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TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (Heading of Title 7 amended by Stats. 1974, Ch. 1536.)

DIVISION 2. SUBDIVISIONS [66410 - 66499.41] (Division 2 added by Stats. 1974, Ch. 1536.)

CHAPTER 5. Improvement Security [66499 - 66499.10] (Chapter 5 added by Stats. 1974, Ch. 1536.)

66499. (a) Whenever this division or a local ordinance authorizes or requires the furnishing of security in connection with the performance of any act or agreement, if the developer is not a nonprofit corporation described in subdivision (c) of Section 66499.3, the security shall be one of the following at the option of and subject to the approval of the local agency and if the developer is a nonprofit corporation described in subdivision (c) of Section 66499.3, the security shall be one of the following, subject to the approval of the local agency:

(1) Bond or bonds by one or more duly authorized corporate sureties.

(2) A deposit, either with the local agency or a responsible escrow agent or trust company, at the option of the local agency, of money or negotiable bonds of the kind approved for securing deposits of public moneys.

(3) An instrument of credit from an agency of the state, federal, or local government when any agency of the state, federal, or local government provides at least 20 percent of the financing for the portion of the act or agreement requiring security, or from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment, or a letter of credit issued by such a financial institution.

(4) A lien upon the property to be divided, created by contract between the owner and the local agency, if the local agency finds that it would not be in the public interest to require the installation of the required improvement sooner than two years after the recordation of the map.

(5) Any form of security, including security interests in real property, which is acceptable to the local agency and specified by ordinance thereof.

(b) Any contract or security interest in real property entered into as security for performance pursuant to paragraph (4) or paragraph (5) of subdivision (a) shall be recorded with the county recorder of the county in which the subject real property is located. From the time of recordation of the written contract or document creating a security interest, a lien shall attach to the real property particularly described therein and shall have the priority of a judgment lien in an amount necessary to complete the agreed to improvements. The recorded contract or security document shall be indexed in the Grantor Index to the names of all record owners of the real property as specified on the map and in the Grantee Index to the local agency approving the map.

The local agency may at any time release all or any portion of the property subject to any lien or security interest created by this subdivision or subordinate the lien or security interest to other liens or encumbrances if it determines that security for performance is sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the completion of agreed upon improvements.

(Amended by Stats. 1988, Ch. 1308, Sec. 2.)

66499.1. Except as provided in Section 66499.3, a bond or bonds by one or more duly authorized corporate sureties to secure the faithful performance of any agreement shall be in substantially the following form:

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__.

Appropriate modifications shall be made in such form if the bond is being furnished for the performance of an act not provided for by agreement.

(Amended by Stats. 1988, Ch. 1308, Sec. 3.)

66499.2. A bond or bonds by one or more duly authorized corporate sureties for the security of laborers and material suppliers shall be in substantially the following form:

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 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

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, material suppliers, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 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 3 (commencing with Section 9000) of Part 6 of Division 4 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__.

(Amended by Stats. 2010, Ch. 697, Sec. 35. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697.)

66499.3. Security to guarantee the performance of any act or agreement shall be in the following amounts:

(a) An amount determined by the legislative body, 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; and

(b) An additional amount determined by the legislative body, 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 required act.

(c) Whenever an entity required to furnish security in accordance with subdivisions (a) and (b) is a California nonprofit corporation, funded by the United States of America or one of its agencies, or funded by this state or one of its agencies, the entity shall not be required to comply with subdivisions (a) and (b), if the following conditions are met:

(1) A letter or letters of credit are provided pursuant to paragraph (3) of subdivision (a) of Section 66499 for 100 percent of the contract of improvements or the contractor installing the improvements has bonded to the nonprofit corporation and the local agency as coobligee the amount of 100 percent of the contract for the faithful performance of the work, and has further bonded to the nonprofit corporation and the local agency as coobligee an amount of not less than 50 percent of the contract for the payment of labor and materials, and those bonds comply with the provisions of this chapter.

