

**SECTION 00 50 00**

**AGREEMENT**

THIS IS AN AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the County of San Luis Obispo, a political subdivision and one of the counties of the State of California, hereinafter referred to as "**County**", and:

**F&H Construction**, a corporation organized and existing under the laws of the State of California, hereinafter referred to as "Design-Build Entity or D-BE".

In consideration of the mutual covenants, conditions, promises, and agreements herein contained, the County and D-BE hereby mutually covenant and agree as follows:

**RECITALS**

- A. On August 21, 2018, the County Board approved the release of the Request for Statement of Qualifications for Prospective Design-Build Entities (RSOQ No. 1449) seeking to qualify for the San Luis Obispo County - New Animal Services Facility (Project No. 320088).
- B. On October 12, 2018, D-BE submitted a statement of qualifications (Design-Build Qualifications for F&H Construction and LDA Partners) in response to RSOQ No. 1449.
- C. In reliance upon the D-BE's Statement of Qualifications, the County determined that D-BE was qualified to submit a proposal on this Project, and on December 3, 2018, the County issued a "Notice of Pre-Qualification" in compliance with the terms of the RSOQ.
- D. On April 23, 2019, the County Board approved the release of a Request For Proposal (RFP) to Pre-selected Design-Build Entities for the design-build of the New Animal Services Facility Project (County Solicitation No. 1516). On May 21 and 31, and on July 8, 2019 Addenda 1, 2, and 3 were issued to the RFP. Said RFP and addenda, which consisted of three volumes, is incorporated herein to this Agreement as part of the Contract Documents.
- E. On July 16, 2019, D-BE submitted its Proposal (Design-Build Proposal for F&H Construction and LDA Partners) in response to the RFP which consisted of one volume with attached drawings dated July 16, 2019, and is herein incorporated to this Agreement as part of the Contract Documents.
- F. On August 20, 2019, County issued a Notice of Intent to Award a Design-Build Contract for Solicitation No. 1516 to D-BE in compliance with the terms of the RFP.
- G. Consistent with the terms of the RFP, the County and the D-BE have concluded their negotiations regarding the terms of this Agreement, and agree that this Agreement supersedes and replaces the sample Agreement set forth in Section 00 50 00 of the RFP.

**ARTICLE 1 - SCOPE OF WORK:**

- 1.1.** D-BE agrees to serve as the entity responsible for the delivery of the complete Project, New Animal Services Facility, to the County in strict accordance with the Contract Documents (defined in Article 5 herein).
- 1.2.** D-BE hereby agrees to provide the County a complete, functional and legally operable Project, in strict accordance with the terms and conditions of the Contract Documents. Pursuant to the Contract Documents, the D-BE shall provide all services and Work needed for the completion of the Project, including but not limited to the following:
  - A. complete planning, design, and engineering services;
  - B. construction management;
  - C. all services needed to obtain any and all permits required for the construction of Project, including storm water permits;
  - D. complete construction plans;

- E. supporting reports and documents applicable to the Project's design and construction, including but not limited to those that support compliance with applicable building, fire, storm water, utility and other agency regulations;
- F. construction services, tools, equipment, apparatus, facilities, expendable equipment, utility and transportation services, and labor and materials necessary to construct, perform and complete the Project in a workmanlike manner;
- G. project closeout;
- H. warranty work and related services; and
- I. as described in the following exhibits attached hereto and incorporated herein by reference though fully set forth:

Exhibit "A" – New Animal Services Facility #320088 – Contract Scope and Price

Exhibit "B" – Key Personnel, Subconsultants and Subcontractors

**ARTICLE 2 - TIME OF COMPLETION:**

The Work shall be commenced within **ten (10)** calendar days from date of the County's "Notice to Proceed", and shall be fully completed no later than **six hundred and eighty (680)** calendar days from and after the Notice to Proceed. Said 680 day period shall constitute "Contract Time". Contract Time is of the essence as defined in Article 15 of Section 00 72 53 (General Conditions).

**ARTICLE 3 - CONTRACT PRICE:**

Subject to the terms and conditions set forth in the Contract Documents, the D-BE will receive and accept, and the County will pay, the Total Contract Price specified in Exhibit "A" – New Animal Services Facility #320088 – Contract Scope and Price, as full compensation for all Work as follows:

- 3.1.** County shall pay D-BE the following Contract Price, fifteen million, two hundred eighty-five thousand, nine hundred and seventy dollars (\$15,285,970) for completion of the Project, and all Work relating thereto, in accordance with Contract Documents (including, but not limited to, all Work referenced in Exhibit "A": New Animal Services Facility #320088 – Contract Scope and Price, which is incorporated herein by reference).
- 3.2.** Allowances: The County reserves the right to accept, adjust, or omit the Work under the following allowance(s) during the design and construction of the facility:

Allowance 1: Emergency Power Equipment Connection and Electrical Feeds

Design and install an emergency connection for a future portable or permanent emergency generator with associated panel, wiring, and switching to provide electrical power to critical systems during power outages. The not to exceed allowance price of one hundred thousand dollars (\$100,000) is included in the total Contract Price.

- 3.3.** Permit Fees

The County shall pay the cost of permit and regulatory impact/assessment fees directly to County Planning and Building Department and to other agencies having approval and permit jurisdiction, and for final utility permit fees to the utility companies for the Project's permanent utility connections.

The D-BE is responsible for submitting the appropriate revenue offset applications to utility companies so that the final permit fees are properly calculated. County will pay utility company permit fees for final connection of permanent services.

D-BE shall apply and pay for initial utility application fees for permanent utility services to the building. D-BE shall be responsible for all fees and costs related to providing temporary utility services during execution of the Contract services and Work.

The County's obligation to cover Planning and Building Department's permit fees for plan reviews shall be restricted to two resubmittals. Thereafter, the D-BE shall be responsible for the cost of additional construction document reviews by the Planning and Building Department.

To the full extent permitted by law, the D-BE assumes all risks during the progress of the Work and before its acceptance by the County, of any and all loss or damage relating to, or arising out of the Work including those caused by the weather or the elements, or from any foreseen or unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work until its acceptance by the County; D-BE assumes any and all expenses incurred by or in consequence of the suspension or discontinuance of Work, or for well and faithfully completing the Work, and the whole thereof, in the manner and to the requirements of the Contract Documents, the D-BE Drawings and Specifications, the Permit requirements, and codes and regulations.

#### **ARTICLE 4 - ASSIGNMENT OF CONTRACT**

Inasmuch as the Contract is intended to secure the specialized design and construction services of the D-BE, the D-BE may not assign, transfer, delegate, or sublet any interest herein without the prior written consent of the County. Any such assignment, transfer, delegation, or sublease without the County's prior written consent shall be considered null and void. The County may deny a requested assignment, transfer, delegation, or sublease in its sole discretion.

