

DOCUMENT 00 5200

**AGREEMENT
(Design-Build)**

THIS AGREEMENT, dated this _____ day of _____, 2016 by and between _____, whose place of business is located at: _____, CA _____ ("Design-Build Team"), and the City of Santa Clarita ("Owner"), acting under and by virtue of the authority vested in Owner by the laws of the State of California.

**PROJECT NUMBER:
CITY OF SANTA CLARITA
PARKING STRUCTURE – OLD TOWN NEWHALL F 2010**

WHEREAS, upon receipt of approval of various aspects of Owner's separate transaction with the neighboring property owner, Owner's conditional award of the Contract will become unconditional.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Design-Build Team and Owner agree as follows:

ARTICLE 1 - SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

- A. Design-Build Team hereby agrees to serve as the Design-Build Team for the Project identified herein, inclusive of complete planning, design and engineering services, construction management services, complete permitted plan sets, construction services, completion and commissioning services, and turnover of a complete, functional and legally operable Project, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents ("Work").
- B. Without limiting the foregoing, Work specifically includes the following Enhancements:
 - 1. The following Additive Alternates:
 - 1. [Assembly Area on Roof]
 - 2. [30-day Time Extension]
 - 3. [60-day Time Extension]
 - 4. [90-day Time Extension]
 - 5. [120-day Time Extension]
 - 6. [150-day Time Extension]

* As defined in Proposal Form attached for reference.

1.02 Price for Completion of The Work

- A. Owner shall pay Design-Build Team the following Contract Sum of [WRITTEN AMOUNT] (\$XX,XXX,XXX) for completion of Work in accordance with Contract Documents (including Additive and Deductive Alternates and the Allowance identified in paragraph 1.01B, above, if applicable).

Comment [A1]: Not to exceed \$10.5M.

1.03 Alternates

- A. At Owner's sole discretion, Work may also include one or more Alternates identified on Attachment 1 hereto. To add any Alternate to the Work, Owner must notify Design-Build Team no later than the date indicated for the Alternate ("City Decision Point Date") identified in Attachment 1. Contract Sum will be adjusted (increased for an additive Alternate only by the Proposal Price for the Alternate identified in Attachment 1, and Owner will pay no other amount on account of adding the Alternate to the Work. Addition of any Alternate shall be memorialized by Change Order and (other than any provision regarding payment) subject to all other Contract Documents requirements relating to Change Orders.

1.04 Allowances

- A. Contract Sum includes the following allowances
1. Owner's Allowance (if used) (see Section 01 2100, para. 1.04) \$TBD
- B. See also Section 01 2100 Allowances.
- C. Allowance Work will be authorized by Owner in writing, following change order procedures to determine cost, supporting documentation and authorization to proceed. Unused allowance amounts at Contract completion shall modify the Contract Sum accordingly.

1.05 Unit Prices

- A. At Owner's sole discretion, Work may also include any of the additional Unit Prices identified on Attachment 1 hereto. To add any Unit Price items to the Work, Owner must notify Design-Build Team no later than the date indicated for the Unit Price ("County Decision Point Date") identified in Attachment 1. Addition of any Unit Price item shall be memorialized by Change Order and (other than any provision regarding payment) subject to all other Contract Documents requirements relating to Change Orders.
- B. See also Section 01 1100, Summary of Work, paragraph 1.03.C.

1.06 Maximizing Sales and Use Taxes Payable to Owner

- A. Design-Build Team will work with Owner to develop procedures to maximize Owner's receipt of sales and use taxes resulting from design and construction of the Project (**Taxable Purchasing Procedures**). Taxable Purchasing Procedures must include, without limitation:
1. The Direct Payment Procedures (as defined below).
 2. To the extent not otherwise addressed by the Direct Payment Procedures, requirements that Design-Build Team, and Subcontractors and Designers of all tiers that perform a significant portion of their Project Work or Services on the Project Site or within the City of Santa Clarita, use an address within the City of Santa Clarita for purchases and leases of Project-related tangible personal property (goods, materials, fixtures, equipment, tools, supplies, etc.) (**Project Personal Property**), to the greatest reasonably feasible extent.
 3. To the extent not otherwise addressed by the Direct Payment Procedures, requirements that, to the greatest reasonably feasible extent, sellers and lessors of Project Personal Property either:
 1. have a physical presence within California; or
 2. if located out of state, collect and pay California use tax.
- B. Taxable Purchasing Procedures must include the following, to the greatest reasonably feasible extent (**Direct Payment Procedures**):

