

**AGREEMENT
(Design-Build)**

THIS AGREEMENT, dated this 15th day of March, 2017 by and between F&H Construction, whose place of business is located: 1115 East Lockeford Street, Lodi, CA 95240 ("Design-Build Entity"), and San Mateo County ("Owner"), acting under and by virtue of the authority vested in Owner by the laws of the State of California.

PROJECT NUMBER: P23G6

ANIMAL SHELTER REPLACEMENT PROJECT

WHEREAS, upon receipt of approval of Owner's contract award to Design-Build Entity from the County Board of Supervisors, Owner's conditional award of the Contract will become unconditional.

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

ARTICLE 1 - SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

- A. Design-Build Entity hereby agrees to serve as the stipulated sum Design-Build Entity 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. Additive Enhancements: none.
 - 2. Voluntary Enhancements: none.

1.02 Price for Completion of the Work

- A. Owner shall pay Design-Build Entity the following Contract Sum, Nineteen Million Six Hundred Sixty Nine Thousand One Hundred Ninety Seven Dollars (\$19,699,197) for completion of Work in accordance with Contract Documents (including Additive and Voluntary Enhancements identified in paragraph 1.01B above).

1.03 Allowances

- A. Contract Sum includes the following allowances (see Section 01 01 1100 para. 1.4A.1 and 1.4A.2):
 - Allowance #01: Sound Absorbing Walls for \$85,000
 - Allowance #02: Cages for \$70,000
 - Allowance #03: Hazmat Removal for \$255,000
 - Allowance #04: Public Announcement (PA) Speakers for \$101,400
 - Allowance #05: Emergency Generator for \$85,000
 - Allowance #06: Autoclave for \$18,000
 - Allowance #07: HVAC System Zoning for \$107,000

Allowance #08: Canopies and Park Benches for \$20,654
Allowance #09: Dog Kennel Covers (Tops) for \$30,000
Allowance #10: Owner Allowance for \$350,000

- B. See also Section 4.01 (f) and Division 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 reduce the Contract Sum accordingly.

ARTICLE 2 - COMMENCEMENT AND COMPLETION OF WORK

2.01 Commencement of Work

- A. Design-Build Entity shall commence Work on **March 21, 2017**, or three (3) working days following Design-Build Entity's receipt of this fully executed Agreement.
- B. Owner reserves the right to modify or alter the Commencement Date.

2.02 Completion of Work

- A. Design-Build Entity shall achieve Final Completion of the entire Work no later than **735 calendar days** following Commencement of Work date set forth in Paragraph 2.01 (A).

2.03 Design and Construction Milestones

- A. Design-Build Entity shall also complete design and construction of the Project consistent with the following milestones.
 - 1. Certificate of Beneficial Occupancy of entire Project: Recorded by **725 calendar days** following Commencement of Work date set forth in Paragraph 2.01 (A).

2.04 Liquidated Damage Amounts

- A. Owner and Design-Build Entity 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 Entity 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 Entity agree that Design-Build Entity shall pay Owner as liquidated damages the number of Dollars provided below:
 - 1. As liquidated damages for delay, Design-Build Entity shall pay Owner three thousand dollars (\$3,000) for each day that expires after the time specified herein for Design-Build Entity to achieve the Final Completion of the entire Work (paragraph 2.02A above), until achieved.

2.05 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 Administrator

- A. Owner has designated Director of Project Development Unit as its Project Administrator to act as Owner's Representative in those matters relating to the Contract Documents that do not require The Board of Supervisors approval.
- B. To the extent The Board of Supervisors approval is not required, Project Administrator 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 Administrator is not assigned any rights or obligations that require The Board of Supervisors approval.
- C. Owner may assign all or part of the Project Administrator'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 in which case authority has been delegated to its Deputy.

