

## **SUBDIVISION IMPROVEMENT AGREEMENT**

**Tract Map No.: \_\_\_\_\_**

**THIS AGREEMENT** is between the City of Fontana, a municipal corporation, County of San Bernardino, State of California ("City") and \_\_\_\_\_ ("Subdivider"):

**WHEREAS**, the application for tentative Tract Map No. \_\_\_\_\_, was conditionally approved on \_\_\_\_\_; and

**WHEREAS**, Subdivider is the owner of that certain parcel of land defined by the Final Map and Subdivider proposes to do and perform certain work of improvement thereon as set forth in this agreement; and

**WHEREAS**, City desires to assure that the proposed improvements will be done in a good workmanlike manner and in accordance with the laws and standards now in force and effect in the City, the terms and conditions of which are incorporated herein by reference; and

**WHEREAS**, Subdivider declares acknowledgement the pertinent regulations contained in the City Code and in the Subdivision Map Act (Government Code Sections 66410 to 66500) and agrees to comply therewith; and

**WHEREAS**, a Final Map of the subdivision, prepared in accordance with the City's Subdivision Ordinance, has been filed by Subdivider with City for approval by the City Council;

**NOW THEREFORE**, in consideration of the approval and acceptance of the Final Map by the City Council and the acceptance of easements therein offered for dedication for street, utility, and other public purposes and the covenants herein contained, the parties hereto mutually covenant and agree as follows:

### **1. General requirements:**

Subdivider shall, at its own cost and expense, provide all required tests, design work, equipment, materials and labor in order to complete all of the improvements as associated with the requirements per the approved project or to the satisfaction of the City Engineer of the City of Fontana. All required improvements have an estimated cost of construction totaling

(\$ \_\_\_\_\_) as shown on Exhibit "A". Improvements are shown on approved plans on file with City Engineer.

The estimated cost of construction set forth in Exhibit "A" is for estimation purposes only, and for calculation of the amount of securities

required pursuant to the provisions of section (2), below. Subdivider's obligation to complete the improvements, or any portion of them, is not limited in any way by the estimated cost of construction, and the obligation of Subdivider's surety in connection with the securities required pursuant to the provisions of section (2), below.

2. **Security:**

Subdivider shall, at all times, guarantee its performance of this agreement by furnishing to City and maintaining good and sufficient security as required by the State Subdivision Map Act on forms approved by City for the purposes and in the amounts as follows:

- a. To ensure a faithful performance of this agreement in regard to the improvements in the amount of 100% of the estimated cost of construction of the improvements; and
- b. To secure payment to any contractor, sub-contractor, persons renting equipment or furnishing labor or materials for the improvements required to be constructed or installed pursuant to this agreement in the additional amount of 100% of the estimated cost of construction of the improvements; and
- c. To guarantee or warranty the work done pursuant to this agreement for a period of one (1) year following acceptance thereof by City Council of the City of Fontana against any defective work or labor done or defective materials furnished in the amount of 20% of the estimated cost of construction of the improvements; and
- d. To warranty the setting of required subdivision monuments within one-year following recordation of the Final Map in the amount of 100% of the estimated cost of setting subdivision monuments as shown in Exhibit "A".
- e. To guarantee the landscape maintenance of all landscape improvements for a period of one year (1) year following acceptance of thereof by the City.

The securities required by this agreement shall be kept on file with the City Clerk. The terms of the security documents required by this agreement are hereby incorporated in this agreement by reference and copies attached hereto.

The security, which guarantees performance, can be released upon acceptance of the improvements by the City Council. The security which guarantees payment to contractor, sub-contractors and to persons furnishing labor, materials or equipment will be released 6 months after acceptance of the improvements by the

City Council, less the total of all claims to which the City has been given proper notice.

Securities may be released upon the final completion and acceptance of the work subject to the provisions herein. The City Council, in its absolute discretion, may release a portion of the security given for faithful performance of the improvement work as the improvement progresses upon application thereof by the Subdivider.

3. **Time of Completion:**

All of the required improvements shall be completed within 24 months from the effective date of this agreement. If the work is not completed within the specified time period because of acts of God, the public enemy, the City, or because of fire, flood, epidemic, quarantine restrictions, strikes or freight embargoes, the Subdivider shall be entitled to an extension beyond the specified time period for a period equal to the length of such delay within ten days from the beginning of such delay.

