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## MEMORANDUM OF LAW

**DATE:** May 6, 2010

**TO:** Kelly Broughton, Director, Development Services Department

**FROM:** City Attorney

**SUBJECT:** Summary of the Law Relating to Performance Bonds Required Pursuant to the Subdivision Map Act and the San Diego Municipal Code

### INTRODUCTION

The Development Services Department (DSD) processes agreements for public improvements required as a condition of subdivision approvals, as well as permits for grading and public right-of-way improvements. These Subdivision Improvement Agreements (SIA) and permits require the posting of performance bonds.

### QUESTION PRESENTED

You have asked about the relevant laws and processes applicable to requiring, releasing, and recovering the security required by the City in these circumstances.

### SHORT ANSWER

This memorandum presents information on the requirements for obtaining such security, followed by an analysis of the types, amounts, forms, and limitations of such security and the cancellation and recovery or release of such security.

### BACKGROUND

A performance bond is basically “[a] bond given by a surety to ensure the timely performance of a contract.”<sup>1</sup> Black’s Law Dictionary 1253 (9th ed. 2009). A public entity commonly requires a performance bond “because of its potential liability for injury to persons or

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<sup>1</sup> Other types of bonds that may also be required by the City, such as bid bonds and payment bonds, are beyond the scope of this memorandum.

property which might result from dangerous or defective conditions created by the failure of completion of required improvements.” *City of Merced v. American Motorists Insurance Company*, 126 Cal. App. 4th 1316, 1323 (2005) (quoting *Berman v. Aetna Casualty and Surety Co.*, 40 Cal. App. 3d 908, 911 (1974)). The City of San Diego requires performance bonds for public improvements required pursuant to an approved SIA, as well as when a permit is obtained for grading or work in the public right-of-way.

## ANALYSIS

### I. THE CITY MUST SECURE THE PERFORMANCE OF A DEVELOPER PURSUANT TO A SUBDIVISION IMPROVEMENT AGREEMENT.

#### A. The Subdivision Map Act and the San Diego Municipal Code Require that Security be Posted.

If, at the time of the approval of the final map, the required public improvements are not yet complete, the Subdivision Map Act (SMA) requires the local agency to enter into an agreement to complete the improvements at a later time.<sup>2</sup> Cal. Gov’t Code § 66462(a). In addition, the local agency must “require that performance of the agreement be guaranteed by the security specified in Chapter 5 (commencing with Section 66499).” Cal. Gov’t Code § 66462(c). The San Diego Municipal Code reiterates this requirement. San Diego Municipal Code § 144.0132. A bond may also be required for subdivisions that occur pursuant to a parcel map, if a local ordinance requires a bond for the construction of public improvements. 62 Op. Cal. Att’y Gen. 175 (1979). The San Diego Municipal Code requires bonds in the amount of 110 percent of the estimated cost of the public improvements and structures (as defined in the Land Development Code). SDMC §129.0119(a)(6)(D). Therefore, in the City of San Diego, a SIA for improvements required pursuant to a parcel map will require that a bond be posted.

#### B. The City Has Some Discretion to Determine the Type, Amount, and Form of Security in Conformance with the Subdivision Map Act.

Type. The type of security shall be one of the following, at the option of and subject to the approval of the local agency: bonds; deposit of money or negotiable bonds; an instrument of credit from an agency of the state, federal, or local government when a government agency provides at least 20 percent of the financing for the portion of the agreement requiring security, or from a financial institution subject to state or federal regulation and pledging that the necessary funds are on deposit and guaranteed for payment, or a letter of credit from such an institution<sup>3</sup>; a lien upon the property to be divided if the local agency finds that it would not be in

<sup>2</sup> Council Policy 600-21 contains additional guidance for amending SIAs, as well as for pursuing remedies in the event of default.

