

**DOCUMENT 00 6113.13**

**CONSTRUCTION PERFORMANCE BOND  
(Design-Build)**

THIS CONSTRUCTION PERFORMANCE BOND ("Bond") is dated **[Month, Day]**, 2016 is in the amount of **[Insert Amount]** ("Penal Sum"), which is 100% of the Contract Sum and is entered into by and between the parties listed below to ensure the faithful performance of the Design-Build Contract identified below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 14 attached to this page. Any singular reference to **[Insert name of Design-Build Team]** ("Design-Build Team"), **[Insert name of Surety]** ("Surety"), CITY OF SANTA CLARITA ("Owner"), or other party shall be considered plural where applicable.

**DESIGN-BUILD TEAM:**

**[Insert name of Design-Build Team]**

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

**SURETY:**

**[Insert name of Surety]**

\_\_\_\_\_  
Principal Place of Business

\_\_\_\_\_  
City/State/Zip

**DESIGN-BUILD CONTRACT:**

Agreement for the City of Santa Clarita Parking Structure – Old Town Newhall Project, located at the southeast corner of 9<sup>th</sup> Street and Railroad Avenue in Santa Clarita, California, dated **[Month, Day]**, 2016, in the amount of **[Insert Amount]**).

**DESIGN-BUILD TEAM AS PRINCIPAL**

Company: (Corp. Seal)

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

**SURETY**

Company: (Corp. Seal)

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

## BOND TERMS AND CONDITIONS

- 1 Design-Build Team and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner and the State of California for the complete and proper performance of the Design-Build Contract, which is incorporated herein by reference.
- 2 If Design-Build Team completely and properly performs all of its obligations under the Design-Build Contract, Surety and Design-Build Team shall have no obligation under this Bond.
- 3 If there is no Owner Default, Surety's obligation under this Bond shall arise after:
  - 3.1 Owner provides Surety with written notice that Owner has declared a Design-Build Team Default under the Design-Build Contract pursuant to the terms of the Design-Build Contract; and
  - 3.2 Owner has agreed to pay the Balance of the Contract Sum:
    - 3.2.1 To Surety in accordance with the terms of this Bond and the Design-Build Contract; or
    - 3.2.2 To a Design-Build Team selected to perform the Design-Build Contract in accordance with the terms of this Bond and the Design-Build Contract.
- 4 When Owner has satisfied the conditions of Paragraph 3 above, Surety shall promptly (within 40 Days) and at Surety's expense elect to take one of the following actions:
  - 4.1 Arrange for Design-Build Team, with consent of Owner, to perform and complete the Design-Build Contract (but Owner may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4 below); or
  - 4.2 Undertake to perform and complete the Design-Build Contract itself, through its agents or through independent contractors or design-build entities; provided, that Surety may not select Design-Build Team as its agent or independent contractor or Design-Build Team without Owner's consent; or
  - 4.3 Undertake to perform and complete the Design-Build Contract by obtaining bids from qualified contractors or design-build entities acceptable to Owner for a contract for performance and completion of the Design-Build Contract and, upon determination by Owner of the lowest responsive and responsible Bidder, arrange for a contract to be prepared for execution by Owner and the contractor or Design-Build Team selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Design-Build Contract; and, if Surety's obligations defined in Paragraph 7 below, exceed the Balance of the Contract Sum, then Surety shall pay to Owner the amount of such excess; or
  - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor or Design-Build Team, and with reasonable promptness under the circumstances and, after investigation and consultation with Owner, determine in good faith its monetary obligation to Owner under Paragraph 7 below, for the performance and completion of the Design-Build Contract and, as soon as practicable after the amount is determined, tender payment therefor to Owner with full explanation of the payment's calculation. If Owner accepts Surety's tender under this Paragraph 4.4, Owner may still hold Surety liable for future damages then unknown or unliquidated resulting from the Design-Build Team Default, as agreed by Owner and Surety at the time of tender. If

Owner disputes the amount of Surety's tender under this Paragraph 4.4, Owner may exercise all remedies available to it at law to enforce Surety's liability under Paragraph 7 below.