#### **ARTICLE 5 - CONTRACT DOCUMENTS:**

##### **5.1. Identification of Contract Documents**

The complete Agreement between the parties hereto shall consist of the following identified documents herein referred to as the Contract Documents:

- RFP documents and Addenda (County Solicitation No. 1516);
- Total Contract Price and associated Work scope summaries shown on Exhibit "A" – New Animal Services Facility #320088 – Contract Scope and Price; Proposal documents, certificates, affidavit, and Proposal support documents;
- Agreement, Insurance, Indemnification, Guaranty;
- RFP Volume I issued April 23, 2019 - General Conditions and Division 00 Specifications (Excluding Bonds);
- RFP Volume II issued April 23, 2019 - Environmental Documents, County Building Standards, County Data and Voice Cabling;
- RFP Volume III of the RFP issued on April 23, 2019 – including Outline Specifications Divisions 02-33, Design Narratives, Design and Engineering Drawings (by Master Architect Swatt Miers Architects included in the RFP);
- D-BE Proposal submitted on July 16, 2019 by F&H Construction and LDA Partners;
- Executed Change Orders and Directives; and
- Approved and permitted Construction Documents herein prepared by D-BE and its subconsultants that are approved by the County in accordance with the terms of the Contract Documents.

## **5.2. Interpretation of Contract Documents**

The D-BE agrees that the County Public Works Director shall decide as to the meaning of the Contract Documents where interpretation of Contract Documents is required, including without limitation, the documents identified in 5.3 below. The County Public Works Director shall have the right to correct any errors or omissions therein when such corrections are necessary to the proper fulfillment of the intention of the Contract Documents. The action of such corrections is to take effect from the time said County Public Works Director gives notice thereof to the D-BE, and the decision shall be final.

## **5.3. Order of Precedence**

- A. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following order of precedence:
1. Building/Construction Codes and Regulations, Mitigated Negative Declaration for County of San Luis Obispo New Animal Services Facility Project dated August 20, 2018, and other governmental approvals.
  2. Change Orders and Construction Change Directives, (most recent having higher precedence).
  3. Agreement 00 50 00 – 00 69 99 Documents (excluding bonds) Proposal Required Documents, Certifications, Affidavit, Schedules, and Forms as negotiated for final Contract Price and identified Scope of Work attached as Exhibit “A” – New Animal Services Facility Contract Scope and Price.
  4. D-BE Proposal. Refer to Item B. below.
  5. Approved and permitted Construction Documents herein prepared by D-BE and its subconsultants that are approved by the County in accordance with the terms of the Contract Documents.
  6. RFP (Division 00 10 00 – 00 49 99), and including all Addenda issued under the RFP.
  7. RFP (Divisions 00 73 00 – 00 73 99).
  8. General Conditions (Divisions 00 72 00 – 00 81 00).
  9. RFP Volume II : Division 01 Specifications.
  10. Special Reports and Provisions (County Building Standards, County IT – Data and Voice, Cabling Standards).
  11. RFP Volume III : Outline Specifications (Divisions 02-33) and Design Narratives (Appendices A-F) by Swatt Miers Architects.
  12. Architectural needs assessment and Building Program Dated: Reissued February 14, 2019.
  13. RFP Volume III : Drawings by Swatt Miers Architects.
- B. D-BE Proposal must meet or exceed all minimum requirements of the RFP and General Conditions, Division 00 and 01 specifications sections, and the County's Building Standards to be valid. If after Contract award it is discovered that the D-BE Proposal and Approved Construction Documents do not meet said minimum requirement, the missing or lesser items in the D-BE Proposal shall be upgraded as necessary to meet the minimum requirements of the RFP and comply with the General Conditions, Division 00 and 01 specifications, and the County's Building Standards at no additional cost to the County.
- C. In the event the County Director of Public Works concludes that any of the following inconsistencies appear within the Contract Documents, interpretations will be based on the following order of precedence and determined by the County Director of Public Works:
1. Written numbers and notes on a drawing govern over any inconsistent graphics on the drawing;

2. A detail drawing governs over any inconsistencies on a general drawing;
3. A detail specification governs over any inconsistencies on a general specification; and
4. A specification in a section governs over any inconsistencies on a specification referenced by that section.

**5.4. Coordination of Drawings and Specifications:**

Refer to Specification Section 00 72 53 "General Conditions" Article 5, for Coordination of Drawings and Specifications.

**5.5. Terms**

Public Works Director: Means the Director of Public Works and Transportation (hereinafter, also the Department of Public Works) of the County of San Luis Obispo, State of California, acting either directly or through properly authorized agent(s), acting within the scope of the particular duties delegated to them, including registered engineers employed by the Department of Public Works.

Risk Manager: Means the manager of the Risk Management Division, Human Resources Department of the County of San Luis Obispo.

Clerk of the Board of Supervisors: Means the Clerk of the Governing Board of Supervisors of the County of San Luis Obispo, State of California.

County Clerk: Means the Clerk-Recorder of the County of San Luis Obispo, State of California.

County Board: Means the Governing Board of Supervisors of the County of San Luis Obispo. Also referred to as "Board".

**ARTICLE 6 - LAW AND VENUE:**

This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The Project site is in San Luis Obispo County and all duties and obligations of the parties created hereunder are performable in San Luis Obispo and such County shall be the venue for any action of proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**ARTICLE 7 - CONFLICTS OF INTEREST:**

No official or consultant of the County who is authorized on behalf of the County to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with the design and construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for the County who is authorized on behalf of the County to exercise any executive, supervisory or other similar function in connection with the construction of the Project shall become directly or indirectly interested personally in this Contract or in any part thereof. D-BE is aware of the requirements of Government Code section 1090 et seq. and the Political Reform Act (Gov. Code sec. 80000 et seq.) and agrees to comply with those laws' requirements.

**ARTICLE 8 - INSURANCE REQUIREMENTS:**

D-BE, at its sole cost, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. All of the insurance companies providing insurance for D-BE shall have,

and provide evidence of, an A.M. Best & Co. rating of A:VII or above, unless exception is granted by Risk Manager. Further, all policies shall be maintained for the full term of this Agreement and related warranty period if applicable.

Scope and Limits of Required Insurance Policies:

MINIMUM INSURANCE REQUIRED	AMOUNT
Comprehensive Liability & Property Damage	\$ 2.0 Million per occurrence, \$5.0 Million aggregate, and \$10.0 Million in excess liability
Professional Liability – Errors and Omission Insurance	\$ 2.0 Million per occurrence \$ 2.0 Million aggregate
Auto Liability /Property Damage/Bodily Injury	\$ 1.0 Million per occurrence
Workers Compensation & Disability Benefits	\$ 1.0 Million per occurrence

**8.1. Professional Liability Insurance/Errors and Omission Insurance**

- A. Insurance covering D-BE’s liability arising from or related to this Contract, with limits of not less than \$2.0 million per claim and \$2.0 million aggregate from a California admitted company that provides coverage for Work on a design-build contract with a Best Rating of A:VII or better and licensed in state of California. Further, D-BE understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Contract’s expiration, termination or cancellation.
- B. The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County of San Luis Obispo, Department of Public Works.

