

EXHIBIT 9

FORM OF PERFORMANCE BOND

[To be replaced with actual Performance Bond]

GRAND PARKWAY PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to Zachry-Odebrecht Parkway Builders, a Texas joint venture comprised of Zachry Construction Company and Odebrecht Construction, Inc. (“Principal”), a Development Agreement for the Grand Parkway Project, duly executed and delivered as of _____, 2013 (the “Contract”), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, Principal is required to furnish a bond (this “Bond”) guaranteeing the faithful performance of its obligations under the Contract Documents.

NOW, THEREFORE, Principal and _____, a _____ (“Surety”), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of \$50,000,000, subject to increase in accordance with the NTP2 Rider attached hereto (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 8.1.3 of the Contract.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages as specified in the Contract Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive Final Acceptance of the Work called for in the Contract Documents with respect to those obligations of Principal which survive such Final Acceptance.

4. Whenever Principal shall be, and is declared by Obligee to be, in default under the Contract Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:

a. arrange for the Principal to perform and complete the Contract; or

b. complete the Project in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors; or

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Work, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee'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 Obligee the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Price incurred by the Obligee resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and the Obligee refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligee shall be entitled to enforce any remedy available to the Obligee.

6. After the Obligee has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract. To the limit of the Bonded

Sum, but subject to commitment of the unpaid balance of the Price to mitigation costs and damages on the Contract, Surety is obligated without duplication for:

- a. the responsibilities of the Principal for correction of defective work and completion of the Work;
- b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and
- c. Liquidated Damages under the Contract.

7. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than \$78,890,000. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

8. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

9. No right of action shall accrue on this Bond to or for the use of any entity other than Obligee or its successors and assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 200__.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

or secretary attest

By: _____
Name
Title:
Address:

NTP2 RIDER

To be attached to and form a part of

Bond No.

Type of
Bond: **Performance Bond**

dated
effective
(MONTH-DAY-YEAR)
[Developer]

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor of **Texas Department of Transportation**
(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

The Bonded Sum hereunder shall increase to the amount of \$788,900,000 (ONE HUNDRED PERCENT (100%) of the Price allocable to Construction Work (equal to the sum of the amounts set forth in rows 9-20 and 24 of Form M-1.1)) effective upon issuance by the Obligee of NTP2 under the Contract.

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: _____
(PRINCIPAL)

(SURETY)

By: _____
Attorney in fact