1. Design-Build Team and all Subcontractors and Designers (of all tiers) with Project-related contracts equal to or exceeding \$1 Million dollars (or other amount must approved by the BOE) (**Eligible Subcontractors**) must obtain a California State Board of Equalization (**BOE**) sub-permit for the Project Site and allocate all Project-related sales and use tax to the City of Santa Clarita. Before performing any Work at the Project Site, Design-Build Team and each Eligible Subcontractor must provide Owner with a copy of its sub-permit or an official statement that sales and use tax is not applicable to its portion of the Project.
 2. When filing quarterly sales and use tax returns, Design-Build Team and all Eligible Subcontractors must record local taxes on BOE Schedule C (Detailed Allocation by Suboutlet) rather than Schedule B (Allocation by County).
 3. Design-Build and Subcontractors and Designers (of all tiers), regardless of Project contract size, shall directly allocate to the City of Santa Clarita sales and use tax on all Project Personal Property with a total value exceeding \$250,000 that is shipped to the Project Site from an out-of-state supplier, using Schedule F when filing sales and use tax forms with the BOE.
 4. Design-Build Team and all Subcontractors and Designers (of all tiers), regardless of Project contract size, must provide Owner with copies of all eligible returns and supporting documentation for review and approval at least ten days in advance of submission to the BOE. (This is essential as Owner understands that the BOE will not make retroactive allocation adjustments should revenues be allocated to the City wide pool rather than the Project Site.)
 5. Before performing any Work at the Project Site, Design-Build Team and each Subcontractor and Designer (of all tiers), regardless of Project contract size, must provide Owner with a formal written document stating that their appropriate staff member(s) responsible for filing tax documents (a) have been instructed on these Taxable Purchasing Procedures, (b) will prepare their returns so that to the greatest reasonably feasible extent the local share of sales use tax paid with respect to Project Personal Property) will be allocated to the City of Santa Clarita.
- C. Taxable Purchasing Procedures must also include periodic Design-Build Team reporting (on behalf of itself and its Subcontractors and Designers), and Owner monitoring, audit and enforcement rights.
- D. Taxable Purchasing Procedures may include exclusions for out-of-state vendors that perform at most nominal or incidental Work within Stanislaus County or on the Project Site.
- E. Design-Build Team must provide an initial proposed Taxable Purchasing Procedures within 20 Days of execution of this Agreement. Owner and Design-Build Team will use good faith efforts to finalize them within ten Days thereafter. If the parties are unable to agree, Owner will determine the final Taxable Purchasing Procedures consistent with this Paragraph 1.06, and if Design-Build Team disagrees it may file a claim pursuant to Document 00 7253 (General Conditions).
- F. The final Taxable Purchasing Procedures will become an attachment to this Agreement and incorporated herein.

ARTICLE 2 - COMMENCEMENT, COORDINATION AND COMPLETION OF WORK

2.01 Commencement of Work

- A. Design-Build Team shall commence Work on the date indicated in the applicable Notice to Proceed. Two different Notices to Proceed will be issued for the Project: a Notice to Proceed with Design, and a Notice to Proceed with Construction.
- B. Owner reserves the right to modify or alter the Commencement Date.

- C. Design-Build Team acknowledges that it has been advised that the commencement of design and construction on this Project is conditional upon two adjacent projects (Mixed Use and Theater) meeting key milestone dates. Design-Build Team acknowledges and understands that if key milestone dates are not met on the two adjacent projects, Owner may never issue a Notice to Proceed with Construction once design is complete. In such a case, Owner may let the construction portion of this Project at a later date or may negotiate a change order with Design-Build Team for the time between completion of design and completion by the neighboring projects of their key milestone tasks.
- D. Design-Build Team further acknowledges that it has been asked to price the cost of Owner time extensions to the Project that range between 30 days and 150 days. Design-Build Team agrees that in the event Owner chooses to exercise any of the Time Extensions priced in Alternates 2 through 6, Design-Build Team shall not seek any other remedy or remuneration for such Time Extension and further acknowledges that it shall not consider the exercise of any such Time Extension to be a delay in or suspension of or cessation of the Work. Design-Build Team acknowledges and agrees that Owner may choose to exercise any of Alternates 2 through 6 at any time during the Project, whether during design or construction.

