

TAKEOVER AGREEMENT

This Takeover Agreement (the “Agreement”) is made and entered as of the Effective Date, by and between the City of North Miami, (“Obligee”) and The Guarantee Company of North America USA (“Completing Surety”). Obligee and Completing Surety are each respectively referred to herein as a “Party,” and collectively as the “Parties.”

Recitals

WHEREAS, T.V. Diversified, LLC, (“Principal”) and Obligee entered into a contract dated November 29, 2018, (the “Contract”) for the construction of the Rehabilitation of Wastewater Pump Station No. 24 (Hospital Station) IFB No. 39-17-18 (the “Project”);

WHEREAS, Completing Surety issued Payment and Performance Bonds (collectively, the “Bonds,” and respectively, the “Payment Bond” and “Performance Bond”), each numbered 30164574 and each with a penal sum of \$952,060.56, in connection with the Project naming Principal as principal and Obligee as obligee;

WHEREAS, on or about on, February 14, 2020, Principal has advised the Parties that it is financially unable to complete the performance of its work on the Project and to comply with its contractual obligations, and irrevocably and voluntarily abandoned performance of the Contract, rendering Principal in default;

WHEREAS, subject to the reservation of rights set forth below, Completing Surety is willing to undertake and arrange for the performance of the work remaining under the Contract (the “Work”) pursuant to the terms of the Performance Bond and this Agreement, provided the entire Contract Balance as defined below and subject to adjustment for variation in the estimated quantities in accordance with the Contract, is paid to Surety in accordance with this Agreement.

NOW THEREFORE, in consideration of the agreements and undertakings set forth below and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

Terms

1. Recitals are Terms. The foregoing Recitals are incorporated herein by reference and constitute terms of this Agreement.
2. Incorporation of the Contract. The Contract and all included documents are incorporated by reference into this Agreement, amended and modified as provided by this Agreement.
3. Performance of the Work. Completing Surety shall be responsible for completion of the remaining Work in conformance with the terms and conditions of the Contract. Completing Surety agrees to undertake and arrange for the performance of the remaining Work under the Contract. Obligee acknowledges that Completing Surety is not acting as a contractor and is not licensed as a contractor in the State of Florida, and fully and forever releases and waives any claims

and defenses against Completing Surety on the grounds that Completing Surety is not properly licensed to perform the Work in accordance with this Agreement. Obligees acknowledge that Completing Surety is neither responsible for nor assuming any obligations or liabilities beyond those set forth in the Performance Bond and this Agreement. Obligees acknowledge that Completing Surety's obligation or loss shall not, under any circumstances, exceed the penal sum of the Performance Bond. For purposes of completion of the Contract, except as may otherwise be provided in this Agreement, Completing Surety is entitled to all rights, title, and interest of Principal in and to the Contract in all respects as if Completing Surety were the original party to the Contract. For purposes of completion of the Contract, except as may otherwise be provided in this Agreement, Obligees shall have all rights, obligations and responsibilities under the Contract with respect to the Completing Surety as if the Completing Surety were the original party to the Contract instead of Principal. The term "Contractor" as used in the Contract shall be deemed, after the Effective Date, to refer to Completing Surety rather than Principal.

4. Completion Contractor. Obligees acknowledge that Completing Surety may undertake and arrange for the performance of the Work pursuant to one or more separate agreements with one or more independent agents/entities and/or one or more completion contractors (collectively, the "Completion Contractor"). Obligees hereby consent to Completing Surety's selection of Completion Contractor subject to the qualification requirements of the Obligees imposed by the Contract for those entities performing the type of work contemplated by the Contract. Completing Surety reserves the right, in its sole discretion, to terminate or alter its agreement with Completion Contractor, or to engage a new or supplemental Completion Contractor to perform the Work. Insurance obligations under the Contract will be deemed met upon Completing Surety providing satisfactory evidence of the insurance coverage required by the Contract being carried by Completion Contractor(s), with Completing Surety and Obligees being named as additional insureds under the policy or policies. Obligees will be named as dual Obligees with Completing Surety for any payment and performance bonds obtained by Completion Contractor.

5. Contract Balance. Obligees represent and warrant that as of the Effective Date:
- a. The total authorized amount of the Contract, including all additions and deductions is \$952,060.56.
 - b. Principal has been paid the sum of \$207,512.39.
 - c. The "Contract Balance" shall be hereinafter defined as the sum of \$744,548.17 (subsection (a) minus subsection (b)). The Contract balance shall be adjusted as a result of any Change Order executed by the Parties after the Effective Date.
 - d. Obligees are currently holding the sum of \$23,056.93 in retainage pursuant to the Contract, which sum is included in the Contract Balance.
 - e. Obligees acknowledge that Surety is reasonably and materially acting in reliance upon Obligees' representations and warranties concerning the amount

of the Contract Balance. Surety reserves the right to dispute the accuracy of the Contract Balance.