(2) All moneys under the control of the nonprofit corporation and payable to the contractor by the nonprofit corporation are deposited in a depository complying with the provisions of this chapter, and out of which moneys progress payments are conditioned upon:

(A) The contractor's certification to the nonprofit corporation that all labor performed in the work, and all materials furnished to and installed in the work, have been paid for in full to the date of the certification.

(B) The written approval of the nonprofit corporation.

(C) Review and approval of progress payment billings by local government.

(D) Final payment to the contractor not being made until 30 days shall have expired after the filing and recording of the notice of completion of the work and acceptance of the work by, and a waiver of lien rights provided by the contractor to, the local agency in writing.

(3) All certifications as to progress payments shall be delivered through the United States mail to the nonprofit corporation. The term "progress payments" means payments made in compliance with the schedule of partial payments agreed upon in the contract for the work. No less than 10 percent of the total contract price shall be retained for the 60 days following the filing of the notice of completion.

(d) Subject to the limitations of Section 66499.9, an amount determined by the legislative body necessary for the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished.

(Amended by Stats. 1988, Ch. 1308, Sec. 4.)

66499.4. As a part of the obligation guaranteed by the security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the local agency in successfully enforcing the obligation secured.

(Added by Stats. 1974, Ch. 1536.)

66499.5. If the required subdivision improvements are financed and installed pursuant to special assessment proceedings, the local agency at its option may provide by local ordinance that, upon the furnishing by the contractor of the faithful performance and labor and material bonds required by the special assessment act being used, the improvement security of the subdivider may be reduced by an amount corresponding to the amount of such bonds so furnished by the contractor.

(Added by Stats. 1974, Ch. 1536.)

66499.6. Such money, negotiable bond or instrument of credit shall be a trust fund to guarantee performance and shall not be subject to enforcement of a money judgment by any creditors of the depositor until the obligation secured thereby is performed to the satisfaction of the local agency.

(Amended by Stats. 1982, Ch. 497, Sec. 120. Operative July 1, 1983, by Sec. 185 of Ch. 497.)

66499.7. The security furnished by the subdivider shall be released in whole or in part in the following manner:

(a) Security given for faithful performance of any act or agreement shall be released upon the performance of the act or final completion and acceptance of the required work. The legislative body may provide for the partial release of the security upon the partial performance of the act or the acceptance of the work as it progresses, consistent with the provisions of this section. The

security may be a surety bond, a cash deposit, a letter of credit, escrow account, or other form of performance guarantee required as security by the legislative body that meets the requirements as acceptable security pursuant to law. If the security furnished by the subdivider is a documentary evidence of security such as a surety bond or a letter of credit, the legislative body shall release the documentary evidence and return the original to the issuer upon performance of the act or final completion and acceptance of the required work. In the event that the legislative body is unable to return the original documentary evidence to the issuer, the security shall be released by written notice sent by certified mail to the subdivider and issuer of the documentary evidence within 30 days of the acceptance of the work. The written notice shall contain a statement that the work for which the security was furnished has been performed or completed and accepted by the legislative body, a description of the project subject to the documentary evidence and the notarized signature of the authorized representative of the legislative body.

(b) At the time that the subdivider believes that the obligation to perform the work for which security was required is complete, the subdivider may notify the local agency in writing of the completed work, including a list of work completed. Upon receipt of the written notice, the local agency shall have 45 days to review and comment or approve the completion of the required work. If the local agency does not agree that all work has been completed in accordance with the plans and specifications for the improvements, it shall supply a list of all remaining work to be completed.

(c) Within 45 days of receipt of the list of remaining work from the local agency, the subdivider may then provide cost estimates for all remaining work for review and approval by the local agency. Upon receipt of the cost estimates, the local agency shall then have 45 days to review, comment, and approve, modify, or disapprove those cost estimates. No local agency shall be required to engage in this process of partial release more than once between the start of work and completion and acceptance of all work; however, nothing in this section prohibits a local agency from allowing for a partial release as it otherwise deems appropriate.

