

Exhibit D

SURETY AGREEMENT

CHCP SCI-Phoenix Prison

In consideration of, and as an inducement for the execution by the Commonwealth of Pennsylvania, acting by and through the Commonwealth of Pennsylvania, Department of Corrections ("DOC") of that certain Energy Services Agreement dated _____, 20__ (the "ESA") between the DOC and _____ ("Contractor"), and in consideration of, and as an inducement for the execution by the Commonwealth, acting by and through the Commonwealth of Pennsylvania, Department of General Services (the "DGS") of that certain Ground Lease Agreement dated _____, 20__ (the "Ground Lease") (the ESA and Ground Lease being collectively referred to herein as the "Agreements") the undersigned, _____ ("Surety"), intending to be legally bound hereby, does hereby become surety to the DOC and the DGS, for the full and timely payment of any and all sums and charges payable by Contractor, its successors and assigns, and performance and observance of all the covenants, terms, conditions and agreements therein provided to be performed and observed by Contractor, its successors and assigns. Surety hereby covenants and agrees to and with the DOC and the DGS that if default shall at any time be made by Contractor, in the payment of any and all sums and charges payable by Contractor, or if Contractor should default in the performance and observance of any of the covenants, terms, conditions or agreements contained in the Agreements, Surety will forthwith pay such sums and charges, and any arrears thereof, to the DOC and/or the DGS, and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and agreements and will forthwith pay to the DOC and/or the DGS all damages, costs and expenses that may arise in consequence of any such default by Contractor, under the Agreements, including without limitation, all reasonable attorneys' fees incurred in non-judicial actions, at trial, and upon appeal, and disbursements incurred by the DOC and/or the DGS or caused by any such default and/or by the enforcement of the Surety Agreement.

This Surety Agreement is an absolute and unconditional guarantee of payment and of performance. It shall be enforceable against the Surety without the necessity of any suit or proceedings on the DOC's or the DGS's part of any kind or nature whatsoever against Contractor, its successors and assigns, and without the necessity of any notice of non-payment, non-performance or non-observance, any notice of acceptance of this Surety Agreement or any other notice of demand to which the Surety, as surety, might otherwise be entitled, all of which Surety hereby expressly waives. Surety hereby expressly agrees that the validity of this Surety Agreement and the obligations of Surety hereunder shall in no way be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by the DOC or the DGS against Contractor, or against Contractor's successors and assigns, of any of the rights or remedies reserved to the DOC or the DGS pursuant to the provisions of the Agreements or by relief of Contractor from any of Contractor's obligations under the Agreements or otherwise by:

- (a) the release or discharge of Contractor in any creditor's proceedings, receivership, bankruptcy or other proceedings;

Exhibit D

- (b) the impairment, limitation or modification of the liability of Contractor or the estate of Contractor in bankruptcy or of any remedy for the enforcement of Contractor's liability under the Agreements, resulting from the operation of any present or future provision of the Bankruptcy Code or other statute or from the decision in any court; or
- (c) the rejection or disavowments of the Agreements in any such proceedings.

This Surety Agreement shall be a continuing guaranty and the liability of Surety shall be in no way affected, modified or diminished by reason of any assignment, amendment, renewal, supplement, modification or extension of the Agreements or by reason of any modification or waiver or change in any of the terms, covenants, conditions or provisions of the Agreements, or by reason of any extension of time that may be granted by the DOC or the DGS to Contractor, or by reason of any dealings or transactions or matters of things occurring between the DOC or the DGS and Contractor, whether or not notice thereof is given to Surety. The DOC's or the DGS's consent to any assignment or assignments, and successive assignments by Contractor and Contractor's assigns of the Agreements, made either with or without notice to Surety, shall in no manner whatsoever release Surety from any liability as surety.

All of the DOC's and the DGS's rights and remedies under the Agreements or under this Surety Agreement are intended to be distinct, separate and cumulative, and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others.

Until all the covenants and conditions in the Agreements on Contractor's part to be performed and observed are fully performed and observed, Surety (a) shall have no right of subrogation against Contractor by reason of any payments or acts of performance by Surety as surety, in compliance with the obligations of Surety hereunder; (b) waives any right to enforce any remedy which Surety now or hereafter shall have against Contractor by reason of any one or more payments or acts of performance in compliance with the obligations of Surety hereunder; (c) subordinates any liability or indebtedness of Contractor now or hereafter held by Surety to the obligations of Contractor to the DOC or the DGS under the Agreements; (d) waives any right provided by law to cause the DOC or the DGS either to commence a proceeding against Surety to enforce the terms of this Surety Agreement or to waive the DOC's or the DGS's right to commence to such a proceeding; and (e) covenants and agrees to notify the DOC and the DGS, in writing, of any change in the address of the residence of Surety, prior to the date of such change.

