



Form 9

CITY OF PHILADELPHIA PERFORMANCE BOND

Bond No. _____

City Contract No. _____

Bond Amount _____

1. Provider, _____ and the Surety, _____ jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the City for the performance of the City Contract, Operation, Maintenance & Support Services for the Department of Public Property which is incorporated herein by reference.
2. If the Provider performs the City Contract, in accordance with the terms and conditions of the City Contract, the Surety and the Provider shall have no further obligation under this Performance Bond.
3. The Surety's obligation under this Performance Bond shall arise after the City has declared a Provider Default as defined below, formally terminated the City Contract or the Provider's right to complete the City Contract, and notified the Surety of the City's claim under this Performance Bond.
4. When the City has satisfied the conditions of Paragraph 3 above, the Surety shall, at the Surety's sole cost and expense, undertake one or more of the following actions:
 - a. Arrange for the Provider to perform and complete the City Contract, provided, however, that the Surety may not proceed with this option, except upon the express written consent of the City, which consent may be withheld by the City for any reason; or
 - b. Perform and complete the City Contract itself, through qualified providers who are acceptable to the City, through a contract between the Surety and qualified providers, which performance and completion shall be undertaken in strict accordance with the terms and conditions of the City Contract; or
 - c. Tender payment to the City in the amount of all losses incurred by the City as a result of the Provider Default and as determined by the City for which the Surety is liable to the City, including all costs of completion of the City Contract and all consequential losses, costs, and expenses incurred by the City as a result of the Provider Default, and including all unpaid fees or payments owed to the City by the Provider under the City Contract, except that Surety's payment under this option shall in no event exceed the limit of the Bond Amount. The Surety may not proceed with this option, in lieu of the options set forth in subparagraphs (a) or (b) above, except upon the express written consent of the City, which consent may be withheld by the City for any reason.
5. The Surety shall proceed under Paragraph 4 above within ten (10) business days after notice from the City to the Surety of the Provider Default, formal termination of the Contract or the Provider's right to complete the City Contract, except that the Surety shall proceed within twenty-four (24) hours after notice, where the notice states that immediate action by the Surety is necessary to safeguard life or property.
6. If the Surety fails to proceed in accordance with Paragraphs 4 and 5 above, then the Surety shall be deemed to be in default on this Performance Bond three business days after receipt of written notice from the City to the Surety demanding that the Surety perform its obligations under this Performance Bond. Thereafter, if notice to the Surety is without effect, the City shall be entitled to enforce any legal or equitable remedy available to the City. If the Surety has denied liability, in whole or in part, the City shall be entitled without further notice to Surety to enforce any legal or equitable remedies available to the City.

7. After the City has terminated the City Contract or the Provider's right to complete the City Contract, and if the Surety is proceeding under subparagraphs 4(a) or 4(b) above, then the responsibilities of the Surety to the City shall not be greater than those of the Provider under the City Contract, and the responsibilities of the City to the Surety shall not be greater than those of the City under the City Contract. The Surety shall be obligated to the limit of Bond Amount as set forth on the front page, subject, however, to a commitment by the City for payment to the Surety of the Balance of the Contract Price in mitigation of costs and damages on the City Contract. The Surety shall be obligated, without duplication, for:
 - a. The responsibilities of the Contractor for correction of defective or unsuitable work and performance and completion of the City Contract;
 - b. Additional legal, design professional, and delay costs incurred by the City as a result of the Provider's Default, and as a result of the Surety's actions or failures to act under Paragraph 4 above;
 - c. Liquidated damages as specified in the City Contract, or, if no liquidated damages are specified in the City Contract, actual damages and consequential damages incurred by the City as a result of delayed performance or non-performance of City Contract by the Provider or the Surety; and
 - d. Payment of all unpaid and due and owing fees or payments owed to the City under the City Contract at the time of the Provider Default.
8. To the extent of payment to the Surety of the Balance of the Contract Price, the Surety shall defend, indemnify, and hold harmless the City from all claims, suits, causes of actions, and demands (including all costs of litigation and a reasonable attorney's fee), which are brought against the City by the Provider or any other party and which arise from or by reason of payment to the Surety the Balance of the Contract Price.
9. The Surety hereby waives notice of any change or modification to the City Contract, including changes of time, or changes to related subcontracts, purchase orders, and other obligations.
10. Any proceeding, suit, or claim, legal or equitable, under this Performance Bond shall be instituted in the U.S. District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County and shall be instituted within two years of the date on which the Surety refuses or fails to perform its obligations under this Performance Bond, in accordance with Paragraphs 4 and 5 above. If the provisions of this Paragraph are void or prohibited by law, the minimum limitations period available to sureties as a defense in the jurisdiction of the proceeding, suit, or claim shall be applicable.
11. All notices to the Surety or the Provider shall be mailed or delivered to the respective addresses shown on the signature page. In the event of a change in the address of the Surety or the Provider, such party shall promptly provide notice to the City and the other party, with such notice to include the City Contract No. and this Performance Bond No.
12. The law controlling the interpretation or enforcement of this Performance Bond shall be Pennsylvania law.
13. Definitions
 - a. Balance of the Contract Price: The total amount then payable by the City to the Provider under the City Contract after all proper adjustments have been made, including change orders and credits due the City, reduced by all valid and proper payments made to or on behalf of the Provider under the City Contract and reduced further by all direct costs and expenses incurred by the City as a result of the Provider Default, including costs of additional supervision or inspection by the City of the Provider's work under the City Contract and fees and expenses paid to consultants or others hired by the City for purposes of monitoring or investigating the Provider's work under the City Contract.
 - b. City Contract: The agreement between the City and the Provider identified on the front page.

c. Contractor Default: "Contractor Default" shall mean the occurrence of an "event of default" or a "termination for cause" as defined or provided for in the City Contract's terms, conditions, and provisions.

CONTRACTOR AS PRINCIPAL:

Signature: _____

Title: _____

Date: _____

Address: _____

(Corporate Seal)

SURETY:

Signature: _____

Attorney-In-Fact

(*Attach Power of Attorney)

Date: _____

Address: _____

(Surety Seal)