

TAKEOVER AGREEMENT

This Takeover Agreement (the "Agreement") is made and entered into this 14th day of February, 2012, by and between Williamson County, Texas (Williamson) and American States Insurance Company ("American").

WHEREAS, Williamson entered into a written contract dated January 11, 2011 with a notice to proceed on June 2, 2011, (the "Original Contract") with J.C. Evans Construction Co., LP (the "Principal") for construction work on a project identified as Ronald W. Reagan Boulevard Phase III, Williamson County Project No. 11WC902 (the "Project"); and

WHEREAS, American issued a Performance Bond (the "Performance Bond") and a Payment Bond (the "Payment Bond"), both numbered 58S200111, in connection with the Project in the penal sum of \$9,449,782.66; and

WHEREAS, on or about November 23, 2011, the Principal notified Williamson that it would not be completing the Project; and

WHEREAS, Principal filed for Chapter 11 bankruptcy protection in the action styled: *In re: JCE Delaware, Inc., et al.*, Case No. 11-11926-cag, Jointly Administered, and in such action has elected to reject the contract with Williamson; and

WHEREAS, Williamson has demanded that American complete the work referenced in the Original Contract and the Performance Bond; and

WHEREAS, American is willing to undertake the completion of the Original Contract in accordance with the terms of the Performance Bond and this Agreement provided the entire contract balance is available to be paid to American and certain other agreements hereinafter set out are made with Williamson.

NOW, THEREFORE, American and Williamson, for good and valuable consideration, the receipt of which is hereby acknowledged, do contract and agree as follows:

1. American agrees to perform or cause to be performed the terms, covenants and conditions of the Original Contract, including all modifications thereto, and agrees to be bound by the Original Contract. Williamson acknowledges, by its execution of this Agreement, that American is acting in its capacity as the surety for the Principal in making arrangements for the performance and completion of the Original Contract, and not as a completing contractor or a design professional. Williamson and American agree American is not assuming any obligations or liabilities beyond those set forth in the Performance Bond and in no event can American's obligation or loss exceed the penal sum of the Bond. As to completion of the Original Contract, except as otherwise provided in this Agreement, American is entitled to all rights, title, and interest of the Principal in and to the Original Contract in all respects as if American were the original party to the Contract. The term "Contractor" as used in the Original Contract

shall be deemed, after the effective date of this Agreement, to refer to American rather than the Principal.

2. Williamson acknowledges that American will subcontract the performance of the work under the Original Contract to one or more completion contractors (the "Completing Contractor(s)"), and Williamson hereby consents to the selection of the Completion Contractor by American. American may satisfy the required insurance obligations under the Original Contract by providing evidence of the required insurance coverage carried by the Completing Contractor, with American and Williamson being named as additional insureds under the policy or policies, effective as of the issuance date of a notice to proceed.

3. Williamson and American agree that as of the date of this Agreement:

- (a) The adjusted contract balance of the Original Contract is the sum of \$9,641,403.39;
- (b) There are pending Change Orders identified as follows: Change Order No. 6;
- (c) The Principal has been paid the sum of \$4,081,453.55;
- (d) Williamson is holding the sum of \$453,494.84, as earned retainage pursuant to the terms of the Original Contract;
- (e) The "Contract Balance" shall be hereinafter defined as the sum of \$5,559,949.84 (subsection a – subsection c). The Contract Balance shall be increased or decreased, as appropriate, as a result of those certain pending change orders identified above, any change orders later submitted by American, and as a result of any change order for extra work (work that is different from, in excess of, or beyond the scope of the work required by the Original Contract) requested or required by Williamson after the date of the execution of this Agreement; and
- (f) As of the date of the execution of this Agreement, Williamson represents that to the best of its knowledge, according to the records available to it, the Contract Balance as defined herein is accurate. American reserves the right to verify the accuracy of the Contract Balance. American's sole remedy against Williamson for breach of this representation and warranty is reformation of the Contract Balance to the proper amount.