**8.2. Commercial General Liability**

Policy shall include coverage at least as broad as set forth in Insurance Services Office Commercial General Liability Coverage (CG 00 01) with policy limits of not less than \$2.0 million dollars combined single limit per occurrence \$5.0 Million aggregate, and \$10.0 Million in excess liability. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:

- A. The County of San Luis Obispo and Woods Humane Society, its officers, officials, employees, and volunteers are named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement. General liability coverage can be provided in the form of an endorsement to the D-BE’s insurance as least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 (if a later edition is used).
- B. The insurance provided herein shall be considered primary coverage to the County of San Luis Obispo with respect to any insurance or self-insured retention maintained by the County. Further, the County’s insurance shall be considered excess insurance only and shall not be called upon to contribute to this insurance.
- C. The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County of San Luis Obispo, Department of Public Works.

**8.3. Business Automobile Policy**

Policy shall include coverage at least as broad as set forth in the liability section of Insurance Services Office Business Auto Coverage (CA 00 01) with policy limits of no less than \$1.0 million dollars combined single limit for each occurrence. Said insurance shall include coverage for

owned, non-owned, and hired vehicles. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:

- A. The County of San Luis Obispo and Woods Humane Society, its officers, officials, employees, and volunteers are named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.
- B. The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County of San Luis Obispo, Department of Public Works.

#### **8.4. Worker's Compensation / Employer's Liability Insurance**

Workers' Compensation: policy shall provide statutory limits as required by State of California. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:

- A. D-BE and its insurer shall waive all rights of subrogation against the County, its officers and employees for workers' compensation losses arising out of this Agreement.
- B. The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County of San Luis Obispo, Department of Public Works.
- C. Employer's Liability: policy shall provide \$1.0 million dollars per accident for bodily injury or disease.
- D. If the D-BE maintains higher limits than the minimum shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the D-BE.

#### **8.5. Deductibles and Self-Insurance Retentions**

All deductibles and/or self-insured retentions which apply to the insurance policies required herein will be declared in writing and approved by the County prior to commencement of this Agreement.

#### **8.6. Documentation**

Prior to commencement of work and annually thereafter for the term of this Agreement, D-BE will provide to the County of San Luis Obispo, Department of Public Works, County Government Center, Room 206, San Luis Obispo, CA 93408, Attention: Project Manager, San Luis Obispo County New Animal Services Facility, Project No. 320088: the properly executed certificates of insurance clearly evidencing the coverage, limits, and endorsements specified in this Agreement. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Failure of the County to demand such certificates or other evidence of D-BE's full compliance with these insurance requirements or failure of the County to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of D-BE's obligation to maintain such insurance.

#### **8.7. Absence of Insurance Coverage**

County may direct D-BE to immediately cease all activities with respect to this Agreement if it determines that D-BE fails to carry, in full force and effect, all insurance policies with coverage levels at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered D-BE's delay and expense.

#### **8.8. Special Risks or Circumstances**

The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

### **8.9. Builder's Risk**

The County maintains Builder's Risk insurance for this Project. The D-BE therefore, is not required to procure nor maintain said insurance. D-BE, its Consultants, Subconsultants, and Subcontractors, shall be named as additional insured under the builder's risk policy as their interests appear.

## **ARTICLE 9 – INDEMNIFICATION**

### **9.1. General**

To the fullest extent permitted by law, the D-BE assumes liability for and agrees, at the D-BE's sole cost and expense, to promptly and fully indemnify, protect, hold harmless and defend (even if the allegations are false, fraudulent, or groundless), the County, its Board and each member thereof, and its respective officials, officers, directors, employees, commission members, representatives, and agents ("Indemnitees"), from and against any and all claims, allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceeds, causes of action, demands, costs, judgments, liens, stop payment notices, penalties, liabilities, damages, losses, anticipated losses of revenues, and expenses (including, but not limited to, any fees of accountants, attorneys, experts, or other professionals, or investigation expenses), or losses of any kind or nature whatsoever, whether actual, threatened, or alleged, arising out of, resulting from, or in any way (either directly or indirectly), related to the Work, the Project or any breach of the Contract by D-BE or any of its consultants, engineers, architects, officers, agents, employees, subcontractors, Sub-subcontractors, or any person performing any of the Work, pursuant to a direct or indirect contract with the D-BE, and/or the failure to perform the Work, or any condition of the Work which is caused, in whole or in part, by any act, omission or negligence of D-BE, its subcontracts (of any tier), consultants, engineers, architects, or agents ("Indemnity Claims"). Such Indemnity Claims include, but are not limited to, claims for:

- A. Any activity on or use of the County's premises or facilities;
- B. Any liability incurred due to D-BE acting outside the scope of its authority pursuant to the Contract, whether or not caused in part by an Indemnified Party;
- C. The failure of D-BE or the Work to comply with any applicable law, permit, or orders;
- D. Any misrepresentation, misstatement or omission with respect to any statement made in the Contract Documents or any document furnished by the D-BE in connection therewith;
- E. Any breach of any duty, obligation or requirement under the Contract Documents, including, but not limited to any breach of D-BE's warranties, representations, or agreements set forth in the Contract Documents;
- F. Any failure to coordinate the Work with the County's separate D-BEs/Consultants;
- G. Any failure to provide notice to any party as required under the Contract Documents;
- H. Any failure to act in such a manner as to protect the Project from loss, cost, expense, or liability;
- I. Bodily or personal injury, emotional injury, sickness or disease, or death at any time to any persons including without limitation employees of D-BE, Subcontractors and Service Providers;
- J. Damage or injury to real property or personal property, equipment and materials (including, but without limitation, property under the care and custody of the D-BE or the County) sustained by any person or persons (including, but not limited to, companies, corporations, utility company or property owner, D-BE and its employees or agents, and members of the general public);
- K. Any liability imposed by applicable law including, but not limited to criminal or civil fines or penalties;
- L. Any dangerous, hazardous, unsafe or defective condition of, in or on the site, of any nature



- whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the site by D-BE, its officers, agents, employees, or Subcontractors;
- M. Any operation conducted upon or any use or occupation of the site by D-BE, its officers, agents, employees, consultants or subcontractors under or pursuant to the provisions of the Contract or otherwise;
  - N. Any acts, errors, omission or negligence of D-BE, its officers, agents, employees, consultants or subcontractors;
  - O. Infringement of any patent rights, licenses, copyrights or intellectual property which may be brought against the D-BE or the County arising out of D-BE's Work, for which the D-BE is responsible; and
  - P. Any and all claims against the County seeking compensation for labor performed or materials used or furnished to be used in the Work or alleged to have been furnished on the Project, including all incidental or consequential damages resulting to the County from such claims.