2.02 Coordination of Work

- A. Design-Build Team acknowledges that it has been advised of the two pending adjacent projects: Mixed Use and Theater Projects. Design-Build Team acknowledges that it has been advised there will be an increased need to coordinate its work with the two adjacent project Owners (Serrano and Laemmler). Accordingly, Design-Build Team reaffirms its commitment to fulfill its obligation under the General Conditions (Document 00 7253) to coordinate its work with the work of the adjacent projects, to cooperate in accommodating the needs of the adjacent projects, and to hold however many coordination meetings Owner deems reasonably necessary to facilitate coordinated work activities at the Project site. In the event of a dispute between Design-Build Team and a neighboring project Owner regarding how best to accomplish coordination of a particular task, Design-Build Team shall transmit notice of the dispute to Owner and agrees that Owner shall be the final arbiter of any such dispute.

2.03 Completion of Work

- A. Design-Build Team shall achieve Final Completion of the entire Work no later than March 30, 2018.

2.04 Design and Construction Milestones

- A. Design-Build Team shall also complete design and construction of the Project consistent with the following milestones.
 1. Substantial Completion of Entire Project: January 27, 2018 ;
 2. Certificate of Beneficial Occupancy of entire Project: Recorded by March 30, 2018;
 3. Occupancy Completion: March 30, 2018.

2.05 Liquidated Damage Amounts

- A. Owner and Design-Build Team recognize that time is of the essence of this Agreement and that Owner will suffer financial loss, if the Work is not completed within the time specified herein, taking into account any extensions thereof allowed in accordance with the Contract Documents.

- B. Consistent with terms, conditions, stipulations and limitations in Document 00 7253 (General Conditions) regarding liquidated damages, Design-Build Team and Owner agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual

damages incurred by Owner because of a delay in completion of the Work. Accordingly, in the event of delay in completion of the Work, or any applicable portion, Owner and Design-Build Team agree that Design-Build Team shall pay Owner as liquidated damages the number of Dollars provided below:

1. As liquidated damages for delay, Design-Build Team shall pay Owner One Thousand Dollars (\$1,000.00) for each Day that expires after the time specified herein for Design-Build Team to achieve the Final Completion of the entire Work (paragraph 2.03A above), until achieved.

2.06 Scope of Liquidated Damages

- A. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00 7253 (General Conditions).

ARTICLE 3 - PROJECT REPRESENTATIVES AND STAFFING

3.01 Owner's Project Manager

- A. Owner has designated Hoon Hahn as its Project Manager to act as Owner's Representative in those matters relating to the Contract Documents that do not require City Council approval.
- B. To the extent City Council approval is not required, Project Manager shall have authority over various matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of Owner, to accept work, and to make decisions or actions binding on Owner, and shall have sole signature authority on behalf of Owner. By this clause, Project Manager is not assigned any rights or obligations that require Board of Supervisors approval.
- C. Owner may assign all or part of the Project Manager's rights, responsibilities, and duties to a Construction Manager or other Owner Representative.
- D. Exceptions to the foregoing Article 3.01 shall be in accordance with Public Contract Code 20142.

3.02 Design-Build Team's Project Manager and Key Personnel

- A. Design-Build Team has designated _____ as its Project Manager to act as Design-Build Team's Representative in all matters relating to the Contract Documents. For the construction phase, the Project Manager shall be resident full-time at the Project Site and shall be devoted solely to the Project. Design-Build Team's Project Manager shall be the single point of contact for all Project communications between Owner and Design-Build Team, and shall be responsible for distributing all communications from Owner and Owner's consultants (including, without limitation, from Bridging Architect on Owner's behalf) to Design-Build Team's Superintendent and others as Design-Build Team deems appropriate.
- B. Design-Build Team's Proposal lists the key personnel identified on Attachment 2 Design-Build Team intends to provide to the Project to perform its design, construction and obligations under the Contract Documents, and their anticipated start times, anticipated duration of commitment to work on the Project, and for each duration percentage of commitment to work on the Project

(together, "Key Personnel"). Design-Build Team represents that such staff have the necessary licenses, experience and qualifications to satisfactorily perform the requirements of the Contract

Documents and that at all times Design-Build Team shall maintain such staff or similar staff having all necessary licenses, certifications, experience and skills necessary to perform all obligations of the Contract Documents. Design-Build Team may not change the identity of its Project Manager or any other Key Personnel without prior Owner written approval, which approval shall not be unreasonably withheld, provided such replacement has similar or greater experience and qualifications.