4. Williamson agrees that the Contract Balance is dedicated to and will be applied to the completion of the Original Contract pursuant to this Agreement. Williamson shall pay directly to American the Contract Balance, plus or minus any additional amounts of money on account of any modifications requested and authorized by Williamson, as the work progresses. The payment of the Contract Balance to

American shall be made in accordance with the terms of the Original Contract as to the time, amount and method of payment, and no payment shall be delayed by reason of any prior breach in the performance of the work by the Principal or by reason of any slow down or cessation of work in connection with the takeover of the Original Contract by American.

5. American agrees to spend its own funds as may be necessary after the amount payable under the Original Contract has been disbursed through approved applications for payment, to pay for the completion of the performance of the Original Contract, with any such payments being credited against the Penal sum of the Performance Bond.

6. American shall complete the work required under the Original Contract pursuant to this Agreement in a timely manner.

7. Insofar as Williamson has any right, title or interest therein, Williamson agrees that American and its Completion Contractor(s) shall have the right to use, subject to the referenced bankruptcy order, and without charge, any of the equipment, materials and appurtenances furnished or supplied by the Principal which may be stored on or about the premises of the Project site or materials which may have been fabricated for use in connection the Original Contract, whether or not presently upon the Project site.

8. American shall be represented at the Project by Munther Shamieh of SourceHOV/Meridian ("Authorized Individual") solely for the purpose set forth in this paragraph. The Authorized Individual may be changed upon written notification from American to Williamson. The Authorized Individual will represent American in dealing with Williamson on construction issues with respect to the Project as the need arises. American hereby designates the Authorized Individual to prepare and process pay applications on the Original Contract. Payment for the work shall be made to American in accordance with the payment procedures set forth in the Original Contract Documents. Payment shall be delivered by U.S. Mail to American States Insurance Company of America, Attention: Ken Rockenbach, 1600 N. Collins Blvd., Suite 4000, Richardson, Texas 75080. The Authorized Individual shall have, on behalf of American, the authority to negotiate and sign change orders for extra work (work that is different from, in excess of, or beyond the scope of the work required by the Original Contract) requested or required by Williamson (hereinafter "Change Order") without American's prior written approval, provided the Change Order does not exceed \$10,000, and, if reasonably necessary, the Completion Contractor is given additional time to perform the Change Order. If the Change Order for extra work exceeds \$10,000, or no additional time is given to the Completion Contractor to perform the Change Order, then American's prior written approval is required to negotiate the Change Order and the final Change Order must be signed by American and not the Authorized Individual. If the total of all of the approved Change Orders exceeds the sum of \$20,000, then American, not the Authorized Individual, must approve in writing all additional or subsequent Change Orders regardless of the amount of each such Change Order. The Authorized Individual has no authority to negotiate deductive Change Orders, credits, backcharges

or net deductions from the Original Contract or the Contract Balance of any nature whatsoever without American's prior written approval. Any agreements with respect to the warranty work of the Principal or corrective work as a result of latent defects in the work performed by the Principal shall require the written approval of American.

9. All written communications from Williamson to American and from American to Williamson shall be made via certified mail, return receipt requested, as follows, and all shall be deemed received three (3) business days after deposit in the U.S. mail as provided herein:

American:

American States Insurance Company
Attn: Ken Rockenbach
1600 N. Collins Blvd., Suite 4000
Richardson, Texas 75080

With a copy to:

Christopher R. Ward
Strasburger & Price, LLP
901 Main Street, Suite 4400
Dallas, Texas 75202

Munther Shamieh
SourceHOV/Meridian
11122 Wurzbach Road, Suite 206
San Antonio, TX 78230

Williamson County, Texas:

Williamson County, Texas
Attn: Dan A. Gattis, County Judge
710 Main Street, Suite 101
Georgetown, Texas 78626

With a Copy to:

Prime Strategies, Inc.
1508 South Lamar Blvd.
Austin, Texas 78704
Attn: Michael Weaver

HNTB
14 Galloping Road
Round Rock, Texas 78681
Attn: James Klotz, P.E.