Payment of the Contract Balance and Costs to Complete. Obligees agree that the Contract Balance shall be paid to Surety for completion of the Work in accordance with the Contract and this Agreement. The payment of the Contract Balance to Completing Surety shall be made in accordance with the terms and conditions of the Contract and this Agreement as to the time, amount, and method of payment. No payment shall be delayed by reason of any prior breach in the performance of work on the Project by Principal or by reason of any slow down or cessation of work in connection with the takeover of the Contract by Completing Surety. Further, in no event shall Obligees withhold, set off, or backcharge any of the Contract Balance from Completing Surety because of or on account of any claims, liens, lawsuits, or demands by any persons or entities furnishing or alleging to have furnished labor and/or materials to the Project or because of any costs or expenses incurred as a result of such claims, including, but not limited to, legal fees, court costs, administrative fees, or other consequential damages.

As of the Effective Date, Obligees is holding contract retainage in connection with Application for Payment Number 1, previously approved, but not paid by Obligees, in the amount of \$23,056.93 (the "Withheld Contract Retainage"). Obligees agree to make payment of the Withheld Contract Retainage to Completing Surety at the completion of contract work and upon the filing of Final Releases of Claims for unpaid claims associated with the Project.

All of Completing Surety's payments relating to the completion of the Contract, less amounts that Surety receives from Obligees pursuant to this Agreement, shall be credited against the penal sum of the Performance Bond. Completing Surety shall have no obligation to continue the performance of the Work if Obligees fails to pay Completing Surety the Contract Balance as required under Contract and this Agreement.

In no event shall Completing Surety be liable for any sums, amounts, claims, liquidated or unliquidated damages, compensation, actual or punitive damages, penalties, assessments, fees, fines, whether claimed or imposed for any reason by any person, comptroller, entity, or federal, state, county, or municipal governmental agency or political subdivision thereof, for any sum in excess of the penal sum of the Performance Bond. Nothing in this Agreement shall be deemed as, construed, or interpreted to effect or constitute a waiver of the penal sum of the Performance Bond or an increase in the liability of Surety under the Performance Bond.

6. Use of Equipment and Materials. Obligees agree that Completing Surety and Completion Contractor shall have the right to use, without charge, any of the equipment, materials, and appurtenances furnished or supplied to or fabricated for the Project, wherever located.

7. Time for Performance. Performance of the Work shall be substantially completed on or before Two Hundred Twenty Five (225) Days after the Notice to Proceed is issued (the "Completion Date"). Obligees hereby grants to Completing Surety a non-compensatory time extension from the original completion date in the Contract until the Completion Date, reserving only the right to assess pre-Effective Date liquidated damages as is set forth in Paragraph 6 above. The assessment of post-Effective Date liquidated damages under the Contract and this Agreement

may begin on the day after the Completion Date (“Post Completion Date Damages”); provided, however, that any such assessment of liquidated damages shall not include any alleged delays attributable to Principal or Surety that occurred at any time prior to or through the Effective Date, as such amounts have been waived and released pursuant to Paragraph 6 above. As for any Post Completion Date Damages, Obligees acknowledges and agrees that no such amounts shall be offset against or withheld from the Contract Balance for any claims Obligees has or may have for such actual or liquidated damages for delay and that any and all such claims asserted by either of the Parties are reserved for resolution following completion of the Work.

8. Completing Surety’s Authorized Individual and Payment Procedures. Completing Surety shall be represented in the performance of the Work on the Project by Kenny M. Young of J.S. Held, LLC (the “Authorized Individual”) solely for the purpose set forth in this Paragraph. The Authorized Individual may be changed upon ten (10) days prior written notification from Completing Surety to Obligees. The Authorized Individual shall represent Completing Surety in dealing with Obligees on day-to-day construction issues with respect to the Project. Completing Surety hereby designates the Authorized Individual to prepare and process applications for payment under the Contract. Payment for the Work on the Project shall be made to Completing Surety in accordance with the payment procedures set forth in the Contract, except that payments shall be remitted to:

Bank:	Fifth Third Bank
Bank Address:	4747 Haggerty Road, West Bloomfield, MI 48323
ABA Routing No.:	042000314
Account No.:	7914709535
Name on Account:	The Guarantee Company of North America USA
Reference:	Midas Southeast, LLC, Bond 30164574