(d) If the local agency approves the cost estimate, the local agency shall release all performance security except for security in an amount up to 200 percent of the cost estimate of the remaining work. The process allowing for a partial release of performance security shall occur when the cost estimate of the remaining work does not exceed 20 percent of the total original performance security unless the local agency allows for a release at an earlier time. Substitute bonds or other security may be used as a replacement for the performance security, subject to the approval of the local agency. If substitute bonds or other security is used as a replacement for the performance security released, the release shall not be effective unless and until the local agency receives and approves that form of replacement security. A reduction in the performance security, authorized under this section, is not, and shall not be deemed to be, an acceptance by the local agency of the completed improvements, and the risk of loss or damage to the improvements and the obligation to maintain the improvements shall remain the sole responsibility of the subdivider until all required public improvements have been accepted by the local agency and all other required improvements have been fully completed in accordance with the plans and specifications for the improvements.

(e) The subdivider shall complete the works of improvement until all remaining items are accepted by the local agency.

(f) Upon the completion of the improvements, the subdivider, or his or her assigns, shall be notified in writing by the local agency within 45 days.

(g) Within 45 days of the issuance of the notification by the local agency, the release of any remaining performance security shall be placed upon the agenda of the legislative body of the local agency for approval of the release of any remaining performance security. If the local agency delegates authority for the release of performance security to a public official or other employee, any remaining performance security shall be released within 60 days of the issuance of the written statement of completion.

(h) Security securing the payment to the contractor, his or her subcontractors, and to persons furnishing labor, materials, or equipment shall, after passage of the time within which claims of lien are required to be recorded pursuant to Article 2 (commencing with Section 8410) of Chapter 4 of Title 2 of Part 6 of Division 4 of the Civil Code and after acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the legislative body, and if no claims have been recorded, the security shall be released in full.

(i) The release shall not apply to any required guarantee and warranty period required by Section 66499.9 for the guarantee or warranty nor to the amount of the security deemed necessary by the local agency for the guarantee and warranty period nor to costs and reasonable expenses and fees, including reasonable attorney's fees.

(j) The legislative body may authorize any of its public officers or employees to authorize release or reduction of the security in accordance with the conditions hereinabove set forth and in accordance with any rules that it may prescribe.

(Amended by Stats. 2015, Ch. 269, Sec. 17. (SB 184) Effective January 1, 2016.)

66499.8. In all cases where the performance of the obligation for which the security is required is subject to the approval of another agency, the local agency shall not release the security until the obligation is performed to the satisfaction of such other agency. Such agency shall have two months after completion of the performance of the obligation to register its satisfaction or dissatisfaction. If at the end of that period it has not registered its satisfaction or dissatisfaction, it shall be conclusively deemed that the performance of the obligation was done to its satisfaction.

(Added by Stats. 1974, Ch. 1536.)

66499.9. Any liability upon the security given for the faithful performance of any act or agreement shall be limited to:

- (a) The performance of the work covered by the agreement between the subdivider and the legislative body or the performance of the required act.
- (b) The performance of any changes or alterations in such work; provided, that all such changes or alterations do not exceed 10 percent of the original estimated cost of the improvement.
- (c) The guarantee and warranty of the work, for a period of one year following completion and acceptance thereof, against any defective work or labor done or defective materials furnished, in the performance of the agreement with the legislative body or the performance of the act.
- (d) Costs and reasonable expenses and fees, including reasonable attorneys' fees.

(Added by Stats. 1974, Ch. 1536.)

66499.10. Where the security is conditioned upon the payment to the contractor, his subcontractors and to persons furnishing labor, materials or equipment to them for the improvement of the performance of an act and takes the form of a deposit of money or negotiable bonds, a suit to recover the amount due the claimant may be maintained against the holder of such deposit. Where the security takes the form of a surety bond, or surety bonds, the right of recovery shall be in a suit against the surety. Where the security takes the form of an instrument of credit, the cause of action shall be against the financial institution obligating itself on such instrument of credit.

(Added by Stats. 1974, Ch. 1536.)