

UPPER HUDSON NATIONAL INSURANCE COMPANY
SURETY TAKEOVER AGREEMENT, BOND NO. 101780-00

WHEREAS, Upper Hudson National Insurance Company, (the "Surety") previously issued Payment and Performance Bond No. 101780-00 (the "Bond") in favor of the County of El Dorado, CA (the "Obligee"), to secure the performance by Victory Engineers, Inc. (the "Principal") of its contract (the "Contract") with the Obligee to perform all work necessary to perform Contract No. 77121, PW No. 09-30469 commonly referred to as "Ice House Road Bridges Maintenance" (hereinafter referred to as the "Project"); and

WHEREAS, on or about January 27, 2012, Principal signed Voluntary Default Letters acknowledging it is unable to perform or complete the performance of the work or comply with its contractual obligations on the Project; and thus, the Obligee declared the Principal to be in default and called upon the Surety to complete the Project according to the terms of the Bond; and,

WHEREAS, the Surety and Obligee acknowledge that the Statute of Limitations for the Obligee to commence a lawsuit against the Surety under the Performance Bond has yet to accrue; and,

WHEREAS, the Surety has elected to arrange for the completion of the performance of the Contract.

NOW, THEREFORE, in consideration of the promises above stated and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed between the Surety and the Obligee as follows:

1. The Obligee represents that the Original Contract Price was \$351,350.00;

2. The Obligees represent that after Change Orders approved, the Current Contract Price is \$383,544.50;

3. Principal has been paid \$209,200.16 for work previously performed by the Principal;

4. The Obligees represent that the Obligees are or will be withholding as a result of Stop Notices received the amount of \$66,918.13;

5. The Obligees represent that the Obligees are withholding as retention the amount of \$23,244.46;

6. The Obligees represent that the remaining contract funds to be paid will be paid to the Surety in the manner provided by the Contract as the work is completed, or as otherwise directed by the Surety in writing.

7. All documents comprising the Contract as defined in the construction contract dated on or about 9/12/2011 are hereby incorporated by reference and made a part of this Agreement and shall continue to bind the parties except as modified herein.

8. The Obligees represent that the present amount of the entire unpaid and unearned balance of the contract price is \$151,099.88 and that no charges have been assessed by the Obligees against the Principal reducing such contract funds available to be paid to the Surety hereunder to complete the project.

9. The Obligees represent that as of the date of this Agreement, a true and correct copy of any and all outstanding liens filed against the contract balances including claims of third parties such as banks, lenders, U.S. Internal Revenue Service, or any other entity claiming obligations due it from the Principal are attached hereto as Exhibit "A".

10. The Surety will arrange to complete the performance of the work in a workmanlike manner, in accordance with the Contract. The Obligee represents that the time to complete the Contract, without assessment of liquidated damages, at the current state of completion is 7 working days. The Obligee will start counting working days in accordance with the terms of the Contract commencing upon the lifting by the Obligee of the Suspension which is currently in place. The Obligee will provide reasonable notice to the Surety of when the Suspension will be lifted.

11. The Obligee accepts Carolino Construction Corporation as the contractor who will complete the Contract as agent for the Surety.

12. The Obligee represents that no liquidated damages due to the Principal's failure to complete the Contract have been assessed. The Surety shall not be liable for liquidated damages in accordance with the Contract unless the 7 working days together with any additional working days granted in accordance with the Contract are exceeded in the completion of the work of the Contract.

13. The parties acknowledge that the Surety's covenants and obligation of performance under this Agreement are being made pursuant to its obligations under the Bond, and all payments by the Surety for labor or material or for performance of the Contract are to be credited against the penal sum of such Bond less credit for receipt of Contract proceeds from the Obligee. The Payment Bond issued by Surety on the Project shall remain in full force and effect in accordance with its terms and provisions.

14. Nothing contained in this Agreement shall wave, limit, alter, or amend any of the Surety's rights or defenses under the Bond nor the rights, defenses, or liability of the Principal. Nothing contained in this Agreement shall be construed as affecting in any way the rights of the

Obligee or of the Surety to proceed or not to proceed, as they may determine in their own discretion, against the Principal.

15. The Obligee agrees that the Surety, by execution of this Takeover Agreement does not in any way waive the penal limit of either the Payment Bond or the Performance Bond. In the event it becomes necessary for the Surety to expend its own funds under its Bond less credits for receipt of Contract proceeds from the Obligee, the penal sum of such bond shall be deemed reduced to the extent of such expenditure. Under no circumstances shall the Surety be obligated to expend funds in excess of the penal limits of the Bond.

16. The parties do not intend by any provision of this Agreement to create any third-party beneficiaries, nor to confer any benefit upon or enforceable rights under it or otherwise upon anyone other than the parties hereto. Specifically, the parties acknowledge that nothing in this Agreement shall extend to or increase the rights of any claimants under the Bond.

17. The Obligee further agrees that it will not acknowledge or honor any claims, liens, suits, or charges against the Contract funds by any creditors or transferees or of any other parties making claims to any such proceeds or balances without the prior written consent of the Surety or by order of a court of competent jurisdiction after due notice to the Surety. The Obligee will promptly notify the Surety of any such claims, liens, suits or charges and furnish copies of same to the Surety.

IN WITNESS WHEREOF, the parties have hereunto set their hand and affixed their seals, this _____ day of _____.

OBLIGEE: _____

By: _____

Title: _____

SURETY: UPPER HUDSON NATIONAL INSURANCE COMPANY

By: *John Miller*
Title: *Vice President*

Attest: *Andrea Amendola*
Titles: *Administrative Assistant*