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

- A. Design-Build Entity has designated **Susie Turpin** as its Project Manager to act as Design-Build Entity's Representative in all matters relating to the Contract Documents. For the construction phase, the Project Manager shall be resident at the Project Site, until Owner takes occupancy of the building, or until Substantial Completion of the new building, and shall be devoted solely to the Project. Design-Build Entity's Project Manager shall be the single point of contact for all Project communications between Owner and Design-Build Entity, and shall be responsible for distributing all communications from Owner and Owner's consultants (including without limitation from Bridging Architect or Construction Manager on Owner's behalf) to Design-Build Entity's Superintendent and others as Design-Build Entity deems appropriate.
- B. Design-Build Entity's Proposal lists the key personnel. Design-Build Entity intends to provide to the Project, this personnel, 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 Entity 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 Entity 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 Entity 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 Entity acknowledges that the quality and qualifications of the Key Personnel were important factors in Owner's selection of Design-Build Entity for the Project. Design-Build Entity and Owner agree that the personal services of the Key Personnel is a material term of the Contract Documents, and 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, and in lieu of which Owner and Design-Build Entity 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 Entity's Key Personnel staffing schedule, Owner may assess once and Design-Build Entity shall accept liquidated damages in the amount of six (6) times the gross monthly salary for the 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 Entity.
- 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.

3.03 Bridging Architect

- A. Kappe Architects furnished the Bridging Documents dated April 11, 2016 (Performance Criteria and Concept Drawings).

3.04 Construction Manager

- A. Owner intends to delegate certain of its Project Administrator's rights to Owner's Construction Manager and may delegate further rights with notice to Design-Build Entity. Owner's Construction Manager is Theresa Yee, CPC, DBIA.

ARTICLE 4 - CONTRACT DOCUMENTS

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

- a. Originally issued in RFP dated April 14, 2016:
 1. Document 00 3100 Available Project Information
 2. Document 00 4316 Bond Accompanying Proposal
 3. Document 00 4330 Subcontractors List and all amendments thereto, as set forth in Public Contract Code Section 20133
 4. Document 00 5050 Notice of Recommendation to the Board of Supervisors by the Evaluation Committee
 5. Document 00 5100 Notice of Conditional Award
 6. Document 00 5201 Bridging Documents & Annex 1
 7. Document 00 5500 Notice to Proceed with Design
 8. Document 00 5501 Notice to Proceed with Construction
 9. Document 00 6113.13 Construction Performance Bond
 10. Document 00 6113.16 Construction Labor And Material Payment Bond
 11. Document 00 6530 Agreement and Release of Any And All Claims
 12. Document 00 6325 Substitution Request Form
 13. Document 00 7253 General Conditions
 14. Document 00 7380 Apprenticeship Programs
 15. Document 00 9311 Addenda, updated March 9, 2017
- b. Document 00 6536 Guaranty, amended March 9, 2017.
- c. Document 00 7316 Supplementary Conditions – Insurance and Indemnification, amended March 9, 2017.
- d. Division 01 Sections identified in Document 00 0110 Table of Contents, issued with RFP dated April 14, 2016.
- e. Design-Build Entity's Proposal for San Mateo County dated July 06, 2016.

- f. Project and Contract Qualifications and Inclusions (and attachments) dated February 17, 2017. In the event of conflicts with other contract documents, this document shall have precedence.
- g. Design Narrative & Bridging Documents dated April 11, 2016.
- h. Final Construction Documents (following receipt of all approvals required by other Contract Documents), whether included in the final 00 0115 (Lists of Bridging Documents and Construction Documents) provided by Design-Build Entity in accordance with Section 01 1101 (Summary of Work – Design-Build Design Services) paragraph 2.02, Document 00 4330 (Subcontractors List) or otherwise. For the sake of clarify, Section 01 1101 Summary of Work –Design-Build Services, continues in full effect.

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).

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 Entity has performed all required pre-construction investigations required and described in the Contract Documents.

5.02 Design-Build Entity shall include the following Owner addressees on all ordinary course Project communications:

Theresa Yee, CPC, DBIA
 Capital Projects Manager
 County of San Mateo
 Project Development Unit
 1402 Maple Street
 Redwood City, CA 94063

5.03 In addition to the above, all notices to Design-Build Entity 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 and shall include the word "NOTICE" in the subject line and shall be directed as follows.