### **9.2. Effect on Indemnitees' Active Negligence**

D-BE's obligations to indemnify and hold the Indemnitees harmless exclude only such portion of any Indemnity Claim which is attributable to the active negligence or willful misconduct of the Indemnitee, provided such active negligence or willful misconduct is determined by agreement of the parties or by findings of a court of competent jurisdiction. In instances where an Indemnitee's active negligence accounts for only a percentage of the liability for the Indemnity Claim involved, the obligation of D-BE will be for that entire percentage of liability for the Indemnity Claim not attributable to the active negligence or willful misconduct of the Indemnitee(s). Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article 9. Subject to the limits set forth herein, the D-BE, at its own expense, shall satisfy any resulting judgment that may be rendered against any Indemnitee resulting from an Indemnity Claim. The Indemnitees shall be consulted with regard to any proposed settlement.

### **9.3. Independent Defense Obligation**

The duty of the D-BE to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by D-BE of the tender of any Indemnity Claim from an Indemnitee. The D-BE's obligation to defend the Indemnitee(s) shall be at D-BE's sole expense, and not be excused because of the D-BE's inability to evaluate liability or because the D-BE evaluates liability and determines that the D-BE is not liable. This duty to defend shall apply whether or not an Indemnity Claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively, or concurrently negligent, or which otherwise asserts that the Indemnitees are responsible, in whole or in part, for any Indemnity Claim. The D-BE shall respond within thirty (30) calendar days to the tender of any Indemnity Claim for defense and/or indemnity by an Indemnitee, unless the Indemnitee agrees in writing to an extension of this time. The defense provided to the Indemnitees by D-BE shall be by well qualified, adequately insured and experienced legal counsel acceptable to the County.

### **9.4. Intent of Parties Regarding Scope of Indemnity**

It is the intent of the parties that the D-BE and its subcontractors of all tiers shall provide the Indemnitees with the broadest defense and indemnity permitted by Applicable Law. In the event that any of the defense, indemnity or hold harmless provisions in the Contract Documents are found to be ambiguous, or in conflict with one another, it is the parties' intent that the broadest and most expansive interpretation in favor of providing defense and/or indemnity to the Indemnitees be given effect.

**9.5. Waiver of Indemnity Right Against Indemnities**

With respect to third party claims against the D-BE, to the fullest extent permitted by law, the D-BE waives any and all rights to any type of express or implied indemnity against the Indemnitees.

**9.6. Subcontractor Requirements**

In addition to the requirements set forth hereinabove, D-BE shall ensure, by written subcontract agreement, that each of D-BE's, consultants, engineers, architects, subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to Indemnity Claims arising out of, in connection with, or in any way related to each such subcontractors' Work on the Project in the same manner in which D-BE is required to protect, defend, indemnify and hold the Indemnitees harmless. In the event D-BE fails to obtain such defense and indemnity obligations from others as required herein, D-BE agrees to be fully responsible to the Indemnitees according to the terms of this Article 9.

**9.7. No Limitation or Waiver of Rights**

D-BE's obligations under this Article 9 are in addition to any other rights or remedies which the Indemnitees may have under the law or under the Contract Documents. D-BE's indemnification and defense obligations set forth in this Article 9 are separate and independent from the insurance provisions set forth in the Contract Documents, and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance provisions , and shall in no way relieve D-BE and its subcontractors, designers or suppliers from liability.

The purchase of insurance by the D-BE with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations. In any and all claims against the Indemnitees by any employee of the D-BE, any subcontractor, any supplier of the D-BE or subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the obligations under this Article 9 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the D-BE or any subcontractor or any supplier of either of them, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Failure of the County to monitor compliance with these requirements imposes no additional obligations on the County and will in no way act as a waiver of any rights hereunder.

**9.8. Withholding to Secure Obligation**

In the event an Indemnity Claim arises prior to final payment to D-BE, the County may, in its sole discretion, reserve, retain or apply any monies due D-BE for the purpose of resolving such Indemnity Claims; provided, however, the County may release such funds if the D-BE provides the County with reasonable assurances of protection of the Indemnitees' interests. The County shall, in its sole discretion, determine whether such assurances are reasonable.

**9.9. Survival of Indemnity Obligations**

D-BE's obligations under this Article 9 are binding on D-BE's and its subcontractors' successors, heirs and assigns and shall survive the completion of the Work or termination of the D-BE's performance of the Work.

**9.10 Responsibility to Other Entities**

The D-BE is responsible for any liability imposed by law and for injuries to or death of any person, including , but not limited to, workers and the public, or damage to property resulting from defects or obstructions or from any cause whatsoever, during the progress of the Work or at any time before its completion and final acceptance.

This provision is not construed as a third-party beneficiary provision.

**ARTICLE 10 – FINAL PAYMENT**

**10.1.** It is mutually agreed between the parties hereto, that no certificate given or payments made under this Contract shall be evidence of the proper performance of this Contract, either wholly or in part, by the D-BE. Final payment for the work performed under this Contract shall not be made until the lapse of thirty-five (35) calendar days after the Notice of Completion and Acceptance of said work has been filed for record and no payment shall be construed to be an acceptance of any defective work or improper materials.

**10.2. Guarantee:** Final Payment does not release D-BE of obligations of Warranty for the Work. Besides guarantees required elsewhere, the D-BE shall and does hereby guarantee all workmanship and material for a period of one year from and after the recordation of the Notice of Completion and Acceptance by the County and shall repair or replace any or all work and material, together with any other portions of the work which may be displaced in so doing, that in the opinion of the County is or becomes defective during the period of said guarantee without expense whatsoever to the County.

Refer to specification Sections 00 60 00, 00 65 36, and 00 72 53 for additional requirements and information.

**10.3. Acceptance of Final Payment as Release:**

The D-BE further agrees that acceptance by the D-BE of the final payment due under this Contract, and the adjustment and payment of his/her bill rendered for any work done in accordance with any amendments of this Contract, shall be and shall operate as a release to the County of San Luis Obispo from any and all claims or liabilities on account of work performed under this Contract except claims or liabilities for which written Notice of Claim or protest has been timely and properly filed with the County Public Works Director per Section 00 72 53, General Conditions Article 12.

The acceptance by the D-BE of final payment shall be and shall operate as a release to the County of all claims and all liability to the D-BE for all things done or furnished in connection with this Work and for every act and neglect of the County and others relating to or arising out of this Work. No payment, however, final or otherwise, shall operate to release the D-BE or its sureties from any obligations under this Contract or the Performance, Payment, and Maintenance Bonds.