- C. Design-Build Team acknowledges that the quality and qualifications of the Key Personnel were important factors in Owner's selection of Design-Build Team for the Project. Design-Build Team and Owner agree that the personal services of the Key Personnel are a material term of the Contract Documents. Design-Build Team and Owner agree further that the substitution or removal or change in role or level of effort of such Key Personnel would result in damages to the Owner, the measure of which would be impractical or extremely difficult to fix. In lieu such damages, Owner and Design-Build Team have agreed to liquidated damages as described below:
 - 1. For any substitution of any Key Personnel individual before the end of the individual's Project commitment period provided in Design-Build Team's Key Personnel staffing schedule, Owner may assess once, and Design-Build Team shall accept, liquidated damages in the amount of six (6) times the gross monthly salary for each substituted Key Personnel.
- D. Liquidated damages for substitution of Key Personnel shall be deducted from the next applicable Application for Payment or, if insufficient, shall be paid by Design-Build Team upon Owner's written demand.
- E. No liquidated damages shall under be due under this paragraph 3.02 for any substitution required due to death, incapacity or employment termination of a Key Personnel.
- F. Pursuant to Labor Code Section 1771(a), Design-Build Team covenants that it will award contracts and subcontracts for Project Work, only to Subcontractors that are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Design-Build Team shall obtain and provide proof of such registration from all such Subcontractors. and provide it to Owner along with each Document 00 4330 (Subcontractors List) transmitted to Owner.

3.03 Bridging Architect

- A. Walker Parking Consultants furnished the Bridging Documents (Performance Criteria and Concept Drawings) and shall have the rights assigned to Bridging Architect in the Contract Documents.

3.04 Construction Manager

- A. Owner has delegated certain of Project Administrator's rights to Owner's Construction Manager, and may delegate further rights with notice to Design-Build Team.

ARTICLE 4 - CONTRACT DOCUMENTS

4.01 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00 4330	Subcontractors List and all amendments thereto, as set forth in Public Contract Code Section 22160
Document 00 5050	Notice of Intent to Award
Document 00 5100	Notice of Conditional Award
Document 00 5200	Agreement
Document 00 5201	Bridging Documents
Document 00 5500	Notice to Proceed with Construction
Document 00 5501	Notice to Proceed with Design Services
Document 00 6113.13	Construction Performance Bond
Document 00 6113.16	Construction Labor and Material Payment Bond
Document 00 6290	Escrow Agreement for Security Deposits in Lieu of Retention
Document 00 6325	Substitution Request Form
Document 00 6530	Agreement and Release of Any And All Claims
Document 00 6536	Guaranty
Document 00 7253	General Conditions
Document 00 7300	Supplemental General Conditions
Document 00 7316	Supplementary Conditions – Insurance and Indemnification
Document 00 7330	Labor Compliance Program
Document 00 9311	Addenda
Division 01 Sections identified in Document 00 0110 Table of Contents	
Final Construction Documents (following receipt of all approvals required by other Contract Documents), whether included in the final Document 00 0115 (List of Construction Documents) or in the final Document 00 5201 (Bridging Documents) provided by Design-Build Team in accordance with Section 01 1101 (Summary of Work – Design-Build Design Services) paragraph 2.02, or otherwise.	
Specifications	Division 02 through 28, inclusive

4.02 There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified, or supplemented as provided in Document 00 7253 (General Conditions). Design-Build Team's Proposal for City of Santa Clarita, dated _____ is attached hereto for reference purposes only. Unless specifically stated otherwise in this Agreement, Design-Build Team's Proposal is not incorporated into the Contract Documents."

ARTICLE 5 - MISCELLANEOUS

5.01 Terms and abbreviations used in this Agreement are defined in Document 00 7253 (General Conditions) and Section 01 4200 (References and Definitions) and will have the meaning indicated therein. Prior to executing this Agreement, Design-Build Team has performed all required post-Bridging Document design and pre-construction investigations required and described in the Contract Documents.

5.02 Design-Build Team shall include the following Owner addressees on all Project communications:

Hoon Hahn, PE, Senior Engineer
City of Santa Clarita
23920 Valencia Blvd.
Santa Clarita, CA 91355

City of Santa Clarita Parking
Structure - Old Town Newhall
OAK #4818-4949-2015 v3
02012-1099

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Agreement

5.03 In addition to the above, all notices to Design-Build Team and the other party (including requests, demands, approvals or other communications other than ordinary course Project communications) in connection with the Project shall be in writing, shall include the word "NOTICE" in the subject line, and shall be directed as follows.