In addition to the extension for the reasons referenced in the foregoing paragraph, Subdivider may submit a written request, Exhibit "B", for a discretionary extension of the time for completion of the improvements to the City Engineer. The City Engineer may grant or reject such extension, in whole or in part or with conditions, in his sole discretion. If an extension of time is granted it shall in no way affect the validity of this contract or release the surety on the securities referenced herein.

In the event that Subdivider fails to complete the improvements within the required period or any approved extension, the City may complete the work and shall be entitled to recover the full cost and expenses thereof from Subdivider, or his surety as herein provided. If City pursues completion of the improvement work, it may require Subdivider, or his surety, to pay the City in advance, sufficient monies to cover the City's cost in completing construction of the improvements.

Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not commence running until Subdivider, or Subdivider's surety pursuant to Section 2 of this Agreement, has provided the City Engineer with written notice of Subdivider's intent to abandon or otherwise not complete the improvements.

4. **Effective Date of Agreement:**

This Agreement shall not become effective unless and until the Subdivision Map has been approved by the City Council of the City of Fontana and also accepted

the Final Map for recordation by the County Recorder of the County of San Bernardino.

**5. Utility Deposits - Statements:**

Prior to the commencement of any work to be performed within the area delineated on the Final Map, the Subdivider must file a written statement with the City Clerk and the City Engineer, signed by the Subdivider, and each public utility involved, to the effect that Subdivider has made all deposits legally required by such public utility for the connection/extension of any and all public serving utilities to be provided to or within the subdivision.

**6. Permits - Compliance with Law:**

Subdivider shall, at Subdivider's expense, obtain all necessary permits and licenses, pay all charges, fees and taxes, and give all necessary and incidental notices to the due and lawful prosecution of the work.

**7. Definition and Ownership of Improvements:**

The term "improvements" means: grading, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities as shown in detail upon plans, profiles and specifications which have been prepared or are now in final preparation by engineers acting for Subdivider subject to approval by the City Engineer of the City of Fontana. No work on the improvements shall be commenced until plans and/or profiles therefore have been submitted, approved and permitted by the City Engineer. All required public improvements constructed or installed pursuant to this Agreement shall become the sole exclusive property of the City, without payment therefore, upon acceptance of the improvements by the City Council.

**8. Obligations of Subdivider:**

Notwithstanding the fact that Subdivider's plans and specifications, completion of the work, and other acts are subject to approval of the City, it is understood and agreed that any approval by the City thereof shall in no way relieve Subdivider of satisfactorily performing all work on the related obligations hereunder. The construction shall be done strictly in accordance with the plans and specifications prepared by Subdivider or its engineer, and as approved by the City as being consistent with the City Code and Standards. Subdivider warrants that its plans and specifications conform as a minimum to all City codes and standards and that they are adequate to accomplish the work in a good workmanlike manner and in accordance with responsible construction practices.

9. **Superintendence by Subdivider:**

Subdivider shall personally supervise all work involved in the improvements, or shall designate a competent foreman or superintendent, satisfactory to the City Engineer, to supervise the work at all times during progress, with authority to act for Subdivider. In the event satisfactory superintendence is not being exercised by the Subdivider, the City Engineer may order suspension of all work within the subdivision until the deficiency is adequately corrected.

10. **Repair and Replacements:**

Subdivider shall replace, or have replaced, or repair, or have repaired, as the case may be, or pay to the owner the entire cost of replacement or repairs, for all survey monuments or for any and all property damaged or destroyed by reason of any work done hereunder, whether such property be owned by the United States or any agency thereof, or by the City or by any public or private corporation, or by any person whomsoever or by combination of such owners. Any such repair or replacement shall be completed in a reasonable manner and subject to the approval of the City Engineer and affected property owner.

11. **Inspection by City:**

Subdivider shall at all times maintain proper facilities and provide safe access for inspection by City to all parts of the work and to the shops where the work is in preparation. The cost of inspections shall be paid by the Subdivider.

