

City of Palo Alto

Administrative Services Department

December 22, 2009

California Surety Federation
Attn: Paul Gladly
1201 K Street, Suite 750
Sacramento, CA 95814

Subject: **Section 2845 and 2849 of the California Civil Code**

Dear Mr. Gladly:


In response to your letter dated November 30, 2009 related to the above section of the code as referenced within our Performance and Payment Bond documents.

We have recently updated our construction contract templates including our standard Performance and Payment Bond forms. You have objected to our new forms' requirement that the surety waive Sections 2845 and 2849 of the Civil Code. As to Civil Code Section 2845, the City is aware that alternate dispute resolution can be effective in resolving most construction disputes and that the vast majority of such disputes can be resolved without involvement of the surety. Typically, the City only brings in the surety if such alternate methods are not availing or schedule does not permit extended dispute resolution procedures. For these reasons, a waiver of Civil Code Section 2845 is necessary. That being said, Palo Alto is committed to alternate dispute resolution and will continue to work towards resolving disputes directly with the contractor before resorting to the surety.

With respect to Section 2849, if the City elects to collect additional security from a contractor who is having performance issues, it is unreasonable to expect subrogation rights to that security, especially if the security relates to another aspect of the work not secured by the original bond. For this reason we believe that a waiver of Section 2849 is also reasonable.

We have received bonds issued on our new forms and do not believe that these provisions will adversely impact contractors' ability to obtain bonds. We will, however, continue to monitor the situation and I appreciate your bringing these issues to our attention.

Yours truly,



Jose L. Arreola
Contracts Administrator

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