

TAKEOVER AGREEMENT

This Takeover Agreement ("Takeover Agreement") is entered into between the Guarantee Company of North America USA, One Town Square, Suite 1470, Southfield, MI 48076 ("Surety"), and Pinellas County, 315 Court Street, Clearwater, Florida 33756 ("County"). Surety and County are collectively referred to as the "Parties."

W I T N E S S E T H:

WHEREAS, Florida Safety Contractors, Inc., ("Florida Safety"), and the County entered into a Contract ("Original Contract") for Florida Safety to furnish all labor, equipment, materials, and perform all work for Contract Number 178-0458-CP, for the Advanced Traffic Management System project at Alternate U.S. Highway 19 South from State Road 60 to 34th Street North, ("Project") in accordance with the terms and provisions of the Original Contract, including all Contract Documents forming a part of the Original Contract, included as Exhibit A to this Agreement; and,

WHEREAS, Florida Safety and the Surety made, executed and delivered to the County a Contract Bond, identified as Bond No. 80165591 ("Bond") in the penal sum of \$2,160,181.25; and,

WHEREAS, Florida Safety, by email, dated November 24, 2020, notified the County that it was voluntarily defaulting on its contractual obligations under the Original Contract. Based on the voluntary default, the County took the prosecution of the work out of the hands of Florida Safety prior to full and final completion of the work on the Project, and demanded that the Surety takeover the Contract as stated under the terms and conditions of the Contract and the Bond; and

WHEREAS, the Parties recognize and agree that this Takeover Agreement is in furtherance of the Surety's obligations under the Bond; and

WHEREAS, the Surety through the engagement of a completion contractor ("Completion Contractor") is willing and able to undertake the completion of the Original Contract in accordance with the terms of the Bond and this Takeover Agreement while reserving all rights contained in each document and under applicable law, provided that the unpaid balance of work yet to be performed associated with the Original Contract (subject to adjustment to estimated quantities for actual field measurement) is paid to the Surety; and

WHEREAS, the Surety acknowledges receipt of the Deficiency List (Exhibit B) and the Surety will complete all work within the scope of the Original Contract.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and undertakings hereinafter set forth, and for other good and valuable consideration, its receipt and sufficiency being hereby acknowledged, the County and the Surety mutually agree as follows:

1. Each of the above recitations are true and correct and are incorporated into this Takeover Agreement as if fully set forth herein.

2. The Surety and the County represent and warrant to each other that they are authorized and empowered to enter into this Takeover Agreement.

3. The Bond and the Original Contract, including all plans; specifications, and other Contract Documents are incorporated by reference herein, and are made a part of this Takeover Agreement.

4. The Surety agree to have the Completion Contractor perform and complete the Work on the Project required by and in accordance with the terms and conditions of this Takeover Agreement and the Original Contract, including all plans and specifications referred to therein, and all supplemental agreements, work orders, Additional Work Authorizations (AWA), and change orders issued pursuant thereto (“Completion Work”). The County acknowledges that the Surety, by their execution of this Takeover Agreement, are acting in their capacity as Surety for Florida Safety, and are making arrangements for the performance and completion of the Original Contract through a Completion Contractor, and is not acting as a completing contractor, and is not assuming any obligations or liabilities beyond those contained in the Bond and this Takeover Agreement. With this understanding, for purposes of this Takeover Agreement, references to “Contractor” in the contract documents shall include the Completion Contractor and the Surety.

5. The County acknowledges that the Surety will subcontract the performance of each and every one of the terms, covenants, and conditions of the Original Contract, including all modifications thereto, to the Completion Contractor. The Completion Contractor shall be subject to the terms and conditions of the Original Contract as if it had originally executed the Original Contract, except to the extent otherwise provided in this Takeover Agreement. The Surety may satisfy the required insurance obligations under the Original Contract by providing evidence of the required insurance coverage carried by the Completion Contractor, naming the Pinellas County and the Surety as additional insured under the policy or policies by specific endorsement. The Completion Contractor shall be an independent contractor of the Surety, and no contractual relationship pursuant to this Takeover Agreement shall exist between the County and the Completion Contractor. The County shall recognize the Completion Contractor only in the capacity of a subcontractor of the Surety.