**ARTICLE 11 – D-BE’S REPRESENTATIONS**

**11.1.** The D-BE hereby declares that he/she has read the Contract Documents pertaining to the Work, has carefully examined the RFP Specifications, County standards, RFP plans, and detail requirements/regulations of the Work to be performed and fully understands the intent and meaning of the same.

It is further stipulated and agreed that the D-BE shall keep himself/herself fully informed of all laws, ordinances, and regulations which do or may affect the design, engineering, and conduct of the Work, the materials used therein or persons engaged or employed thereupon and all such orders of bodies and tribunals having any jurisdiction over the same. If it be found that the Contract Documents for the Work conflict with any such law, ordinance or regulation the D-BE shall immediately report same to the Director of Public Works in writing and make required modifications to D-BE Drawings and Specifications, and Work without cost to the County.

The D-BE shall at all times observe and comply with and shall cause all his/her agents, employees, and independent consultants and subcontractors hired by the D-BE to observe and comply with all such existing and future laws, ordinances, regulations, or decrees.

**11.2. Assigned Key Personnel and listed Consultants, Subconsultants, and Subcontractors.**

- A. The D-BE has been selected to perform the Work herein because of the skills and expertise of key individuals, consultants, subconsultants, and subcontractors identified in the D-BE Proposal.
- B. D-BE shall verify that all consultants, subconsultants, and subcontractors are properly licensed/certified as such by the State of California.
- C. Key Personnel and Subconsultants: The Key Personnel and subconsultants listed in Exhibit "B", as long as their performance continues to be acceptable to the County, shall remain through Project completion to maintain consistency through the Project. Any changes to the Key Personnel or subconsultants, or changes to their roles as designated in Exhibit "B" and in the Proposal, must be approved in writing by the County prior to the D-BE making the change and must comply with the Public Contract Code.

Exhibit "B" contains the names of all Key Personnel employed in and under the direction of the D-BE who will be associated with the Project. If the designated key person fails to perform to the satisfaction of the County upon written notice from the County, the D-BE will have 10 working days to remove that person from the Project and replace that person with one acceptable to the County.

- D. Subcontractors listed in Exhibit "B" and included in the D-BE Proposal shall be afforded the same protections of chapter 4 for the Public Contract Code (commencing with Section 4100) of Part 1. Subcontractors not listed and a subcontract exceeding the value of ½ of 1% of the value of the total Contract Price shall be awarded through a competitive bidding process compliant with Public Contract Code Section 22166.

**ARTICLE 12 – APPRENTICES AND SKILLED LABOR WORKFORCE**

**12.1. Apprentice**

Attention is directed to the provisions in Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning the employment of apprentices by the D-BE or any subcontractor. The D-BE and any subcontractor shall comply with the requirements of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code in the employment of apprentices.

To insure compliance and complete understanding of the law relating to apprentices, and specifically the required ratio thereunder, each D-BE or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue,

San Francisco, California, or one of its branch offices prior to commencement of work on this contract. Responsibility for compliance with said Labor Code Sections lies with the prime D-BE.

### **12.2. Skilled Labor Workforce Commitment**

The D-BE and every tier of Subcontractor will use a skilled and trained workforce to perform all work on the Project or Contract that falls within an apprenticeable occupation in the building and construction trades in accordance with Chapter 2.9 commencing with Section 2600, Part 1. D-BE will comply with the applicable statutes, and in the event of any conflict or ambiguity within this Article, the statutes will control.

### **12.3. Payroll and Worker Records**

Attention is directed to the provisions of the Labor Code governing payroll records on public works projects. The D-BE and any subcontractor shall comply with the requirements of Labor Code Sections 1771.4(a)(3), 1776 and 1812, and all other applicable laws and regulations.

## **ARTICLE 13 - SUBCONTRACTING**

**13.1.** Nothing contained in this Contract or otherwise, shall create any contractual relation between County and any sub-consultant(s) or subcontractors, and no subcontract shall relieve D-BE of its responsibilities and obligations hereunder. D-BE agrees to be fully responsible to County for the acts and omissions of its subconsultants and subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by D-BE. D-BE's obligation to pay its subconsultants and subcontractors is an independent obligation from the County's obligation to make payment to the D-BE.

**13.2.** D-BE's failure to provide the County with a copy of any agreement between the D-BE and any of its subconsultants, subcontractors or suppliers (or any agreements between any of its subconsultants and subcontractors and any lower-tiered subconsultants or subcontractors) within five days of the County's written request thereof shall be deemed a material breach of this Agreement.

## **ARTICLE 14 - EQUAL EMPLOYMENT OPPORTUNITY**

D-BE shall comply with the provisions of Title VI of the Civil Rights Act of 1964 in that D-BE shall not discriminate against any individual with respect to his or her compensation, terms conditions or privileges of employment nor shall D-BE discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, disability, medical condition, sexual orientation or marital status. More specifically during the performance of this contract, D-BE agrees to comply with all of the Equal Employment Opportunity provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), including the following:

**14.1.** The D-BE will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The D-BE will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The D-BE agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department of Public Works setting forth

the provisions of this nondiscrimination clause.

- 14.2. The D-BE will, in all solicitations or advertisements for employees placed by or on behalf of the D-BE, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 14.3. The D-BE will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Department of Public Works, advising the said labor union or worker's representative of the D-BE's commitments under this Article 14 and shall post copies of the Notice in conspicuous places available to employees and applicants for employment.
- 14.4. The D-BE will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.
- 14.5. The D-BE will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the County of San Luis Obispo and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 14.6. In the event of the D-BE's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the D-BE may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- 14.7. The D-BE will include the provisions of this Article in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The D-BE will take such action with respect to any subcontract or purchase order as the Public Works Director or the Secretary of Labor may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event a D-BE becomes involved in, or is threatened with litigation with a consultant, engineer, a subcontractor or vendor as a result of such direction by the Secretary of Labor, the D-BE may request the United States to enter into such litigation to protect the interests of the United States.

## **ARTICLE 15 - BONDS**

D-BE agrees that the Payment Bond, Performance Bond and Maintenance Bond attached to this Agreement are for reference purposes only, and shall not be considered a part of this Agreement or any other Contract Document. D-BE further agrees that said bonds are separate obligations of the D-BE and its surety, and that any attorney's fee provision contained in any payment bond or performance bond shall not apply to any legal action between D-BE and County to enforce any provision of the Contract Documents.

## **ARTICLE 16 - ATTORNEYS FEES**

No provisions of this Agreement or any other Contract Documents provide either the D-BE or the County the right to be awarded any attorney's fees and/or costs under Civil Code section 1717 in any legal action brought by either party to enforce any provision of the Contract Documents against the other party. Nothing

in this Article precludes the County from recovering its attorney's fees and other costs from any surety in the same or a separate legal action.