<sup>3</sup> A letter of credit is not a form of suretyship obligation. Cal. Civ. Code § 2787. Two significant differences between a letter of credit and the securities discussed further in this memorandum are 1) the remedy with a letter of credit

the public interest to require the installation of the improvements sooner than two years after the recordation of the map; or any form of security, including security interests in real property, which is acceptable to the local agency and specified by ordinance thereof. Cal. Gov't Code § 66499(a). The type of security to be provided is at the option of and subject to the approval of the local agency.<sup>4</sup> 74 Op. Cal. Att'y Gen. 89 (1991).

Amount. The amount of security required by California Government Code section 66499.3 may be summarized as follows:

- (i) An amount determined by the legislative body, but not less than 50 percent nor more than 100 percent of the total estimated cost of the improvement or of the act to be performed, conditioned upon the faithful performance of the act or agreement.
- (ii) An additional amount determined by the legislative body, but not less than 50 percent nor more than 100 percent of the total estimated cost of the improvement or the performance of the required act, securing payment to the contractor, to the subcontractors, and to persons furnishing labor, materials, or equipment to them for the improvement or the performance of the act.
- (iii) Exceptions to the above exist for non-profits funded by a United State or state agency.
- (iv) An amount, determined by the legislative body, and subject to the limitations in California Government Code section 66499.9, for the guarantee and warranty of the work for one year following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished.

As the bond examples discussed below show, the bonds shall include the cost of enforcement. Cal. Gov't Code § 66499.4. The performance bond amounts set by the City Council of the City of San Diego for SIAs are 100 percent of the total estimated cost of the public improvement to be

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upon a permittee's failure to perform the permit conditions is solely the payment of the funds to the beneficiary, not the performance of the underlying permit requirements, and 2) a letter of credit has a one year statute of limitations from either the expiration date of the letter or the breach, whichever occurs later. 42A Cal. Jur. 3d, *Letters of Credit* §§ 6, 9, 13 (2008); Cal. Com. Code § 5115. If no expiration date is stated, the letter expires one year after the date of issuance. Cal. Com. Code § 5106(c).

<sup>4</sup> Council Policy 800-08 contains a summary of the surety ratings acceptable to the City of San Diego.

performed, plus the amount required by SDMC section 129.0119 (see section II.B of this memorandum). SDMC § 144.0132(c)(1).

Form. The SMA requires that a performance bond be “substantially” in the form set forth in the code, attached as Exhibit 1. Cal. Gov’t Code § 66499.1. The SMA also requires that a labor and material bond, also known as a payment bond, be “substantially” in the form, set forth in the code, attached as Exhibit 2. Cal. Gov’t Code § 66499.2. The document titled “Performance Bond” currently in use by the Development Services Department, attached as Exhibit 3, seems to be a combination of these two forms because it addresses both performance and payment for labor and materials. Defects in the bond or in the giving or filing of a bond do not make the bond void. Cal. Civ. Proc. Code § 995.380(a).<sup>5</sup> Therefore, it is immaterial that the two forms have been combined into one, as long as the result is in “substantially” the form set forth in the SMA.<sup>6</sup>

### **C. Limitations on Liability and Statute of Limitations.**

The security shall be liable for the performance of the work covered by the agreement between the subdivider and the legislative body, or the performance of the required act; any alterations to the work that do not exceed 10 percent of the original estimated cost of the improvement; the guarantee of the work for one year following completion and acceptance; and the costs and reasonable expenses and fees. Cal. Gov’t Code § 66499.9.

The scope of the work that is the subject of the bond will depend on an interpretation of the bond agreement. “Surety contracts are construed according to the same rules that govern interpretation of all contracts.” *Pacific Employers Insurance Company v. City of Berkeley*, 158 Cal. App. 3d 145, 150 (1984); Cal. Civ. Code § 2837. The liability of the surety is that set forth in the agreement, including any documents incorporated by reference. *Pacific Employers Insurance Company*, 158 Cal. App. 3d at 152. If DSD would like to ensure that the surety is also responsible for any charges for City staff time for the processing, review, and inspection of the project that is the subject of the SIA, a specific reference can be included in the bond agreement. DSD could include the following language in its bonds: “The obligations of this bond shall include charges by the City of San Diego to the Principal’s City of San Diego Deposit Account as may be necessary for the processing, inspection, and plan review of the permit that is the subject of this bond.” In addition, when the City calculates the estimated cost of the improvement or the act to be performed in accordance with California Government Code section 66499.3(a), the estimated City staff charges should be included.

