the Penal Sum, in order to cover the warranty and maintenance of the facilities installed, and shall remain in effect per the warranty period identified in the Agreement.

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 in strict conformity with the plans, specifications, and conditions set forth therein, as such agreement may be subsequently modified, then this Bond shall be void; otherwise, this Bond shall remain in full force and effect.

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 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. For purposes of this Bond, the Principal shall be deemed in default if the Principal (i) fails to comply with or complete any of its obligations under the Agreement in strict conformity with the plans, specifications, and conditions set forth therein, (ii) abandons, renounces, or repudiates the performance of any of its obligations under the Agreement, (iii) declares bankruptcy or is the subject debtor of a bankruptcy proceeding (the foregoing event shall not relieve Surety of its obligations under this Bond), (iv) fails to maintain this Bond for the requisite duration, or (v) defaults under the Agreement.

B. In the event of a default by the Principal, the Authority may exercise any termination or suspension rights that it has under the Agreement.

8. In the event of a default by the Principal, the Authority shall send a notice of default to the Principal which will provide for a time period to cure the default per the terms of the Agreement. A copy of any notice of default shall be sent to the Surety. If the Principal fails to timely cure the default, then the Authority shall give written notice of the failure to cure to the Surety. In the event of Principal's default, the Surety shall either:

A. Within 7 days after the expiration of the cure period or, if no cure period is provided, the receipt of the notice of default, the Surety shall pay for any damages, losses, fees, or costs, incurred as a result of the default, that the Authority may recover under the Agreement (the "Recoverable Damages"), plus any resulting administrative costs, inspection or testing costs, design or engineering costs, project management costs, and attorneys' fees and litigation costs (the "Incidental Costs"). If the amount of the Surety's payment is less than the Penal Sum, and the costs and expenses of completing the Principal's work exceed the portion of the payment allocated for such completion, then the Surety shall pay for the extra costs and expenses incurred for such

completion; or

B. Within 7 days after the expiration of the cure period or, if no cure period is provided, the receipt of the notice of default, the 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 obligations under the Agreement according to its terms and provisions or such other terms as may be approved by the Authority. The Surety acknowledges that time is of the essence in retaining a new contractor(s) and shall act promptly in retaining such contractor(s). The Authority shall have the right to approve in their sole discretion any contractor(s) proposed by Surety. In addition to the foregoing, the Surety shall pay for any Recoverable Damages and Incidental Costs that remain or still exist after factoring the mitigation of any damages through the Surety's retention of a new contractor(s).

9. If the Surety fails to timely make an election as required above, fails to timely or fully perform the option elected, or the new contractor(s) that Surety selects fails to fully or timely perform the obligations under the Agreement according to its terms or such other terms as may be approved by the Authority, then the Authority may exercise any rights it may have under the Agreement to take over or cause the performance and completion of the Principal's work by whatever means determined by the Authority and recover from Surety any Recoverable Damages, Incidental Costs, and all other costs incurred in completing such obligations. The Authority may also or instead file suit to enforce the provisions of this Bond, in which case the Surety shall be liable for the reasonable attorneys' fees and costs incurred by the Authority should the Authority prevail, not to exceed the Penal Sum. If the Authority elects to take over or cause the performance and completion of the Principal's work, the Authority shall not be bound by the Principal's approved construction plans if the Authority reasonably determines that deviations from the approved plans are necessary due to unforeseen conditions, or new conditions that occur after the Principal's default, or for the timely completion of the Principal's work. Such deviations shall not relieve Surety of its obligations under the Bond.

10. Nothing in this Bond shall be construed as creating an obligation upon the Authority to pay for the performance or completion of the obligations guaranteed under the provisions of this Bond. The foregoing, however, shall not impact any obligations that the Authority may otherwise have under the Agreement.

11. The Surety and the Principal shall be jointly and severally liable to the Authority under this Bond.

12. 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.

13. 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.

14. 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 the Principal or the Surety 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.

15. 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.

16. All notices sent to the Principal or the Surety shall be sent to the addresses set forth on page 1 of this Bond unless said Principal or Surety notifies 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, notices shall be effective if sent to either address. If the address of any Principal or Surety changes, Principal or Surety shall immediately notify the Authority of such change. Failure to notify the Authority of any change in address is deemed to be a waiver of any requirement of notice under this Bond to the Principal and the 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.

17. If there is a dispute over the amounts in which the Surety must pay under this Bond, the Surety shall promptly pay the undisputed amounts while the parties resolve the disputed amounts.

18. *Intentionally omitted.*

19. *Intentionally omitted.*

20. Any ambiguities in this Bond shall not be automatically construed against a party on the basis of authorship. The use of the phrases “and” / “or” shall be construed based on the context and not as conjunctive or disjunctive strictly based on the exact phrase used.

[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/Commonwealth of \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, to wit:

I, \_\_\_\_\_, a Notary Public in and for the State and County 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/Commonwealth of \_\_\_\_\_  
AUTHORITY OF \_\_\_\_\_, to wit:

I, \_\_\_\_\_, a Notary Public in and for the State/Commonwealth and  
County 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: \_\_\_\_\_

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: \_\_\_\_\_