6. The County and the Surety agree that as of the date of this Takeover Agreement:

- (a) The authorized contract amount of the Original Contract is in the sum of \$2,160,181.25.
- (b) Florida Safety has been paid the sum of \$1,697,354.19.
- (c) The Contract Balance shall be hereinafter defined as the sum of \$462,827.06 [subsection (a) minus subsection (b)].
- (d) As of the date of execution of this Takeover Agreement, the County represents that, to the best of its knowledge and ability based upon the records available to it, the balance as defined herein is accurate. The Surety reserves the right to verify and confirm the accuracy of this balance. The

Surety's sole remedy against the County for breach of this representation is payment by the County to the Surety of any additional amount due.

7. The County agrees that the Contract Balance is dedicated to and will be applied to the Completion Work covered under this Takeover Agreement. As work is completed, the County shall pay directly to the Surety the Contract Balance, plus or minus any amounts of money on account of any modifications requested and authorized by the County, subject to all of the terms and conditions of the Original Contract, except as provided herein. The Surety agrees to expend their own funds as may be necessary to pay for the performance of the Original Contract by the Completion Contractor in the event that the Contract Balance is insufficient, with any such payments being credited against the penal sum of the Bond. Notwithstanding any provision in the Original Contract to the contrary, the County agrees to release funds from the Contract Balance in accordance with but not limited to Sections B.25 and 26 of the Original Contract (Exhibit A) to the Surety when and as due under this Takeover Agreement. In consideration of the Contract Balance being paid by the County to the Surety, as provided herein, the Surety agrees to comply with the obligations of the Original Contract and the Bond.

8. Insofar as the County has any right, title or interest therein, the County agrees that the Surety and the Completion Contractor shall have the right to use, without charge by the County, any of the equipment, materials and appurtenances furnished or supplied by Florida Safety which may be stored on or about the premises of the Project site or materials which may have been fabricated for the County in connection with the Original Contract, whether or not presently upon the Project site.

9. The Surety shall be represented at the Project by JS Held, LLC, ("Surety Representative). Prior to the issuance of the Surety's Notice to Proceed to the Completion Contractor, the Surety shall specifically authorize in writing an individual with the Completion Contractor to be its representative ("Authorized Individual"), solely for the purposes set forth in dealing with the County on day-to-day construction issues with respect to the Project.

10. Payments from the County shall be made to the Surety and transmitted to the Surety at the following address, unless and until the County is notified in writing of any different address:

c/o Matson Driscoll & Damico
David Stryjewski
399 Market Street, Suite 300
Philadelphia, PA 19106

11. All further changes to the Original Contract and this Takeover Agreement must be executed by both the Surety and the County. The Surety Representative and the Authorized Individual from the Completion Contractor shall have, on behalf of the Surety, authority to negotiate, but not to sign, Additional Work Authorizations (AWA), Work Change Directives (WCD), Supplemental Agreements and change orders for extra work (i.e. work that is different from, in excess of, or beyond the scope of the Work required by the Original Contract) requested or required by the County. The Surety hereby designates the Authorized Individual to review and negotiate any contract modifications and assist in the resolution of disputes that may arise during the performance of the work. The County agrees that the Surety need not sign pay requisitions

submitted to the County, and that they may be signed on Surety's behalf by the Authorized Individual. Except as expressly provided for in this paragraph, neither Completion Contractor, the Authorized Individual, nor the Surety's Representative shall have authority to sign Additional Work Authorizations (AWA), Work Change Directives (WCD), Supplemental Agreements, change orders, work orders, credits, back charges, or modifications of any kind whatsoever without Surety's prior written approval.

12. The provisions of the Bond shall remain in full force and effect in accordance with its terms and conditions. Nothing in this Takeover Agreement constitutes a waiver of the penal sum or an increase in the financial liability of the Surety under the payment and performance provisions of the Bond.