12. **Approval by City Engineer.**

All required improvements shall be constructed under the inspection of and subject to approval of the City Engineer. Therefore, it is mutually agreed by the parties hereto that the City Engineer shall have the right to reject any or all of the work to be performed under this contract if such work does not conform to the plans and specifications set forth herein or the City's Codes and standards. Any damage to the improvements (existing or new) that occurs during the course of work performed under this Agreement shall be repaired or replaced, by the Subdivider, to the satisfaction of the City Engineer before the final acceptance of completed work and release of security.

13. **Liability for Performance Injury or Damage:**

Neither the City nor any of its officers or agents shall be liable to Subdivider or its contractors for any error or omission arising out of or in connection with any work to be performed under this contract. Additionally, the City shall not be liable to the Subdivider or to any other person, firm, or corporation whatsoever, for any injury or damage that may result to any person or property by or from any

cause whatsoever in, on, or about the subdivision of said land covered by this Agreement, or any part thereof.

**14. Indemnification and Release:**

Prior to the commencement of any work pursuant to this contract, Subdivider's contractors shall furnish to City satisfactory evidence of an insurance policy written upon a form and by a company (which meets with the approval of City) insuring City, its officers, agents, and employees against loss or liability which may arise during the work or which may result from any of the work herein required to be done, including all costs of defending and claim arising as a result thereof. Minimum liability and property damage insurance shall not be less than \$250,000 for all damages arising out of bodily injury to a death of one person and not less than \$1,000,000 for all damages arising out of bodily injuries to or death of more than one person in any occurrence; and not less than \$250,000 for all damages and/or destruction of property in any one occurrence and not less than \$500,000 for all damages and/or destruction of property during the policy period. Such policy shall be in favor of Subdivider or its contractors and of the City, its officers, agents, and employees and shall be maintained in full force and effect during the life of this contract. The policy shall state by its terms and by an endorsement that it shall not be cancelled until City shall have had at least ninety (90) days' notice in writing of such cancellation.

The Subdivider hereby releases and agrees to indemnify and save the City harmless from and against any and all injuries to and deaths of persons and injuries to property, and all claims, demands, costs, loss, damage and liability, howsoever the same may be caused and whensoever the same may appear, resulting directly or indirectly from the performance or non-performance of any of or all work to be done in and upon premises adjacent thereto pursuant to this Agreement, and also from any and all injuries to and deaths of persons and injuries to property or other interests and all claims, demands, costs, loss, damage, and liability, howsoever same may be caused and whensoever the same may appear, either directly or indirectly made or suffered by the Subdivider, the Subdivider's agents, employees, and sub-contractors, while engaged in the performance of the work.

**15. Liability of Subdivider:**

The Subdivider agrees that the use for any purpose and by any person of any and all of the streets, easements and improvements herein specified shall be at the sole and exclusive risk of the Subdivider at all times prior to final acceptance by the City of the completed street and other improvements thereon and therein; provided that acceptance by the City shall in no way eliminate or lessen any of Subdivider's obligations or undertakings contained in this Agreement. The issuance of any occupancy permits (if granted) by the City for buildings located within the subdivision shall not be construed in any manner to constitute an

acceptance and approval of any or all of the required improvements in said subdivision.

16. **Relationship of Contractors:**

It is hereby mutually covenanted and agreed by the parties hereto that Subdivider's contractors are not agents of the City, if any, are those of independent contractors.

17. **Repair or Reconstruction of Defective Work:**

If, within a period of up to one year after City Council acceptance of the improvement work performed under this Agreement, any of the improvements for work done under this Agreement fails to fulfill any of the requirements of this Agreement, or the specifications referred to herein, Subdivider shall without delay and without any cost to the City (upon receipt of written notice from the City), repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Subdivider can be notified, City may, at its own option, make the necessary repairs or replacements or perform the necessary work and offset that amount against any security pledged by Subdivider for faithful performance, labor and materials, or warranty obligations under this agreement.

18. **Warranty:**

Without limiting the foregoing, Subdivider warrants and guarantees: materials used and workmanship performed on said work for a period of one (1) year after completion and acceptance thereof by the City, and the setting of all required Final Map monuments.

19. **Assignment:**

This agreement shall not be assignable by Subdivider without written consent of City.