- 5 If Surety does not proceed as provided in Paragraph 4 above then Surety shall be deemed to be in default on this Bond ten Days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond. Such Surety default shall be independent from the Design-Build Team Default. To the extent Surety's independent default causes Owner to suffer damages, including, but not limited to, delay damages, which are different from, or in addition to (but not duplicative of) damages which Owner is entitled to receive under the Design-Build Contract, Surety shall also be liable for such damages.
- 6 At all times Owner shall be entitled to enforce any remedy available to Owner at law or under the Design-Build Contract including, without limitation, and by way of example only, rights to perform work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, and coordinate Work with other consultants or contractors or design-build entities.
- 7 If Surety timely elects to act under Paragraphs 4.1, 4.2 or 4.3 above and complies with its obligations under this Bond, Surety's obligations under this Bond are commensurate with the obligations of Design-Build Team under the Design-Build Contract. Surety's obligations shall include, but are not limited to:
  - 7.1 The responsibilities of Design-Build Team under the Design-Build Contract for completion of the Design-Build Contract and correction of Defective Work;
  - 7.2 The responsibilities of Design-Build Team under the Design-Build Contract to pay liquidated damages; and
  - 7.3 Additional legal, design professional and delay costs resulting from Design-Build Team Default or resulting from the actions or failure to act of the Surety under Paragraph 4 above (but excluding attorney's fees incurred to enforce this Bond).
- 8 If Surety timely elects to act under Paragraphs 4.1, 4.3 or 4.4 above and complies with its obligations under this Bond, Surety's monetary obligation under this Bond is limited by the amount of this Bond identified herein as the Penal Sum.
- 9 No right of action shall accrue on this Bond to any person or entity other than Owner or its successors or assigns.
- 10 Surety hereby waives notice of any change, alteration or addition to the Design-Build Contract or to related subcontracts, design agreements, purchase orders and other obligations, including changes of time, and of any Owner action in accordance with Paragraph 6 above. Surety consents to all terms of the Design-Build Contract, including provisions on changes to the Contract. No extension of time, change, alteration, Modification, deletion, or addition to the Contract Documents, or of the Work (including services) required thereunder, or any Owner action in accordance with Paragraph 6 above shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such action is an Owner Default. Except in the event of an Owner Default, and to the extent Surety is damaged thereby, Surety hereby waives the provisions of California Civil Code Section 2809, and any other law which either prohibits, restricts, limits or modifies in any way any obligation of a surety which is larger in amount or in any other respect more burdensome than that of the principal.
- 11 Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between Owner and Design-Build Team regarding the Design-Build Contract, or in the courts of the County of Los Angeles, or in a court of competent

jurisdiction in the location in which the Work is located. Communications from Owner to Surety under Paragraph 3.1 above shall be deemed to include the necessary agreements under Paragraph 3.2 above unless expressly stated otherwise.

**12** All notices to Surety or Design-Build Team shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to Owner shall be mailed or delivered as provided in Document 00 5200 (Agreement). Actual receipt of notice by Surety, Owner or Design-Build Team, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.

**13** Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.

**14 Definitions**

**14.1 Balance of the Contract Sum:** The total amount payable by Owner to Design-Build Team pursuant to the terms of the Design-Build Contract after all proper adjustments have been made under the Design-Build Contract, for example, deductions for progress payments made, and increases/decreases for approved Modifications to the Design-Build Contract.

**14.2 Design-Build Contract:** The agreement between Owner and Design-Build Team identified on the signature page of this Bond, including all Contract Documents and changes thereto.

**14.3 Design-Build Team Default:** Material failure of Design-Build Team, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Design-Build Contract, limited to "default" or any other condition allowing a termination for cause as provided in Document 00 7200 (General Conditions).

**14.4 Owner Default:** Material failure of Owner, which has neither been remedied nor waived, to pay Design-Build Team progress payments due under the Design-Build Contract or to perform other material terms of the Design-Build Contract, if such failure is the cause of the asserted Design-Build Team Default and is sufficient to justify Design-Build Team termination of the Design-Build Contract.

**END OF DOCUMENT**