Surety consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. Surety agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

Surety hereby represents and warrants that Surety has the full legal right and power to enter into this Surety Agreement.

Exhibit D

The invalidity or enforceability of any one or more provisions of this Surety Agreement shall not affect any other provision. This Surety Agreement will be governed by Pennsylvania law and may be amended only by a written instrument executed by Surety and the Commonwealth. Whenever the context requires, all terms used in the singular will be construed in the plural and *visa versa*, and each gender will include each other gender.

This Surety Agreement shall be legally binding upon Surety, its successors and assigns, and shall enure to the benefit of the DOC and the DGS and the DOC's and the DGS's successors and assigns, each of whom shall have the same rights, remedies, powers and privileges as are herein provided for the DOC and the DGS.

POWER TO CONFESS JUDGMENT. SURETY HEREBY EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD, AFTER THE OCCURRENCE OF ANY DEFAULT HEREUNDER, TO APPEAR FOR SURETY AND, WITH OR WITHOUT COMPLAINT FILED, CONFESS JUDGMENT, OR A SERIES OF JUDGMENTS, AGAINST SURETY IN FAVOR OF THE DOC AND/OR DGS FOR ALL AMOUNTS DUE TO DOC AND/OR DGS HEREUNDER, TOGETHER WITH COSTS OF SUIT AND AN ATTORNEY'S COMMISSION OF THE GREATER OF 15% OF SUCH AMOUNTS OR \$5,000 ADDED AS A REASONABLE ATTORNEY'S FEE, AND FOR DOING SO, THIS SURETY AGREEMENT OR A COPY VERIFIED BY AFFIDAVIT SHALL BE A SUFFICIENT WARRANT, PROVIDED SURETY IS GIVEN WRITTEN NOTICE OF DOC'S AND/OR DGS' INTENTION TO CONFESS JUDGMENT AT LEAST FIVE (5) DAYS PRIOR TO THE FILING OF SUCH CONFESSION OF JUDGMENT. SURETY HEREBY FOREVER WAIVES AND RELEASES ALL ERRORS IN SAID PROCEEDINGS AND ALL RIGHTS OF APPEAL AND ALL RELIEF FROM ANY AND ALL APPRAISEMENT, STAY OR EXEMPTION LAWS OF ANY STATE NOW IN FORCE OR HEREAFTER ENACTED.

NO SINGLE EXERCISE OF THE FOREGOING POWER TO CONFESS JUDGMENT, OR A SERIES OF JUDGMENTS, SHALL BE DEEMED TO EXHAUST THE POWER, WHETHER OR NOT ANY SUCH EXERCISE SHALL BE HELD BY ANY COURT TO BE INVALID, VOIDABLE, OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND IT MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS DOC AND/OR DGS SHALL ELECT UNTIL SUCH TIME AS DOC AND/OR DGS SHALL HAVE RECEIVED PAYMENT IN FULL OF ALL AMOUNTS DUE, INTEREST AND COSTS. NOTWITHSTANDING THE ATTORNEY'S COMMISSION PROVIDED FOR IN THE PRECEDING PARAGRAPH (WHICH IS INCLUDED IN THE WARRANT FOR PURPOSES OF ESTABLISHING A SUM CERTAIN), THE AMOUNT OF ATTORNEYS' FEES THAT DOC AND/OR DGS MAY RECOVER FROM SURETY SHALL NOT EXCEED THE ACTUAL ATTORNEYS' FEES INCURRED BY DOC AND/OR DGS.

"Default" shall mean (i) the occurrence of any of the events defined as an "Event of Default" or "Default" in the Agreements; (ii) any default under any of the Agreements that does not have a defined set of "Events of Default" or "Default" and the lapse of any notice or cure period provided in such Agreements with respect to such default; (iii) Surety's failure to observe or

Exhibit D

perform any of the covenants, conditions or agreements contained herein, (iv) if any representation or warranty made by Surety herein shall prove to be incorrect or misleading in any material respect when made, or (v) the termination or attempted termination of this Surety Agreement.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Surety Agreement on this ____ day of _____, 20____.

SURETY:

Attest: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(Corporate Seal)