The parties agree that any references to attorney's fees in language describing indemnification obligations do not constitute a contractual provision that would provide either the D-BE or the County the right to be awarded any attorney's fees and/or costs under Civil Code section 1717 in any legal action brought by either party to enforce any provision of this Agreement or any other the Contract Documents against the other party.

The parties agree that any references to the County's right to collect attorney's fees against any surety in this Agreement or in any security or bond documents do not constitute a contractual provision that would provide either the D-BE or the County the right to be awarded any attorney's fees and/or costs under Civil Code section 1717 in any legal action brought by either party to enforce any provision of this Agreement or any other Contract Documents against the other party. D-BE agrees that the Payment Bond, Performance Bond and Maintenance Bond (or any other Bond or form of security referenced in the Contract Documents) are separate obligations of the D-BE and its surety, and that any attorney's fee provision contained in any such bond or security shall not apply to any claim or action between D-BE and County to enforce any provision of this Agreement or any other Contract Documents.

Any other language in the Contract Documents providing for a recovery of attorney's fees shall be strictly construed as not including the recovery of any attorney's fees incurred by either D-BE or County in any legal action brought by either party to enforce any provision of the Contract Documents against the other party.

The parties agree that this Agreement and the other Contract Documents contain no provisions that would allow either the D-BE or the County to be awarded attorney's fees and/or costs under Civil Code section 1717. Nothing in this Article affects any right by D-BE or County to recover attorney's fees or costs by operation of any law other than Civil Code section 1717.

The parties agree that the Contract Documents contain no provisions that would allow either the D-BE or the County to be awarded attorney's fees and/or costs under Civil Code section 1717 in any legal action brought by either party to enforce any provision of the Contract Documents against the other party. Nothing in this Article affects any right by D-BE or County to recover attorney's fees or costs by operation of any law other than Civil Code section 1717.

In the event of any conflict between language in this Article and any other language in the Contract Documents, the language in this Article shall prevail.

#### **ARTICLE 17 - FEDERAL AND STATE LAWS AND REGULATIONS**

The Project shall be constructed under the complete jurisdiction of all applicable laws of the United States and State of California governing construction including, but not limited to, the following:

- 17.1.** The California Health and Safety Code and all applicable administrative code regulations pursuant thereto.
- 17.2.** All laws governing the employment of labor, qualifications for employment of aliens, payment of employees, convict-made materials, domestic and foreign materials and accident prevention.
- 17.3.** Title 19 of the California Code of Regulations entitled "Public Safety", Division 1, County Fire Marshal, Chapter 1, "General Fire and Panic Safety Standards".
- 17.4.** All laws and regulations governing construction on behalf of public entities, including but not

limited to the California Public Contract Code, Latest Edition.

**17.5.** General Industrial Safety Orders: Each and every D-BE shall observe and conform to the provisions of Title 8, California Code of Regulations bearing upon safe and proper use, construction disposal, etc., of materials, machinery, and building appurtenances as therein set forth.

**17.6.** Code Rules and Safety Orders: All Work and materials shall be in full accordance with the latest substantive rules and regulations of the County Fire Marshal, the safety orders of the Division of Industrial Safety, Department of Industrial Relations; the California Building Codes and other applicable State Laws or Regulations. Nothing in the plans and specifications is to be construed to permit Work not conforming to these codes.

**17.7.** Labor Code: In addition to references elsewhere in the Contract Documents, the requirements of the following Labor Code Sections are incorporated into this contract by reference: Section 1771, 1774-1776, 1777.5, 1813, and 1815.

Note: The procedural aspects of the Codes referred to above may not apply to the Work of this Contract, but the substantive provisions do apply.

All of the above laws and regulations though referred to herein, are as much a part of the Contract as if they were incorporated in their entirety in these General Conditions.

#### **ARTICLE 18 - SAFETY - REQUIRED D-BE SAFETY PLAN(S)**

All Work performed by the D-BE and/or consultants, engineers, or subcontractors in the execution of this Contract shall be in accordance with current CAL OSHA requirements. Full compensation for compliance with the provisions of this Article shall be considered as included in the other items of work and no additional compensation will be allowed therefor.

#### **ARTICLE 19 - GENERAL CONDITIONS AMENDMENTS**

General Conditions Section 00 72 53 is hereby amended and superseded by Exhibit "C" - General Conditions and Division 00 Section Amendments.

#### **ARTICLE 20 - SIGNATORY AUTHORITY AND DESIGN-BUILD ENTITY INFORMATION**

The legal name of the corporation shall be set forth together with the signature of the officer or officers authorized to sign Agreement on behalf of the corporation. If signature is by an agent, other than an officer of a corporation or a member of a partnership, a Power of Attorney must be on file with the County.

The names of the persons for the New Animal Services Facility Project No. 320088, as principles of F&H Construction (a corporation in the State of California) are:

Charles Ferrell - President  
Stephen Seibly - Secretary - Treasurer  
Harold Jones - CFO

F&H Construction's execution of the signature portion of the Agreement shall also constitute and endorsement and execution of those certifications, information, pricing, and assurances which are a part of the Contract Documents.



F&H Construction warrants and represents that he/she is licensed in accordance with an Act providing for the registration of a D-BE with a contractor's License, No. 293306, Class B, License Expiration Date 02/29/2020. (Note: F&H Construction must possess the license classification specified in the Notice to Proposers upon award of this Agreement.)

Name of D-BE	<u>F&amp;H Construction</u>
Signature of D-BE	_____
Printed Name and Title	<u>Stephen Seibly, Secretary-Treasurer</u>
Business Address	<u>1115 E. Lockeford Street, Lodi, CA 95240</u>
Email Address	<u>sseibly@f-hconst.com</u>
Telephone Number	<u>209-931-3738</u>
License, Expiration Date	<u>B License #293306, 02/29/20</u>
DIR Registration No.*	<u>1000002431</u>

Architectural/Engineering License: C-28388 – Eric Wohle, Expiration: 09/21  
C-33148 – Carolyn Natividad, Expiration: 07/21

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written, being authorized thereto.