13. This Takeover Agreement is solely for the benefit of the County and the Surety. The County and the Surety do not intend by any provision of this Takeover Agreement to create any rights, nor to confer any benefit upon or confer any enforceable rights under this Takeover Agreement or otherwise upon anyone other than the County and the Surety. The Completion Contractor has no contractual rights pursuant to this Takeover Agreement, and no contractual relationship shall exist between the County and the Completion Contractor.

14. Save and except for the Bond, this Takeover Agreement constitutes the whole of the understanding, discussions, and agreements by and between the County and the Surety upon the subject matter contained herein. The terms and provisions of this Takeover Agreement are contractual and not mere recitals. The County and the Surety acknowledge that there have been no oral, written or other agreements of any kind as a condition precedent to or to induce the execution and delivery of this Takeover Agreement. Any written or oral discussions conducted prior to the effective date of this Takeover Agreement shall not in any way vary or alter the terms of this Takeover Agreement.

15. This Takeover Agreement shall not be changed, amended, or altered in any way except in writing and executed by both the County and the Surety.

16. This Takeover Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. Facsimile, digital, and electronic signatures shall be treated as original signatures for all purposes.

17. This Takeover Agreement shall be construed and interpreted in accordance with the laws of the State of Florida. Venue of any proceeding involving the Original Contract, or this Takeover Agreement must be in Leon County, Florida.

18. Any notices which are required to be given by the terms of this Takeover Agreement, the Original Contract, or the Bond, shall be made as follows:

As to the County:

Via certified mail, return receipt requested,
postage prepaid to:

Paul Giuliani

Division Director
Pinellas County Public Works Construction
22211 US 19 N., Bldg 16
Clearwater, FL 33765

With a copy to:
Merry Celeste
Division Director, Purchasing and Risk
Pinellas County
400 S. Ft. Harrison Ave.
Clearwater, FL 33756
mceleste@pinellascounty.org

As to the Surety:

Via certified mail, return receipt requested,
postage prepaid to:

Jeffrey Jubera
The Guarantee Co. of N. America USA
One Towne Square, Ste. 1470
Southfield, MI 48076

With an additional copy to:

Richard Sexton
JS Held, LLC
135 W. Central Blvd., Ste. 550
Orlando, FL 32801

20. The failure of any of the Parties to exercise in any respect a right provided for in this Takeover Agreement shall not be deemed to be a subsequent waiver of the same right or any other right.

21. This Takeover Agreement shall be binding upon the Parties and shall inure to the benefit of themselves, their respective successors and assigns.

22. In the event that one or more of the provisions of this Takeover Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

23. It is understood and agreed by the County and the Surety that this Takeover Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Takeover Agreement to be drafted.

24. With this Takeover Agreement Florida Safety, the Surety and the County agree to waive and release the other from (i) any of the rights or claims of Florida Safety and/or the Surety including, but not limited to, claims that the determination that Florida Safety had defaulted was improper or invalid, claims for delay, additional costs, and other claims for additional compensation or time extensions under the Original Contract; (ii) any rights or claims of the County in the Original Contract including, but not limited to, the County's claim for liquidated damages against Florida Safety or the Surety, lost revenue claims, back charges, and claims that Florida Safety breached the Original Contract, all of which claims and rights of the Surety and the County are specifically waived or released by entering into this Takeover Agreement.

25. With this Takeover Agreement, the Surety agrees to provide a project schedule acceptable to the County within ten (10) days of execution of this Agreement that will determine the new completion date for the project and will thereby establish a date upon which liquidated damages will apply should the project duration extend beyond the new completion date. The new project schedule will also provide the Surety a basis upon which to establish a delay claim should the Completion Contractor be delayed beyond his control in completing the project in accordance with but not limited to the terms and conditions for making such claims as outlined in Section B.24 of the Original Agreement.

IN WITNESS WHEREOF, the Parties have executed this Takeover Agreement on the date indicated above, and each of the undersigned personally represent and warrant that they have the full right, power and authority to execute this Takeover Agreement on behalf of the entity they represent.

Pinellas County, by and through its
County Administrator

The Guarantee Company of North America
USA

By: 
Barry A. Burton

By: 
Its: V.P. - Claims

Date: January 22, 2021

Date: January 20, 2021

APPROVED AS TO FORM

By: 
Office of the County Attorney