San Mateo County

Doug Koenig, Interim Director
 County of San Mateo
 Project Development Unit
 555 County Center, Fifth Floor
 Redwood City, CA 94063

Design-Build Entity

Stephen Seibly
 F&H Construction
 1115 E. Lockeford Street
 Lodi, CA 95240
 Email: sseibly@f-hconst.com
 Fax (209) 931-4427

with a copy to:
 Theresa Yee, CPC, DBIA
 Capital Projects Manager
 County of San Mateo
 Project Development Unit
 1402 Maple Street
 Redwood City, CA 94063

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., unless, it is electronic mail that contains a letter, that complies with the requirements of Section 5.03, and recipient expressly confirms in a return electronic email and acknowledges they are in receipt of the notice.
- 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 Entity 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 Entity is duly qualified to conduct business in the State of California; that Design-Build Entity 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 Entity.
- 5.05** Design-Build Entity shall not assign any portion of the Contract Documents.
- 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** It is understood and agreed 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, and it is further understood and agreed 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 Entity 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 Entity, 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 Director of the State of California Department of Industrial Relations, 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 §§ 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every Design-Build Entity will be required to secure the payment of compensation to his employees. Design-Build Entity represents that it is aware of the provisions of Section 3700 of the Labor Code which require 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 Entity 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 Entity's design including, but not limited to, drawings, specifications, shop drawings, samples and submittals, as specified in the Contract Documents. Such review and other action shall not relieve Design-Build Entity of its responsibility for a complete design complying with the requirements of 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 Entity, consistent with these Contract Documents. Design-Build Entity'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 Redwood City, County of San Mateo, 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 San Mateo County.

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

**RECOMMENDED AND APPROVED
AS TO CONTENT:**

By _____

**SAN MATEO
COUNTY MANAGER**


By  _____
John Maltbie

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL

By  _____
Adam Ely

DESIGN-BUILD ENTITY

Corporation
Type of Entity
(corporation, partnership, sole proprietorship)

By  _____
Signature
Stephen Seibly
Typed Name
Secretary-Treasurer
Title of Individual Executing
Document on behalf of Firm

END OF DOCUMENT

DOCUMENT 00 9113

ADDENDA

PROJECT NUMBER P23G6

COUNTY OF SAN MATEO

ANIMAL SHELTER PROJECT

SAN MATEO, CA

Issued with Agreement
Between F&H Construction and San Mateo County
Dated March 9, 2017

The following Addenda were issued, modifying the Project Manual:

Addendum No. 1, issued on **May 04, 2016**
Addendum No. 2, issued on **May 31, 2016**
Addendum No. 3, issued on **June 10, 2016**
Addendum No. 4, issued on **June 23, 2016**
Addendum No. 5, issued on **June 30, 2016**

END OF DOCUMENT

GUARANTY

Amended March 9, 2017

TO: The COUNTY OF SAN MATEO ("Owner"), for construction of its ANIMAL SHELTER PROJECT located at 12 Airport Blvd, San Mateo CA.

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

Design-Build Entity hereby grants to Owner for a period of ten (10) years following the date of Final Acceptance of the Work completed, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all design, engineering, professional services, labor, materials and equipment provided by Design-Build Entity and its Subcontractors of all tiers in connection with the Work. Labor or construction work is deemed of quality and adequate so long as it is in accordance with applicable requirements of federal, state, and local laws, applicable construction codes and standards, licenses, and permits, Bridging Documents and all descriptions set forth therein –subject to subsequent modifications- and all other requirements of Contract Documents. Design, engineering and other professional services are deemed of quality and adequate so long as they are in accordance with generally accepted professional standards of good and sound design. Materials and Equipment are deemed of quality and adequate if new, of suitable grade of its respective kind for its intended use and free from defects.