**IN WITNESS WHEREOF**, this agreement shall for all purposes be deemed an original thereof, having been duly executed by the Subdivider herein named on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ being duly signed by its undersigned representative(s) pursuant to authority of its governing body.

**SUBDIVIDER**

By: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

By: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**CITY OF FONTANA**

By: \_\_\_\_\_

City Manager

\_\_\_\_\_  
Print Name

Attest: \_\_\_\_\_

City Clerk

\_\_\_\_\_  
Print Name

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

\_\_\_\_\_  
Print Name

**APPROVED AS TO CONTENT:**

By: \_\_\_\_\_  
City Engineer

\_\_\_\_\_  
Print Name

Attachments: (1) Exhibit "A" – Cost Estimate  
(2) Exhibit "B" – Time Extension  
(3) Securities

Exhibit "A"

**INSERT ENGINEER'S  
COST ESTIMATE  
IN THIS SPOT**

**SUBDIVISION IMPROVEMENT AGREEMENT**

**Tract Map No.:\_\_\_\_\_**

Exhibit "B"

I, \_\_\_\_\_

(Subdivider's name here)

am the owner of the property to which this Request is being made for of a Time Extension for  
Project No. \_\_\_\_\_.

Name: \_\_\_\_\_

Subdivider's Signature: \_\_\_\_\_

Subdivider's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

(Attached Notary Acknowledgment)

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**CITY OF FONTANA**

BY: \_\_\_\_\_  
City Engineer

DATE: \_\_\_\_\_

\_\_\_\_\_  
Print Name

[ ] DENY  
[ ] APPROVED

NEW DATE: \_\_\_\_\_

Bond No. \_\_\_\_\_  
Premium \$ \_\_\_\_\_

**SECURITY BOND FOR FAITHFUL PERFORMANCE OF**  
**SUBDIVISION AGREEMENT**

**Tract Map No.:** \_\_\_\_\_

**WHEREAS**, the City Council of the City of Fontana, State of California, and, \_\_\_\_\_ ("Principal") have entered into an agreement dated \_\_\_\_\_ (the "Agreement") which is incorporated herein by reference, in which Principal has agreed to construct, install and complete certain designated public improvements; and

**WHEREAS**, under the terms of the Agreement, Principal is required to file before commencing work a good and sufficient payment bond with the City of Fontana to secure faithful performance of the terms of the Agreement.

**NOW, THEREFORE**, Principal and the undersigned as corporate surety, are held and firmly bound unto the City of Fontana in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), to assure faithful performance of all terms and conditions of the Agreement.

This bond shall be and remain in full force and effect, and shall indemnify and hold harmless the City of Fontana, its officers, agents and employees until all terms, covenants, provisions and conditions of the Agreement, and any agreed upon alterations or additions thereto, are fully and well met and performed by the Principal, his or its heirs, executors, administrators, successors or assigns, to the satisfaction of the City of Fontana in the time and manner specified in the Agreement. Upon fulfillment of the obligations set forth in the Agreement as specified above, this obligation bond shall become null and void.

As part of the obligation secured hereby, Principal shall pay, in addition to the face amount of this bond, all costs and reasonable expenses and fees including reasonable attorney's fees, incurred by the City of Fontana in successfully enforcing such obligation, as may be awarded by a court of competent jurisdiction in any judgement upon this bond.

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 it shall in any manner affect its obligation on this bond and surety hereby waives notice of any such change, alteration or addition.

**IN WITNESS WHEREOF**, this instrument, for all purposes as deemed an original, having been duly executed by the Principal and Surety, as evidenced by the signatures of their duly authorized representatives whose signatures appear below, on this \_\_\_\_ day of \_\_\_\_ ,20 \_\_\_\_.