In the alternative, Obligees may send payment in the form of a check payable to: The Guarantee Company of North America USA with the following reference Midas Southeast, LLC, Bond 30164574. Checks should be mailed to: 1 Towne Square, Suite 1470, Southfield, MI 48076 attention to Christina Zabek. The Authorized Individual shall have the authority to negotiate and execute change orders for extra work (work that is different from, in excess of, or beyond the scope of the work required by the Contract) requested or required by Obligees (hereinafter “Change Order for Extra Work”) without Completing Surety’s prior written approval, provided the Change Order for Extra Work does not exceed \$10,000.00 and the Completion Contractor is given additional time to perform the Change Order for Extra Work as agreed to by the Parties. If the Change Order for Extra Work exceeds \$10,000.00, or no additional time is given to the Completion Contractor to perform the Change Order for Extra Work, then Completing Surety’s prior written approval is required to negotiate the Change Order for Extra Work and any final Change Order for Extra Work must be executed by Completing Surety and not the Authorized Individual. If the total of all of the approved Change Orders for Extra Work exceeds the sum of \$50,000.00 then Completing Surety, not the Authorized Individual, must approve in writing each additional or subsequent Change Order for Extra Work regardless of the amount of each such Change Order for Extra Work. The Authorized Individual shall have no authority to act on behalf of Completing Surety to negotiate deductive change orders, credits, backcharges, or net deductions of any nature whatsoever from the Contract or the Contract Balance without Completing Surety’s prior written

approval. Any agreements with respect to the warranty work of Principal or corrective work, whether latent or patent, in the work performed by Principal shall require the written approval of Completing Surety.

9. Notices. All notices sent in accordance with the Contract or this Agreement shall be sent to the Party to receive such notice at the address set forth below or to such other address as either Party may specify in writing, and shall be presumed to have been given three (3) calendar days after mailing, provided mailing was by certified mail, with a copy transmitted by electronic mail, addressed to the intended recipient at its address set forth below:

Completing Surety:

The Guarantee Company of North America USA
Claims Department
One Towne Square
Suite 1470
Southfield, Michigan 48076
Attn: Christina Zabek
christina.zabek@theguaruntee.com

Obligee:

City of North Miami
776 N.E. 125 Street
North Miami, FL 33161
Attn: Wisler Pierre-Louis

With a copy to:
City of North Miami
776 N.E. 125 Street
North Miami, FL 33161
Attn: Jennifer Warren
jwarren@northmiamifl.gov

10. The Payment Bond. The Payment Bond shall remain in full force and effect in accordance with its terms and provisions. Obligee acknowledges that the total liability of Completing Surety under the Payment Bond shall not exceed the penal sum of the Payment Bond. All Payment Bond payments properly made by Completing Surety shall be credited against the penal sum of the Payment Bond. Nothing in this Agreement constitutes a waiver of such penal sum or an increase in the liability of Completing Surety under the Payment Bond.

Obligee acknowledges that claims have been made or may be asserted on the Payment Bond by Principal's unpaid suppliers and/or subcontractors. Unless required by law, Obligee acknowledges that it is not authorized to and agrees not to make any representations or promises regarding payment to such suppliers and/or subcontractors, and Obligee shall refer all inquiries from such suppliers and/or subcontractors with respect to payment to Completing Surety. Completing Surety shall have the right to settle, compromise, defend, appeal, pay, or dispute such claims as it, in its sole and complete discretion, may deem appropriate in accordance with the terms of the Payment Bond and applicable law. Completing Surety shall defend, indemnify, and hold harmless Obligee from any loss which may arise by virtue of such claims, liens, suits, or demands against the Payment Bond, subject to the penal amount of the Payment Bond, as reduced by payments made by Completing Surety under the Payment Bond.

11. Reservation of Rights. Except as otherwise expressly set forth herein, Completing Surety, for itself and for Principal, and Obligee reserve all of their respective rights, claims, and defenses under the Contract, the Bonds, at law, and in equity. Neither this Agreement nor any

provision hereof shall be deemed or construed to be an admission or concession of liability of any kind or nature by Principal, Completing Surety, or Obligee or a waiver of any right, claim, or defense the Principal, Completing Surety, or Obligee may have under the Contract, the Bonds, at law, and in equity. It is the understanding and intention of the Parties that, except as expressly set forth herein, any claims or contentions that may have been made or that may be made in relation to the Contract, the Bonds, at law, or in equity are in no way affected by this Agreement, and that by entering into this Agreement, the Parties acknowledge and agree that any and all rights, claims, or defenses which Principal and/or Completing Surety may believe themselves to have against Obligee or Obligee may believe itself to have against Principal and/or Completing Surety in relation to the Contract, the Bonds, at law, or in equity are in no way impaired or reduced by this Agreement and are fully reserved.

12. Rights against Third Parties. The Parties expressly reserve all claims, rights, remedies, and defenses they may have against any person or legal entity not a signatory hereto, including, but not limited to, Principal, and any and all suppliers, materialmen, and subcontractors.