Williamson County Director of Infrastructure
3151 S.E. Inner Loop, Suite B
Georgetown, Texas 78626
Attn: Robert B. Daigh, P.E.

10. In no event shall Williamson withhold any of the Contract Balances from American because of or on account of any claims, liens, suits or demands by any person(s) or entities furnishing or alleging to have furnished labor and/or materials to the Project. The Payment and Performance Bonds shall remain in full force and effect in accordance with their terms and provisions. All Payment Bond payments properly made by American 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 American under the Payment Bond.

11. Except as otherwise explicitly set forth herein, American and Williamson reserve all of their respective rights under the Original Contract, the Bonds, at law, and in equity. This Agreement shall not be deemed or construed to be an admission or concession of liability of any kind or nature by American or Williamson. American and Williamson also 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, the Principal, and any suppliers, and subcontractors.

12. This Agreement is solely for the benefit of the Williamson and American. Williamson and American do not intend by any provision of the 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 anyone other than Williamson and American, other than the third party Completion Contractor, as set forth herein. Further, Williamson and American 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 American under the Bonds.

13. Each party to this Agreement hereby agrees and acknowledges that venue of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Williamson County, Texas or in the Austin Division of the Western Federal District of Texas. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

14. This Agreement constitutes the entire Agreement and understanding of the parties relating to the subject matter hereof, and shall supersede all prior or contemporaneous agreements and understandings, representations, and warranties, whether written or oral, relating to the subject matter hereof. The terms and provisions of this Agreement are contractual and not mere recitals. Williamson and American 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 Agreement.

15. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then the Parties will be relieved of all obligations arising under such provision, but only to the extent it is illegal, unenforceable, or void. All other provisions of this Agreement shall continue in full force and effect without regard to the provisions found to be illegal and unreasonable.

16. Each of the parties hereto shall be responsible for and shall all of its own expenses incurred in connection with this Agreement and the transactions contemplated herein, including without limitation all legal fees and other expenses incident to the negotiation, preparation and execution of this Agreement.

17. Williamson and American 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.

18. This Agreement shall not be changed, amended, or altered in any way except in writing executed by both Williamson and American, except as to any change orders authorized hereunder.

19. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original.

20. Each signatory to this Agreement warrants and represents that the claims, suits, rights, and/or interests which are the subject matter of this Agreement are owned by the party asserting same, have not been assigned, transferred, or sold to anyone, and are free of encumbrance.

21. No party to this Agreement may assign or transfer its interest in or obligations under this Agreement without the prior written consent of all parties to this Agreement. This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns.

AMERICAN STATES INSURANCE
COMPANY

By: Nicholas Hyslop

Printed Name: Nicholas Hyslop

Title: Assistant Vice President

THE STATE OF TEXAS

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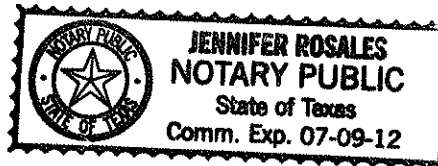
COUNTY OF DALLAS

This instrument was acknowledged before me on this the 8th day of February, 2012, by Nicholas Hyslop, Assistant Vice President of American States Insurance Company on behalf of American States Insurance Company.

Jennifer Rosales
Notary Public in and for the State of Texas

My Commission Expires:

7-9-2012



WILLIAMSON COUNTY, TEXAS

By: 

Printed Name: Dan A. Gattis

Title: Williamson County Judge

THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on this the 14th day of February, 2012, by Dan A. Gattis, Williamson County Judge, on behalf of Williamson County, Texas.

Wendy E. Coco

Notary Public in and for the State of Texas

My Commission Expires:

8/1/12