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<sup>5</sup> The Bond and Undertaking Act, set forth at California Civil Code of Procedure 995.010-996.560 applies to a bond required by state statute, except to the extent that statute prescribes a different rule or is inconsistent. Cal. Civ. Proc. Code § 995.020.

<sup>6</sup> If only one form is going to be used, the document should be re-labeled to reflect that it is both a performance bond and a payment bond. Presently, it is labeled “Performance Bond.”

A bond is a contract, and as such is subject to a four year statute of limitations. *County of Los Angeles v. Security Ins. Co. of Hartford*, 52 Cal. App. 3d 808 (1975); Cal. Civ. Proc. Code §§ 996.450, 337. The principal, beneficiary, and surety may accept a provision for a shorter period of time. Cal. Code Civ. Proc. § 996.450. The statute of limitations begins when the breach of the contract occurs. *Perez-Encinas v. AmerUs Life Ins. Co.*, 468 F. Supp. 2d 1127 (N.D. Cal. 2006).

#### **D. Cancellation of Bonds and Substitution of Bonds.**

For security required pursuant to a state statute, such as the SMA, a surety may cancel or withdraw from a bond by giving notice to the same officer and in the same manner that the bond was given to, with mailed or delivered notice to the principal. Cal. Civ. Proc. Code § 996.320. Cancellation or withdrawal of a surety is effective at the earliest of the following times: (a) thirty days after notice of cancellation or withdrawal is given; (b) the date a substitute surety becomes effective; or (c) the date a new bond becomes effective. Cal. Civ. Proc. Code § 996.330. If a new bond is given in place of an original bond, the original bond remains in full force and effect for all liabilities incurred before the new bond became effective, but not for those that occur after. Cal. Civ. Proc. Code § 996.240. This is also true if the surety cancels or withdraws from a bond. Cal. Civ. Proc. Code § 996.360.

A principal may give a new bond if a surety withdraws or cancels the original bond, or to obtain the release of sureties from liability on the original bond. Cal. Civ. Proc. Code § 996.210. If the principal does not give a new bond within thirty days after notice of cancellation or withdrawal is given, all rights obtained by giving the original bond immediately cease. Cal. Civ. Proc. Code § 996.340(a).

#### **E. Recovery or Release of the Security.**

Recovery. Sureties are governed by the California Insurance Code and the related claims regulations. Cal. Ins. Code § 105(a); Cal. Code Regs. title 10, §§ 2695.1-2695.6; 2695.10; 2695.12-2695.14. A surety must acknowledge a claim within fifteen calendar days of receipt. Cal. Code Regs. title 10, § 2569.5(e). A surety must accept or deny a claim in whole or in part and affirm or deny liability within forty calendar days of receipt of the proof of the claim, unless the matter is in litigation or arbitration. Cal. Code Regs. title 10, § 2695.10(b). If the surety is unable to make a determination on the claim within the forty calendar days, the surety must, before the expiration of the forty calendar days, provide written notification to the claimant of the need for more time and the reasons therefore. Cal. Code Regs. title 10, § 2695.10(c). This written notification must continue to be provided every thirty calendar days. *Id.* If the determination is pending the completion of some event, process, or third party determination, compliance with the notice requirement may be obtained by advising the claimant of the situation and providing an estimate as to when the determination can be made. *Id.* The damages to the City are the cost of the uncompleted portion of the work, and the City may recover from

the surety up to the amount on the bond, even if the City has not completed the improvements. *City of Merced*, 126 Cal. App.4th at 1323.

Release. Within forty-five days of the completion of the improvements and acceptance of the required work, the subdivider must be so notified in writing within forty-five days.<sup>7</sup> Cal. Gov't Code § 66499.7(f).<sup>8</sup> The release of any remaining performance security must then be either placed on the local agency's agenda for release within forty-five days of this written notification, or if authority to release the security has been delegated, the release must occur within sixty days of the written notice of completion. Cal. Gov. Code § 66499.7(g). This release does not apply to that amount deemed necessary for the required guarantee or warranty period. Cal. Gov't Code § 66499.7(j).