Neither final payment nor use nor occupancy of the Work performed by the Design-Build Entity shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Design-Build Entity of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Design-Build Entity shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year, or longer if specified, from the date of Final Acceptance of the Work completed.

If within ten (10) years after the date of Final Acceptance of the labor or construction work completed, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any labor or construction work is found to be defective, Design-Build Entity shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such defective labor or construction work. Design-Build Entity shall remove any defective labor or construction work rejected by Owner and replace it with labor or construction work that is not Defective, and satisfactorily correct or remove and replace any damage to other labor or construction work or the work of others resulting therefrom. If Design-Build Entity fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective labor or construction work corrected or the rejected Work removed and replaced. Design-Build Entity shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Design-Build Entity fails to correct defective labor or construction work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.


Inspection of the Work shall not relieve Design-Build Entity of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Design-Build Entity shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period as set forth above.

All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents.

The foregoing Guaranty is in addition to any other warranties of Design-Build Entity contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Design-Build Entity under the Contract Documents and at law with respect to Design-Build Entity's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Design-Build Entity under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Design-Build Entity.

Date: March 15, 2017

F&H Construction
Design-Build Entity's name

By: 
Signature

Stephen Seibly
Print Name

Secretary-Treasurer
Title

1115 E. Lockeford Street
Street Address

Lodi, CA 95240
City, State, Zip code

END OF DOCUMENT

SUPPLEMENTARY CONDITIONS - INSURANCE AND INDEMNIFICATION

Amended March 9, 2017

1 DBE PROVIDED INSURANCE

1.1 General

- 1.1.1 DBE shall procure and maintain for the duration of this Contract at its sole cost and expense, insurance against claims which may arise from, or in connection with, the performance of the Work by, or on behalf of (whether directly or indirectly), the DBE.
- 1.1.2 Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the Owner, except that ten (10) days' prior written notice shall apply in the event that cancellation for non-payment of premium.

1.2 Commercial General Liability, Workers' Compensation and Employers' Liability and Automobile Liability

- 1.2.1 Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
- 1.2.2 Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
- 1.2.3 Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

1.3 Builder's Risk/Course of Construction.

- 1.3.1 DBE shall procure and maintain in effect a Builders' Risk (course of construction) insurance for completed value of the Work. No deductible shall exceed \$100,000, per occurrence. Builder's Risk Policies shall contain the following provisions:
 - (1) Owner shall be named as loss payee; and
 - (2) Coverage shall contain a waiver of subrogation in favor of the Owner, its officials, employees, agents, and design or engineering professionals.

1.4 Contractor's Pollution Insurance

- 1.4.1 Contractor's Pollution Liability Insurance on an occurrence basis, with limits of at least \$2,000,000 per occurrence and \$2,000,000 policy term aggregate for bodily injury, property damage, cleanup costs and claim expenses, arising at or emanating from the Project Site arising from all operations performed on behalf of the Owner by the Design-Build Entity, its consultants, sub-consultants, or vendors.
- 1.4.2 Such insurance shall provide liability coverage for both sudden and gradual releases arising from the Work. CPL policy shall name Owner, Design-Build Entity and all Subcontractors of all tiers as insureds.

- 1.4.3 Contractor shall be responsible at its own expense for an obligation for each loss payable under this insurance that is attributable to the Design-Build Entity's acts, errors, or omissions, or the acts, errors, or omissions of any of its Subcontractors, or any other entity or person for whom Design-Build Entity may be responsible. The amount of the obligation shall be based on the amount of the initial Contract Price, as follows:
- 1.4.4 The portion of the obligation applying to the Design-Build Entity or Subcontractor shall be the responsibility of the Design Build Entity and shall remain uninsured. Design Build Entity shall promptly pay its charge pertaining to any loss. The Owner, in addition to its other remedies, may back charge Design-Build Entity for the obligation and deduct the back-charged amount from Design-Build Entity's next progress payment or final payment.