PRINCIPAL

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(NOTARIZATION AND SEAL)

SURETY

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(NOTARIZATION AND SEAL)

**NOTE:** Please Attach Notary  
Acknowledgement and  
Power of Attorney.

Bond No. \_\_\_\_\_  
Premium \$ \_\_\_\_\_

**SECURITY BOND FOR LABOR AND MATERIALS OF**  
**SUBDIVISION AGREEMENT**

**Tract Map No.:** \_\_\_\_\_

**WHEREAS**, the City Council of the City of Fontana, State of California, and \_\_\_\_\_ ("Principal") have entered into an agreement dated \_\_\_\_\_, (the "Agreement") which is incorporated herein by reference, in which Principal has agreed to construct, install and completed certain designated public improvements; and

**WHEREAS**, under the terms of the Agreement, Principal is required to file before commencing work a good and sufficient payment bond with the City of Fontana to secure the claims allowed in California Civil Code Sections 3082 *et seq.*

**NOW, THEREFORE**, Principal and the undersigned as corporate surety, are held firmly bound unto the City of Fontana and all contractors, subcontractors, laborers, material men and other persons employed in the performance of the Agreement and referred to in the above referenced sections of the Code of Civil Procedure in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) materials furnished or labor performed of any kind under the Agreement, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the sum in an amount not exceeding this amount herein set forth above, and in the event legal action is brought upon this bond, the surety will pay, in addition to the face amount of this bond, such costs and reasonable expenses and fees, including reasonable attorney's fees, incurred in successfully enforcing this obligation, as may be awarded and fixed by a court of competent jurisdiction in any judgement entered.

It is hereby expressly stipulated and agreed that this bond shall insure to the benefit of all persons, companies, and corporations entitled to file claims pursuant to Section 3082 *et sec.* of the California Civil Code.

This bond shall be and remain in full force and effect until all terms and conditions of the Agreement are fully met and performed by the Principal, his or its heirs, executors, administrators, successors or assigns, to the satisfaction of the City of Fontana. Upon fulfillment of the obligations set forth in the Agreement as specified above, this obligation bond shall become null and void.

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

**IN WITNESS WHEREOF**, this instrument, for all purposes be deemed an original having been duly executed by the Principal and Surety, as evidenced by the signatures of their duly authorized representatives whose signatures appear below, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

PRINCIPAL

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(NOTARIZATION AND SEAL)

SURETY

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(NOTARIZATION AND SEAL)

**NOTE:** Please Attached Notary  
Acknowledgement and  
Power of Attorney

Bond No. \_\_\_\_\_  
Premium \$ \_\_\_\_\_

**SUBDIVISION WARRANTY OBLIGATION BOND**

**Tract Map No.: \_\_\_\_\_**

**WHEREAS**, The City Council of the City of Fontana, State of California, and, \_\_\_\_\_ ("Principal") have entered into an agreement dated \_\_\_\_\_ (the "Agreement") which is incorporated herein by referenced, in which Principal has agreed to warrant and guarantee the installation and maintenance of certain designated public improvements; and

**WHEREAS**, under the terms of the Agreement, Principal is required **to file before acceptance of improvements** by the City of Fontana a good and sufficient payment bond with the City of Fontana to secure the performance of its warranty and guarantee obligation under the Agreement.

**NOW, THEREFORE**, Principal and the undersigned as corporate surety, are held firmly bound unto the City of Fontana in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) to secure the warranty and guarantee of Principal against any defective work or labor or material furnished in connection with the installation and maintenance of the public improvements required by the Agreement.

This bond shall be and remain in full force and effect, and shall indemnify and hold harmless the City of Fontana, its officers, agents and employees until all warranty or guarantee time periods required under the Agreement following performance of all terms, covenants, provisions and conditions of the Agreement, and any agreed upon alterations or additions thereto have expired as to the Principal, his or its heirs, executors, administrators, successors or assigns. Upon fulfillment of the obligations set forth in the Agreement as specified above, this obligation bond shall become null and void.

As a part of the obligation secured hereby, Principal shall pay, in addition to the face amount of this bond, all costs and reasonable expenses and fees including reasonable attorney's fees incurred by the City of Fontana in successfully enforcing this obligation, as may be awarded by a court of competent jurisdiction in any judgement upon this bond.

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

**IN WITNESS WHEREOF**, this instrument, for all purposes be deemed an original, having been duly executed by the Principal and Surety, as evidenced by the signatures of their duly authorized representatives whose signatures appear below, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

PRINCIPAL

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(NOTARIZATION AND SEAL)

SURETY

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(NOTARIZATION AND SEAL)

**NOTE:** Please Attached Notary  
Acknowledgement and  
Power of Attorney