## **II. THE SAN DIEGO MUNICIPAL CODE REQUIRES PERFORMANCE BONDS FOR GRADING AND RIGHT-OF-WAY PERMITS.**

The City's broad authority to regulate land use through planning, zoning, and building ordinances is derived from its police powers to make and enforce police ordinances. *Fonseca v. City of Gilroy*, 148 Cal. App. 4th 1174 (2007). The California Constitution provides cities with the power to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Cal. Const., art. XI, § 7.

### **A. San Diego Municipal Code Requirements.**

The San Diego Municipal Code requires bonds for work performed pursuant to a grading or public right-of-way permit. SDMC § 129.0119(a). The City Manager may waive the requirements for a bond, as established in the Land Development Manual. SDMC § 129.0119(f).<sup>9</sup>

### **B. Type, Amount, and Form of Security.**

Type. In lieu of a bond, the permittee may post a cash deposit or other security acceptable to the City Manager with the City Treasurer in an amount equal to the required bond. SDMC § 129.0119(c).<sup>10</sup>

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<sup>7</sup> Council Policy 800-11 provides for a partial release of security in certain circumstances.

<sup>8</sup> This section will sunset on January 1, 2011, unless extended by the legislature. Senate Bill 1019, introduced on February 11, 2010, proposes to amend this section by deleting the sunset clause.

<sup>9</sup> No information on the waiver of bond amounts was located in the Land Development Manual.

<sup>10</sup> If DSD has determined that certain types of security present difficulties in securing the interests of the City, this section could be revised to be more specific about what types of security are acceptable, or a formal policy could be developed setting forth what types of security the Mayor or City Manager deem acceptable.

Amount. The San Diego Municipal Code sets forth the following required bond amounts for grading, based on the estimated cost of the project:

- (i) up to \$5000 in estimated costs: 100 percent of the estimated costs;
- (ii) over \$5000 in estimated costs: 50 percent of the estimated costs, plus \$5000;
- (iii) over \$50,000 in estimated costs: 25 percent of the estimated costs, and up to \$50,000.

SDMC § 129.0119(a)(6)(C). Work done in the public right-of-way must have a bond submitted for 110 percent of the estimated costs of the repair and restoration of the public right-of-way. SDMC § 129.0119(a)(6)(E).

Form. The San Diego Municipal Code does not specify a form of agreement; however, there are certain conditions that must be contained in the agreement. The bond must be approved by the City and must be “conditioned upon the completion, free of liens, of the work authorized by the permit in accordance with the requirements of this article and the conditions prescribed by the permit.”<sup>11</sup> SDMC § 129.0119(a)(1). Further, the bond shall be conditioned upon the surety company completing the required work or employing a contractor to do so. *Id.* The form titled “Permit Performance Bond” currently used by DSD also appears to be a combination of a performance and payment bond.<sup>12</sup>

### **C. Limitations on Liability and Statute of Limitations.**

Limitation on Liability. The surety must complete the required work or employ a contractor to do so. SDMC § 129.0119(a). If, however, the City Manager must cause the required work to be completed, the principal and the surety “shall be liable for the cost of completing all necessary work including all administrative costs, and overhead incurred by the City to complete the work and collect the costs.” SDMC § 129.0119(a)(4). As discussed in section I.C, the performance bond is a contract, and the surety’s obligation is that set forth in the contract. The City may specifically include in the performance bond an obligation for the surety to pay the costs of the City staff time necessary for the processing, review, and inspection of the project.

Statute of Limitations. The statute of limitations provisions in section I.C above also apply to a bond required by the Municipal Code.

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<sup>11</sup> Like the SMA, the SDMC requires that the project be complete and free of liens prior to being released. The Notice of Completion is the traditional statement of project completion.

<sup>12</sup> See footnote 6.