COUNTY OF SAN LUIS OBISPO

DESIGN BUILD-ENTITY (D-BE)

By: \_\_\_\_\_  
Chairperson of the Board of Supervisors

\_\_\_\_\_  
Full Business Name

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

WADE HORTON  
Ex-Officio Clerk of the Board of Supervisors

\_\_\_\_\_  
Printed Name and Title  
(President/CEO/Vice President)  
(If D-BE is a corporation, a partnership, or a joint venture, attach evidence of authority to sign)

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVAL RECOMMENDED:  
JOHN DIODATI

\_\_\_\_\_  
Printed Name and Title  
(Secretary/Assistant Secretary, CFO,  
Assistant Treasurer)

By: \_\_\_\_\_  
Interim Director of Public Works

Date: \_\_\_\_\_

Date: \_\_\_\_\_


Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO FORM AND  
LEGAL EFFECT:

RITA L. NEAL  
County Counsel

(Name, Official Title)

By:  \_\_\_\_\_

\_\_\_\_\_  
(Telephone)

Date: November 22, 2019

\_\_\_\_\_  
D-BE's License Number Classification(s)

**CORPORATE CERTIFICATE**

I, \_\_\_\_\_, certify than I am the Secretary of the Corporation named as D-BE in the foregoing Contract, that, \_\_\_\_\_ who signed said Contract on behalf of the D-BE, was then \_\_\_\_\_ of said Corporation, that said Contract was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

***(Corporate Seal)***

\_\_\_\_\_

(Secretary)

**END OF SECTION**

**EXHIBIT A: New Animal Services Facility #320088 - Contract Scope and Price**

Type	Description	Proposed and Negotiated Contract Pricing		Narratives
	Base Proposal Price		\$ 15,625,380.00	
<b>ADDITIVE ALTERNATES</b>				
A1	Fiberglass Doors		\$ 43,040.00	Work includes doors and frames, adjust locations in design. Refer to RFP, Volume III issued 4/23/2019, Specification 08 1743 "RFP Doors and Frames", and Drawings A2.1, A9.2 and A9.3.
A2	Flush Drains		\$ 72,925.00	Provide individual drains for each kennel and flushing for each block of kennels. Refer to RFP, Volume III issued 4.23.2019, drawings P2.1 and P2.3.
<b>A Total</b>	<b>Total Additive Alternates</b>		<b>\$ 115,965.00</b>	
<b>DEDUCTIVE SCOPE ITEMS</b>				
D1	Livestock Area Total		\$ (281,835.00)	Omit barn, electrical and communications. Retain fencing, conduits for future electrical and communication feeds, water and hose bibs, grading, irrigation and landscaping. Refer to RFP, Volume III, Specifications Section 13 34 23, and drawings A1.2 Note D.1, C-1, C-2, L-1, E-1, and E-4.
D2	Dog walk triangular so. Woods		\$ (127,666.00)	Refer to D-BE Proposal Section 00 42 00, Schedule 1-A; and RFP, Volume III, Architectural Plan, A1.2, L-1
D3	Dog Play Area		\$ (103,858.00)	Refer to D-BE Proposal Section 00 42 00 Schedule 1-A; and RFP, Volume III, Architectural Plan, A1.2, L-1
D4	Landscape Small Area South side and leading to Woods Dog Walk		\$ (77,603.00)	Refer to D-BE Proposal Section 00 42 00 Schedule 1-A; and RFP, Volume III, Architectural Plan, A1.2, L-1
D13	Lead Silver - Omit		\$ (487,675.00)	Omit the requirement to attain LEED Silver w/o certification. Refer to D-BE Proposal Section 00 42 00 Schedule 1-A; and RFP schedule 1-A
<b>D Total</b>	<b>Deductives Scope Savings</b>		<b>\$ (1,078,637.00)</b>	
<b>VOLUNTARY ENHANCEMENTS</b>				
V1	Soil & ground modification for better foundation. Not to exceed.		\$ 171,000.00	See attached description.
V2	Emergency generator		\$ 100,000.00	ALLOWANCE for a generator connection, electrical panel and wiring for critical systems. Refer to Proposal Section 00 42 00 Schedule 1-B "Table of Additive Alternates". Scope is revised to provide an allowance for a reduced scope of work omitting the generator.
V3	Enhanced Building Plan			See list below under V3. Refer to Proposal, Section 00 42 00, Schedule 1-C, Table of Voluntary Enhancements, and Proposal Floor plan drawings 2.0, 6.0, 6.1, 9.0, and 9.1.
V3.1	Added access to courtyard at dog kennel	\$ 42,000.00		See enhanced Proposal floor plan 2.0. Includes separation of Adoption Dog Wards with walkway to exterior Dog courtyard and exercise area.
V3.2	Angled building to widen lobby hall to ca	\$ 31,500.00		See enhanced Proposal floor plan 2.0. Includes widened and angled adoption lobby hall to access adoption rooms.
V3.3	Floor plan and elevation revisions	\$ 294,794.00		See Proposal for enhanced elevations, and floor plans with additional animal care rooms.
V3.4	Storage for Multipurpose room	\$ 5,200.00		See Proposal enhanced Floor plan. Includes storage for multipurpose room.
V3.5	Acoustical ceiling upgrade	\$ 6,500.00		2x2 suspended ceiling tile in place of 2x4 ceiling tiles. See Proposal enhanced reflected ceiling plan.
V3.6	Upgrade flooring	\$ 22,000.00		Commercial Laminate Vinyl Tile in lieu of Vinyl Composite Tile see Proposal floor finishes plan.
V3.7	Metal roofing and metal soffit panels	\$ 147,880.00		See Proposal enhanced roof plan- Change some roofs to metal roofing with vaulted ceilings.
V3.9	Metal awning over doors leading to cour	\$ 8,150.00		Provide additional metal awnings over doors from support hall to dog courtyard.

Type	Description	Proposed and Negotiated Contract Pricing		Narratives
V3.10	Textured CMU seating/planters at prome	\$	5,800.00	Provides textured CMU low site walls for entry courtyard seating and planters.
V3.11	CMU walls with 3 colors	\$	36,200.00	Exterior CMU Building Walls have 3 colors (Base, Band & Upper 3rd)
V3.14	Wood look for vertical metal cladding	\$	18,900.00	Wood Look Verticle Cladding Material Flanking each side of Main Lobby Entrance
V3.15	Metal Awning over rabbit yard	\$	9,800.00	Metal Awning over rabbit yard to provide year round weather protection and lighting.
V3 Total	Enhanced Building Plan Total		\$ 628,724.00	
<b>V Total</b>	<b>Voluntary Enhancements Total</b>		<b>\$899,724.00</b>	
Negotiated Increase Scope and Price				
M5	Rabbit housing needs to be secure with higher fencing	\$	5,041.76	Increase the height of the rabbit enclosure fencing to the overhead canopy.
M9	Solar tube in halls, dog kennels, restrooms, etc.	\$	32,375.71	Add 20 extra 14 inch diameter solatubes to halls and dog kennels to provide daylighting and energy efficiency.
M14	Access gate for horse pasture at north end.	\$	700.00	Add gate to horse pasture at north end for direct vehicle access from road.
	<b>Negotiated Increase total</b>		<b>\$ 38,117.00</b>	Round down
Negotiated Decrease Scope and Price				
M12	Sallyport modification	\$	(87,366.05)	Omit overhead doors, provide rolling gates and chain link fencing enclosure and limit masonry walls. Refer to RFP, Volume III, drawing A2.1, A2.5, A3.1, A3.2
M19	lot (this work to be completed by others)	\$	(21,685.00)	Delete electrical controlled vehicle gate and adjacent fencing. Refer to RFP, Volume III, Drawing A1.1.
M20	One (1) central dishwasher in lieu of three (3)	\$	(22,610.95)	Omit 2 of the 3 sterilizing dish washers.
M22	Omit V3 future dog kennel area	\$	(96,616.43)	Provide site soils and foundation treatment, electrical and plumbing stub outs for future extension. Size mechanical units for future extension.
M23	Remove oval dog play area	\$	(13,598.60)	Omit oval artificial turf and adjacent concrete walks. Retain trees, shrubs to screen WOODS, turf and irrigation.
M27	Delete Autoclave (by owner)	\$	(7,954.06)	Autoclave to be furnished and installed by owner
M27	Delete Builders Risk (by owner)	\$	(64,748.31)	Builders Risk Insurance is paid for by the County with deductible covered by the County.
<b>M Total</b>	<b>Negotiated Decrease Total</b>		<b>\$ (314,579.00)</b>	round down
<b>CONTRACT PRICE</b>			<b>\$ 15,285,970.00</b>	Figure has been rounded down to the nearest dollar