13. No Third-Party Rights. This Agreement is solely for the benefit of the Parties. The Parties do not intend by any provision of this Agreement to create any rights in favor of or increase the rights of any third party, nor confer any benefit or enforceable rights, under this Agreement or otherwise, upon any person or entity other than the Parties. Further, the Parties acknowledge and agree that nothing in this Agreement is intended to or shall be construed to grant or expand any rights of any third-party claimants or the liabilities or obligations of Completing Surety under the Bonds or waive or alter any available defense or limitation against any third-party claim.

14. Dispute Resolution. Notwithstanding any provisions to the contrary in the Contract, the Parties agree that mediation and/or arbitration shall be undertaken only by the consent of both Parties. Obligee agrees that, upon Completing Surety's express written consent, Completion Contractor may pursue, in its own name and for its own benefit, any claims that Completing Surety and/or Completion Contractor may have against Obligee that accrue after the Effective Date with respect to the performance of the Work, including, but not limited to, claims for extra work, delays, accelerations, and/or disruptions. Completing Surety shall not be obligated to defend, indemnify, or hold harmless Obligee from any such claims of Completion Contractor under this Agreement.

15. Governing Law. The validity and interpretation of this Agreement, the rights and obligations of the Parties hereunder, and any and all disputes arising out of or relating to this Agreement shall be governed by, enforced, and construed in accordance with the laws of the State of Florida, without regard to any otherwise applicable conflict of law rules or requirements.

16. Entire Agreement. This Agreement constitutes the entire Agreement and understanding of the Parties hereto relating to the subject matter hereof, and shall supersede all prior or contemporaneous agreements, understandings, representations, and warranties, whether written or oral, relating to the subject matter hereof. Each of the Parties acknowledges that the other Party, or anyone acting on behalf of the other Party has made no representations, inducements, promises, or agreements, orally or otherwise, unless such representations, inducements, promises, or agreements are expressly embodied in this Agreement.

17. Illegality, Unenforceability, or Invalidity. If any term or provision of this Agreement is construed or found to be void, voidable, illegal, unenforceable, or invalid, this will not affect the legality, enforceability, or validity of any of the other terms or provisions of this Agreement. The illegal, unenforceable, or invalid term or provision shall be deemed stricken and deleted, but all other terms and provisions shall nevertheless continue and be given full force and effect as if the illegal, unenforceable, or invalid terms or provisions had never been incorporated.

18. Costs of Preparation. Each of the Parties hereto shall be responsible for and shall pay all of its own administrative expenses incurred in connection with the negotiation, preparation, and finalization of this Agreement, including without limitation, all legal fees and other expenses incident to the negotiation, preparation, and execution of this Agreement.

19. Additional Actions that may be Required. The Parties shall execute such documents and other papers and take such further actions as may be reasonably required or desirable to carry out the provisions hereof and the transactions contemplated hereby.

20. Modifications to this Agreement. No modification, amendment, or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the Parties. Any attempted amendment or modification of this Agreement that does not comply with this Paragraph shall be deemed void.

21. Construction. The Parties, together with their respective attorneys if any, participated in the drafting and preparation of this Agreement. Therefore, this Agreement shall not be construed in favor of or against any Party on the basis that any such Party did or did not draft this Agreement or any attachment thereto.

22. Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not control or affect the meaning, construction, or effect of this Agreement, or any provisions hereof.

23. Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Facsimile and electronically-transmitted signatures will have the same effect as original signatures. This Agreement will become effective upon the exchange by the Parties of signatures, either the originals or copies by hand delivery, mail, electronic transmission, or facsimile (the "Effective Date").

24. Authority. This Agreement has been duly executed and delivered by the Parties hereto and constitutes a legal, valid, and binding obligation of the Parties. Each person executing this Agreement on behalf of a Party hereto represents and warrants that they have full right and authority to enter into this Agreement. The person or persons signing and executing this Agreement on behalf of the Party, or representing themselves as signing and executing this Agreement on behalf of the Party, do hereby warrant and guarantee that he, she, or they have been duly authorized by the Party to execute this Agreement to validly and legally bind the Party to all terms,

performances, and provisions herein set forth. By their signatures below, the duly authorized representatives of the Parties accept the terms of this Agreement in full.

25. Successors and Assigns. This Agreement and the respective rights and obligations of the Parties shall inure to the benefit and be binding upon the successors and assigns of the Parties.

Executed this 25th day of June, 2020.

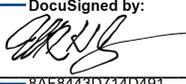
OBLIGEE

DocuSigned by:
By: Arthur H. Sorey, III
FDAAE1897923F49D...
Arthur H. Sorey, III
Interim City Manager

SURETY

By: 
Christina Zabek, Manager, Surety Claims
The Guarantee Company

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

DocuSigned by:

8AF8443D714D491...
Jeff P. H. Cazeau
City Attorney

ATTEST:

DocuSigned by:

BB47A3B4B262492...
Vanessa Joseph, Esq.
City Clerk