**D. Cancellation of Bonds and Substitution of Bonds.**

The San Diego Municipal Code currently requires that a cancellation notice for a grading or public right-of-way permit issued by the principal or surety be sent to the City Manager, with sufficient information describing the project, permit type, permit number, date issued, and purpose of the permit. SDMC § 129.0119(a)(5).<sup>13</sup>

For grading and public right-of-way improvements, failure to post the appropriate security is a violation of the San Diego Municipal Code. SDMC § 121.0302(a). Should security be cancelled, a permittee may not proceed to utilize the permit until sufficient substitute security is posted.

**E. Recovery or Release of the Surety.**

Recovery. If the City Manager finds that a default has occurred in the performance of any term or condition of the work authorized by a permit, the department shall give written notice of default to the principal and surety, stating the work remaining to be done and the estimated costs. SDMC § 129.0119(a)(2). The principal or surety must notify the City of its intent to complete the construction within twenty-one calendar days, or must within thirty-five calendar days deposit the estimated completion costs, plus an additional 25 percent of the estimated completion costs, not to exceed the original amount of the bond. SDMC § 129.0119(a)(3). If the principal or surety fails to make the deposit, the City Manager may cause the work to be completed, and the principal and surety shall be liable for the costs of completing all necessary work, including administrative costs, and the overhead incurred by the City to complete the work and collect the costs. SDMC § 129.0119(a)(4).

The San Diego Municipal Code requires a response from the surety more quickly than the state law discussed in section I.E. provides. State law prohibits any public agency from requiring an admitted surety to comply with any requirements other than those set forth in state law when an objection is made as to the sufficiency of the admitted insurer on the bond. Cal. Civ. Proc. Code §§ 995.670(a), 995.660. However, there are no decisions or legislative history to support an interpretation that when issuing permits pursuant to their police powers, public agencies are preempted from requiring a response from a surety in less time than state law allows.

The California Constitution provides charter cities with the following authority:

It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to

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<sup>13</sup> The authorization of the City is not required prior to the cancellation of a security.



restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

Cal. Const. art. XI, § 5(a).

As to matters which are of statewide concern, charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters, if it is the intent and purpose of such general laws to occupy the field to the exclusion of municipal regulation. This is known as the "preemption doctrine." *Bishop v. City of San Jose*, 1 Cal. 3d 56, 61-62 (1969). The charter city may, however, enact legislation on a matter of statewide concern which is not in conflict with state law, unless the Legislature has intended to preempt that field. *Id.* Preemption occurs when a city ordinance authorizes an act that the state law prohibits, or prohibits an act that state law allows. *Sherwin-Williams Company v. City of Los Angeles*, 4 Cal. 4th 893, 902 (1993).

The purpose of the regulations promulgated by the insurance commissioner pursuant to his authority in California Insurance Code section 790.10 (as may be necessary to administer Division I, Part 2, Article 6.5, Unfair Practices) is to regulate trade practices in insurance "by defining, or providing for the determination of, all such practices in this State which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined." Cal. Ins. Code §790. Two of the stated purposes of the regulations relevant here are "(1) To delineate certain minimum standards for the settlement of claims which, when violated knowingly on a single occasion or performed with such frequency as to indicate a general business practice shall constitute an unfair claims settlement practice within the meaning of Insurance Code Section 790.03(h);" and "(2) To promote the good faith, prompt, efficient and equitable settlement of claims on a cost effective basis." Cal. Code Regs. title 10, § 2695.1(a)(1-2).

There is no true conflict between the time set forth in the state regulations and the time set forth in the San Diego Municipal Code. A surety need not choose to comply with the City ordinances at the risk of violating state law; a surety that complies with the City ordinances will have complied with the state timeframe.

Assuming for the purposes of discussion that the two regulations did conflict, the courts would then determine whether the state regulations were a matter of statewide concern. *California Federal Savings and Loan Association v. City of Los Angeles*, 54 Cal. 3d 1, 17 (1991). If the matter is not, then the City ordinance is a "municipal affair." *Id.* The state must have an interest "transcending identifiable municipal interests." *Id.* The inquiry is whether the state has a

more substantial interest in the matter than does the charter city. *California Federal Savings and Loan Associations*, 54 Cal. 3d at 18.