1.5 Professional Liability Errors and Omission insurance for all professional services

- 1.5.1 Any licensed professional engaged by DBE to perform portions of the Work ("Professional(s)") shall, unless otherwise specified in the Contract Documents, maintain Professional Liability Insurance insuring against professional errors and omissions arising from Professional's Work on the Project, in an amount not less than \$2,000,000 combined single limit for each occurrence. If Professional cannot provide an occurrence policy, Profession shall provide insurance on a claims-made basis, and such insurance shall be maintained continuously for a period no less than two (2) years following termination of this Contract or Final Completion, whichever occurs later. The insurance shall have a retroactive date of placement prior to or coinciding with the date services that are governed by the terms of this Contract are first provided and shall include, without limitation coverage for professional services as called for in this Contract. The Professional Liability coverage shall include the broadest definition possible of professional services for design build entities, including without limitation coverage for professional services as called for in the Contract, and such definition shall not be narrowed by exclusion unless agreed to by Owner's Risk Manager. The Professional Liability policy should sit excess over the professional liability policy of any subcontractor.

1.6 Waivers

- 1.6.1 Owner and Design-Build Entity waive all rights against each other and any of their consultants (including without limitation Construction Manager, Bridging Architect and their consultants), separate contractors, if any, Subcontractors, Designers, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by Builder's Risk insurance obtained pursuant to paragraph 1.3 above, or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner in good faith. Owner or Design-Build Entity, as appropriate, shall require of the separate contractors, if any, and the Subcontractors, Designers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity had an insurable interest in the property damaged.

- 1.6.2 Owner waives subrogation rights under the Contractor's Pollution Liability Policy, to the greatest extent permitted by law, against all other project participants, including Design-Build Entity and Subcontractors of any tier.

2 RESPONSIBILITY OF DESIGN-BUILDER AND INDEMNIFICATION

2.1 Design-Build Entity's Responsibility for the Work.

- 2.1.1 Except for damage caused by the sole negligence, willful misconduct or active negligence of Owner or its agents, Design-Build Entity shall be solely responsible for any loss or damage that may happen to any part of the Work, materials or other things used in performing the work, injury, sickness, disease, or death of any person as a result of the Work, or resulting damage to property.
- 2.1.2 Owner and each of its officers, employees, departments, officials, representatives, inspectors, consultants and agents including, but not limited to the Board, Construction Manager, Bridging Architect and each Owner Representative, (all together, **Owner Parties**), shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person as a result of the Work; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, and Design-Build Entity releases all of the foregoing persons and entities from any and all such claims.
- 2.1.3 With respect to third-party claims against Design-Build Entity, Design-Build Entity waives any and all rights to any type of express or implied indemnity against each of the Owner Parties.

2.2 Claims Arising From the Work.

- 2.2.1 To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Design-Build Entity shall assume defense of, and indemnify and hold harmless, each of the Owner Parties, from and against claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Design-Build Entity, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.
- 2.2.2 Design-Build Entity's indemnity obligation shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall it apply to Owner or other indemnified party to the extent of its active negligence.
- 2.2.3 In the event that a court of competent jurisdiction determines that California Civil Code Section 2782.8 applies to Design-Build Entity's indemnity and defense obligations under this paragraph 3.2, as to the design-related services provided by Design-Build Entity or its Subcontractors, then, with respect to such design-related services only, Design-Build Entity shall assume defense of, and indemnify and hold harmless, each of the Owner Parties, from and against claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, that arise out of, pertain to, or relate to the negligence, recklessness, or

willful misconduct of Design-Build Entity or its Subcontractors in connection with the Work, Contract, or Project. However, irrespective of the applicability of California Civil Code Section 2782.8 as to design-related services, with respect to any non-design-related services (including without limitation construction services), Design-Build Entity shall assume defense of, and indemnify and hold harmless, each of the Owner Parties, in accordance with the other provisions of this paragraph 3.2.

