

EXHIBIT D
LABOR AND MATERIAL BOND

EXHIBIT D

Payment Bond No. _____

PAYMENT BOND (Labor and Material Bond)

WHEREAS, the County of San Bernardino ("County") has awarded [insert name of Design-Builder] designated as the "Principal" herein, a contract for the work described as follows:

WHEREAS, on or about _____, 20____, the Principal entered into a Design-Build Contract with the County for the design and construction of the work of improvement, which Design-Build Contract and all Contract Documents set forth therein are incorporated herein and made a part hereof by this reference; and

WHEREAS, by terms of the Design-Build Contract, as well as California Civil Code §9550, Principal is required to furnish a bond guaranteeing payment of claims.

NOW, THEREFORE, Principal and _____ ("Surety"), a duly admitted surety in the State of California, are held and firmly bound to the County for payment of the penal sum of \$_____ ("the Bonded Sum"), in lawful money of the United States, for payment of which sum Principal and Surety jointly and severally bind themselves and their heirs, executors, administrators, successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if Principal shall fail to pay any of the persons named in California Civil Code §9100 for all labor, materials, equipment or services used or reasonably required for use in performance of the Work of the Project, then Surety shall pay for the same in an amount not-to-exceed the Bonded Sum, otherwise this obligation shall be null and void.

The following terms and conditions shall apply with respect to this Bond:

1. The Design-Builder and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to County and to Claimants, to pay for labor, materials and equipment furnished for use in the performance of the Design-Build Contract, which is incorporated herein by reference.
2. With respect to County, this obligation shall be null and void if the Design-Builder:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless County from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Design-Build Contract, provided County has promptly notified the Design-Builder and the Surety (at the address described in Paragraph 10) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Design-Builder and the Surety, and provided there is no County Default.
3. With respect to Claimants, this obligation shall be null and void if the Design-Builder promptly makes payment, directly or indirectly through its subcontractors, for all sums due Claimants. However, if Design-Builder or its subcontractors fail to pay any of the persons named in California Civil Code section 9100, or

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amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Design-Builder or subcontractors pursuant to the Unemployment Insurance Code section 13020, with respect to such work and labor, then Surety will pay for the same, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the Court.

4. Consistent with the California Mechanic's Lien Law, California Civil Code §§ 8000, et seq., the Surety shall have no obligation to Claimants under this Bond unless the Claimant has satisfied all applicable notice requirements.
5. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety under this Bond.
6. Amounts due the Design-Builder under the Design-Build Contract shall be applied first to satisfy claims, if any, under any Construction Performance Bond and second, to satisfy obligations of the Design-Builder and the Surety under this Bond.
7. County shall not be liable for payment of any costs, expenses, or attorney's fees of any Claimant under this bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
8. The Surety hereby waives notice of any change, including changes of time, to the Design-Build Contract or to related subcontracts, purchase orders and other obligations.
9. Suit against Surety on this Payment Bond may be brought by any Claimant, or its assigns, at any time after the Claimant has furnished the last of the labor or materials, or both, but, pursuant to California Civil Code §9558, must be commenced before the expiration of six months after the period in which stop notices may be filed as provided in Civil Code §9356.
10. Notice to the Surety, County or the Design-Builder shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, County or the Design-Builder, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
11. This Bond has been furnished to comply with the California Mechanic's Lien Law, including, but not limited to, Civil Code §§9550, et seq. Any provision in this Bond conflicting with said statutory requirements shall be deemed deleted and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Design-Builder shall promptly furnish a copy of this Bond or shall permit a copy to be made.
13. **DEFINITIONS**
 - 13.1 **Claimant:** An individual or entity having a direct contract with this Design-Builder or with a subcontractor of the Design-Builder to furnish labor, materials or equipment for use in the performance of the Contract, as further defined in California Civil Code §9100. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Design-Build Contract, architectural and engineering services required for performance of the work

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of the Design-Builder and the Design-Builder's subcontractors, and all other items for which a stop notice might be asserted. The term Claimant shall also include the Unemployment Development Department as referred to in California Civil Code §9554(b).

- 13.2 Design-Build Contract: The agreement between County and the Design-Builder identified on the signature page, including all Contract Documents and changes thereto.
- 13.3 County Default: Material failure of County, which has neither been remedied nor waived, to pay the Design-Builder as required by the Design-Build Contract, provided that failure is the cause of the failure of Design-Builder to pay the Claimants and is sufficient to justify termination of the Design-Build Contract.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety of the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body. Principal and Surety have caused this Bond to be duly executed and delivered as of this _____ day of _____, 20__.

SURETY:

PRINCIPAL:

Name

Name

Principal Place of Business

Address

By: _____
Signature

By: _____
Signature

Attorney-In-Fact

Printed Name

Signature

Its: _____
Title

(Attach Attorney-in-Fact Certificate, Corporate Seal and Surety Seal)

END OF DOCUMENT