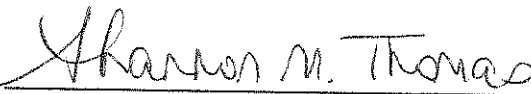
The City's purpose for requiring a response from a surety in the timeframe set forth in the San Diego Municipal Code is to allow the City to have the work completed in a competent, timely manner such that the public's health and safety is not endangered. SDMC §§ 121.0101, 129.0101. The state's interest is in preventing unfair business practices. The state does not have an interest that transcends the City's interest in this matter. Therefore, the state regulations do not preempt the provisions of the San Diego Municipal Code.

Release. No procedures are stated in the San Diego Municipal Code.

### CONCLUSION

The discussion above provides some basic information about the security mandated by the Subdivision Map Act when public improvements are required as part of an approval of a subdivision. In addition, a review is provided of the laws relating to the security mandated by the San Diego Municipal Code when a permit is obtained for grading or public right-of-way improvements.

JAN I. GOLDSMITH, City Attorney

By 

Shannon M. Thomas  
Deputy City Attorney

(Gov. Code §66499.1- Form of Performance Bond)

Whereas, The Board of Supervisors of the County of \_\_\_\_ (or the City Council of the City of \_\_\_\_), State of California, and \_\_\_\_ (hereinafter designated as "principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated \_\_\_\_, 19\_\_, and identified as project \_\_\_\_, is hereby referred to and made a part hereof; and

Whereas, Said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and \_\_\_\_, as surety, are held and firmly bound unto the County of \_\_\_\_, (or City of \_\_\_\_) hereinafter called ("\_\_\_\_"), in the penal sum of \_\_\_\_ dollars (\$\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless \_\_\_\_, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by county (or city) in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on \_\_\_\_, 19\_\_.

(Ca. Gov. Code section 66499.2- Form of Labor and Material Bond)

Whereas, The Board of Supervisors of the County of \_\_\_\_ (or City Council of the City of \_\_\_\_), State of California, and \_\_\_\_ (hereinafter designated as "the principal") have entered into an agreement whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated \_\_\_\_, 20\_\_, and identified as project \_\_\_\_, is hereby referred to and made a part hereof; and

Whereas, Under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the County of \_\_\_\_ (or the City of \_\_\_\_) to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

Now, therefore, the principal and the undersigned as corporate surety, are held firmly bound unto the County of \_\_\_\_ (or the City of \_\_\_\_) and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code in the sum of \_\_\_\_ dollars (\$ \_\_\_\_), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by county (or city) in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on \_\_\_\_, 20\_\_.

Agency \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Subdivision Name)

W.O. No. \_\_\_\_\_

Bond No. \_\_\_\_\_

Premium \$ \_\_\_\_\_

**PERFORMANCE BOND**

Pursuant to Section 66499 of the  
Government Code

KNOW ALL MEN BY THESE PRESENTS: That

as, and hereinafter without regard to gender and number, called PRINCIPAL,

and

a corporation

authorized to do business in the State of California and presently possessed of authority under Title 6 of the United States Code to do business under Sections 6 to 13 thereof, in the aggregate amounts hereof, as SURETY, are held and firmly bound unto THE CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California, in the sum of

\_\_\_\_\_

100% DOLLARS \$ \_\_\_\_\_, for the faithful performance of a certain contract hereinafter referred to; and are held and firmly bound unto the State of California for the benefit of the Unemployment Insurance Fund, to the extent that the State of California is interested, and for the benefit of the contractor, subcontractor and to persons renting equipment or furnishing labor or materials hereinafter referred to, or their assigns in the sum of

then said Surety will pay the same in or to an amount not exceeding the amount herein above specified to be for the benefit of contractor, subcontractor, and to persons renting equipment or furnishing labor or materials, and also will pay, in case suit is brought upon this bond, such reasonable attorney's fee as shall be fixed by the court, awarded and taxed as provided by law.