City of Santa Clarita

Design-Build Team

Hoon Hahn, PE, Senior Engineer
City of Santa Clarita
23920 Valencia Blvd.
Santa Clarita, CA 91355

TBD

- A. Notice shall be sufficiently given for all purposes as follows:
1. When personally delivered to the recipient, notice is effective on delivery.
 2. When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
 3. When delivered by reputable delivery service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
 4. Notice by facsimile or electronic mail shall not be allowed or constitute "Notice" under this paragraph 5.03.
- B. Any correctly-addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.
- C. Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, by giving the other party notice of the change in any manner permitted by this paragraph 5.03.
- D. The provisions of this paragraph 5.03 shall not alter, modify, or excuse any legal or contractual requirement relating to claims under Document 00 7253 (General Conditions) Article 12.

5.04 In order to induce Owner to enter into this Agreement, Design-Build Team represents that it is duly organized, existing and in good standing under applicable state law; is licensed to perform all aspects of the Work; will employ only persons and subcontractors and designers with all required licenses and certifications; that Design-Build Team is duly qualified to conduct business in the State of California; that Design-Build Team has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein; and that the Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Design-Build Team.

5.05 Design-Build Team shall not assign any portion of the Contract Documents. Any assignment made without the Owner's prior written consent shall be null and void.

5.06 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void, or unenforceable, all remaining parts, terms, and provisions shall remain in full force and effect and

shall in no way be invalidated, impaired, or affected thereby. If the provisions of any law causing such invalidity, illegality, or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).

- 5.07** Design-Build Team and Owner understand and agree that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise. Design-Build Team and Owner understand and agree further that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 5.08** In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Design-Build Team or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Design-Build Team, without further acknowledgment by the parties.
- 5.09** Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by the California Department of Industrial Relations Director, are deemed included in the Contract Documents and on file at Owner's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code Sections 1860 and 1861, in accordance with the provisions of Labor Code Section 3700, every Design-Build Team will be required to secure the payment of compensation to his employees. Design-Build Team represents that it is aware of the provisions of Labor Code Section 3700 that requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Design-Build Team shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 5.010** Owner shall have the right to review all phases of Design-Build Team's design including, without limitation, drawings, specifications, shop drawings, samples, and submittals, as specified in the Contract Documents. Such review and other action shall not relieve Design-Build Team of its responsibility for a complete design complying with the Contract Documents; but rather, such review shall be in furtherance of Owner's monitoring and accepting the design as developed and issued by the Design-Build Team, consistent with these Contract Documents. Design-Build Team's responsibility to design and construct the Project in conformance with the Contract Documents shall be absolute.

5.11 This Agreement and the Contract Documents shall be deemed to have been entered into in the City of Santa Clarita, County of Los Angeles, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of Los Angeles.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first above written.

CITY OF SANTA CLARITA

By _____
Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

DESIGN-BUILD TEAM

Type of Entity
(corporation, partnership, sole proprietorship)

By _____
Signature

Typed Name

Title of Individual Executing
Document on behalf of Firm

By _____
Signature

Typed Name

Title of Individual Executing
Document on behalf of Firm

END OF DOCUMENT

ALTERNATES [IF APPLICABLE]

(See Agreement 1.03)

Alternate Number/Name	Proposal Price	County Decision Point Date
1. Assembly Area on Roof	\$	
2. 30-day Time Extension	\$	
3. 60-day Time Extension	\$	
4. 90-day Time Extension	\$	
5. 120-day Time Extension	\$	
6. 150-day Time Extension	\$	

* As defined in Proposal Form attached for reference.

UNIT PRICES [IF APPLICABLE]

(See Agreement 1.05)

ITEM	UNIT PRICE DESCRIPTION	PRICE (per unit)	City Decision Point Date
18.	LIST AS APPROPRIATE	\$	

Final

Attachment 2

KEY PERSONNEL
(See Agreement 3.02)

Position	Name	Start times, anticipated durations, and for each duration percentage of commitment to work on the Project
Project Manager		
Design Manager		
General Superintendent		
Superintendent		
Architect of Record		
Design Architect		
Quality Control Manager		
safety Manager		