2.3 Scope of Indemnification Obligation.

- 2.3.1 Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Design-Build Entity, its Subcontractors of any tier, or the officers or agents of any of them. In the event of loss, however, Design-Build Entity shall give all required notices to all insurance carriers, and shall require its subcontractors to do the same. Owner may, in its discretion, request evidence of such notices from Design-Build Entity.

2.4 Scope of Contract Limitations of Liability.

- 2.4.1 To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of contract, negligence (active or passive), fault or strict liability of the party(is) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents.

END OF DOCUMENT

RESOLUTION NO. 075045

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

RESOLUTION AUTHORIZING:

A) THE COUNTY MANAGER OR HIS/HER DESIGNEE TO EXECUTE AN AGREEMENT WITH F&H CONSTRUCTION FOR THE DESIGN-BUILD CONSTRUCTION SERVICES OF THE ANIMAL SHELTER PROJECT, FOR THE TERM BEGINNING FEBRUARY 28, 2017 THROUGH COMPLETION, IN THE AMOUNT OF \$19,699,197; AND B) THE INTERIM DIRECTOR OF THE PROJECTS DEVELOPMENT UNIT, AND/OR HIS DESIGNEE TO ISSUE AND EXECUTE ON BEHALF OF THE COUNTY OF SAN MATEO REIMBURSEMENTS AND CHANGE ORDERS UP TO 10% (A MAXIMUM AGGREGATE AMOUNT OF \$1,969,920) OF THE AGREEMENT.

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, all municipalities are mandated by the State of California to provide animal sheltering and welfare services. The County of San Mateo has managed these services for all cities and unincorporated areas within the County. The existing facility, located at 12 Airport Blvd, San Mateo is outdated, with a level of deterioration that restricts necessary repairs and upgrades; and

WHEREAS, in October, 2012, a new Animal Shelter Project was presented to the Board of Supervisors and in September, 2014 the Board of Supervisors approved a Memorandum of Agreement with all of the cities in San Mateo County for a proposed new facility to include approximately 27,000 square foot animal shelter at a total estimated cost of \$20 million plus a 2 million dollar or 10% contingency. The new facility would replace the existing building, on the existing parcel of land and offer services

similar to those currently in place which including the: state-mandated animal welfare and control functions; and

WHEREAS, The County issued Request for Qualifications (RFQ), followed by a Request for Proposals (RFP) to the three top-rated qualified design-build entities (DBE) and solicited the best value for a design-build delivery method of the Animal Shelter Project. Proposals were received from F & H Construction and Gonsalves & Stronck; and

WHEREAS, The Selection Committee recommends an agreement with F&H Construction in the amount of \$19,694,993 based upon best value. Based on a preliminary schedule, we expect to begin design at the commencement of the agreement, construction in summer 2017, with substantial completion anticipated early 2019; and

WHEREAS, The Animal Shelter project is included in the County's five-year Facilities Capital Plan that was adopted on August 6, 2013; and

WHEREAS, The County has agreed to advance the funding for the construction project., Animal Care Shelter construction costs will be recovered as a component of the lease payment on and executed 30 year lease; and

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED

that the Board of Supervisors authorizes

A.) The County Manager or his/her designee to execute an agreement with

F&H Construction for the Design-Build construction services of the Animal Shelter Project, for the term beginning February 28, 2017 through completion, in the amount of \$19,699,197; and

B.) The Interim Director of the Projects Development Unit, and/or his designee to issue and execute on behalf of the County of San Mateo reimbursements and change orders up to 10% (a maximum aggregate amount of \$1,969,920) of the agreement.

* * * * *

Regularly passed and adopted this 28th day of February 2017

AYES and in favor of said resolution:

Supervisors: DAVE PINE
 CAROLE GROOM
 DON HORSLEY
 WARREN SLOCUM
 DAVID J. CANEPA

NOES and against said resolution:

Supervisors: NONE

Absent Supervisors: NONE



*President, Board of Supervisors
County of San Mateo
State of California*

Certificate of Delivery

I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.



Assistant Clerk of the Board of Supervisors