This bond, to the extent of the obligation hereof with respect to contractor, subcontractor, and to persons renting equipment or furnishing labor or materials, shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California, so as to give a right of action to them or their assigns to any suit brought upon this bond.

This bond, to the extent of the obligation securing payment to the contractor, subcontractor, and to persons renting equipment or furnishing labor or materials may, sixty days after the recording of Notice of Completion and Acceptance of Subdivision Improvement Agreement be reduced to an amount no less than the total of all claims on which an action has been filed and notice thereof given in writing to the governing body, and if there are no actions filed, this portion of the bond may be released in full.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in no wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, the said Principal and Surety have executed this instrument  
the day and year first hereinabove written.

\_\_\_\_\_  
(Print Name & Title)

\_\_\_\_\_  
(Signature - Principal)

\_\_\_\_\_  
(Print Name & Title)

\_\_\_\_\_  
(Signature - Principal)

\_\_\_\_\_  
(Surety)

By \_\_\_\_\_

**NOTE: Notary acknowledgments (for all signatures) must be attached, per civil Code 1180 et. Seq.**

Job Location: \_\_\_\_\_

Agency \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Work Order No. \_\_\_\_\_

Bond No. \_\_\_\_\_

Permit No. \_\_\_\_\_

Premium \$ \_\_\_\_\_

PERMIT PERFORMANCE BOND  
(Specific Job)

KNOW ALL MEN BY THESE PRESENTS: That

and \_\_\_\_\_ as, and hereinafter without regard to gender and number, called PRINCIPAL,

a corporation authorized to do business in the State of California and presently possessed of authority under Title 6 of the United States Code to do business under Sections 6 to 13 thereof, in the aggregate amounts hereof, as SURETY, are held and firmly bound unto THE CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California, in the sum of

DOLLARS (\$) \_\_\_\_\_), for the payment of which sums well and truly to be made, the said Principal and their said Surety hereby bind themselves and all and singularly their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed with our seals, and dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

The Principal may perform certain work in the City of San Diego, and is desirous of securing a permit for such work in said City in accordance with Article 9, Chapter 12, of the San Diego Municipal Code.

The condition of the above obligation is such that if the said Principal shall comply with Article 9 Chapter 12, of the San Diego Municipal Code and such other sections of said Code as may be applicable, then this obligation shall be void, otherwise to remain in full force and effect.

THE CONDITION OF THIS OBLIGATION is such that if the said Principal shall faithfully perform the covenants, conditions and agreements contained in a certain Permit about to be issued to said Principal by THE CITY OF SAN DIEGO, for a specific job named in the permit, and shall furnish materials in compliance with the specifications and perform all that certain work and improvements in said City which is more particularly described in said Permit, to which Permit reference is hereby made for further particulars, then the obligation with respect to the faithful performance of said Permit shall be void, otherwise to remain in full force and effect.

If the said Principal or his subcontractors, their heirs, executors, administrators, successors and assigns shall fail to pay for any materials, provisions, provender, or other supplies or items used in, upon, for or about the performance of the work permitted to be done, or for any work or labor thereon of any kind, then said Surety will pay the same in or to an amount not exceeding the amount hereinabove specified to be for the benefit of laborers and materialmen, and also will pay, in case suit is brought upon this bond, such reasonable attorney's fee as shall be fixed by the court, awarded and taxed as provided by law.



This bond, to the extent of the obligation hereof with respect to laborers and materialmen, shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3028) of Part 4 of Division 3 of the Civil Code of the State of California, so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Permit or to the work to be performed there under or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alterations or addition to the terms of the Permit or to the work or to the specifications.

IN WITNESS WHEREOF, the said Principal and Surety have executed this instrument the day and year first hereinabove written.

\_\_\_\_\_  
(Principal)

By \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Print Name & Title)

By \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Print Name & Title)

\_\_\_\_\_  
(Surety)

By \_\_\_\_\_

**NOTE: Notary acknowledgments (for all signatures) must be attached, per Civil Code 1180 et. Seq.**

APPROVED

City Engineer

By \_\_\_\_\_  
Permit Engineer