**Exhibit A continued**  
**Voluntary Enhancement #1 Summary**

**Ground Improvement Performance and Proposed Ground Improvement Performance Goals**

The project ground improvement approach provided with Voluntary Enhancement No. 1 will target initial construction settlement and earthquake induced settlements with a goal to reduce to acceptable limits of 2 to 3 inches for seismic settlement and ½ inch for total static settlement. These performance goals will be further evaluated and designed for once F&H Construction secures its own geotechnical investigation report for the site.

The uniform and differential settlements expected of soils identified as being present on site in the informational geotechnical report provided for reference in the RFP will be confirmed and mitigated as needed with the final design for the Animal Services project. The final design will be based on the final project geotechnical tests & report performed and secured by F&H Construction. Settlement mitigation will consist of a site ground improvement program with the goal of limiting settlement so if it occurs after development of the facility, the structure will have a reasonable likelihood of being repairable after a minor to modest seismic event. F&H Construction anticipates that through the ground improvement program the seismic settlement of the building can be limited to 2-3 inches and the total static settlement to be limited to a ½ inch.

The final means and methods that establish the ground improvement will be determined by F&H Construction by working with its Geotechnical Engineer and Structural Engineer to determine and implement the best method and product for the project.

Geotechnical reports, Engineering recommendations and the selected soil stabilization method shall be fully engineered and submitted to the County Public Works for review and acceptance, and ultimately to County Planning and Building for Permitting.

Below are two potential ground improvement methods. The actual method used for the Animal Services project will be determined after Geotechnical testing is complete and during design.

- Method#1 – Installation of Vibro Displacement Columns (VDC) to densify the soil to mitigate liquefaction. VDC are installed in a relatively dense equilateral triangular pattern below the building footprint to the full treatment depth and outside the building footprint to about half the treatment depth (for 48 feet treatment this would be about 24 feet). This method would allow for the use of either a conventional or mat foundation for the structure.
- Method #2 – Installation of Drilled Displacement Piles (DDP) to bypass the liquefiable soil and gain support from the underlying very dense soil or bedrock. DDP (or Auger Cast Piles if required to penetrate dense to very dense soil). The DPP would support column and wall loads and require a structural slab or mat. This option would require the use of a mat foundation for the structure.

Regardless of what method is selected for use at the site, both pre and post improvement cone penetrometer tests (CPTs) will be performed to verify that the design criteria is met. All test results, reports, and documentation will be provided to the County, Geotechnical Engineer and Structural Engineer for their review and records. Construction of project infrastructure, footings, utilities, and slab work will not proceed until after confirmation that performance criteria have been met.

Post stabilization reports shall be submitted to the County representative for review and acceptance and shall become part of the Record Documents.

**Exhibit B - Key Personnel, Subconsultants and Subcontractors**

Firm / Position	Key Personnel/Contact
F&H Construction	Key Personnel
Project Executive	Stephen Seibly
Project Director	Daniel Hoff / Stephen Seibly
Project Manager	Brendan Corbett
Superintendent	Todd La Rose

Subconsultant, LDA Partners	Key Personnel
Architect of Record/ Principal Architect	Eric Whole
Project Architect/Design Architect	Carolyn Natividad

Subconsultants	Contact
Jackson & Ryan - Animal Shelter Design Consultant	
KPFF - Structural Engineering	
Cannon Corp. - Civil Engineering	
Cannon Corp. - Landscape Architecture	
Thoma Electric - Power and Communications	
Boneso Brothers / Axiom - Mechanical & Plumbing Engineering	
Applied Earthwork - Archeologist	

Subcontractors	Contact
Thoma Electric	
Boneso Brothers Construction Inc.	
Granite Construction Company	

## Exhibit B: Hourly Rate Schedule

### **HOURLY RATES FOR ARCHITECTS AND ENGINEERS FOR CHANGES IN CONTRACT AMOUNTS**

(Rates Valid through July 1, 2020)

#### ARCHITECT

• Principal Architect	\$200.00/hour
• Project Manager/ Architect	\$175.00/hour
• Planner	\$165.00/hour
• Designer / Interior	\$155.00/hour
• Job Captain	\$145.00/hour
• Draftsperson	\$125.00/hour
• Clerical/Staff	\$85.00/hour

#### CIVIL ENGINEERING

• Project Manager	\$210.00/hour
• Senior Principal Engineer	\$175.00/hour
• Principal Engineer	\$160.00/hour
• Senior Project Engineer	\$130.00/ hour
• Project Engineer	\$120.00/ hour
• Design Engineer	\$110.00/hour
• Assistant Engineer 2	\$90.00/ hour
• Assistant Engineer 1	\$70.00/ hour
• CAD Tech	\$85.00/hour
• Administrative	\$50.00/hour
• Survey Crew	Prevailing Wage

#### LANDSCAPE ARCHITECT

• Senior Landscape Architect	\$153.00/hour
• Associate Landscape Architect	\$135.00/hour
• Landscape Architect	\$105.00/hour
• Landscape Designer	\$70.00/hour
• CAD Tech	\$55.00/hour

#### STRUCTURAL ENGINEERING

• Principal-In-Charge / Engineer of Record	\$185.00/hour
• Project Manager / Senior Engineer or Surveyor	\$160.00/hour
• Project Engineer / Surveyor	\$130.00/hour
• Design Engineer / Surveyor	\$110.00/hour
• Senior Drafter / Modeler	\$110.00/hour
• Drafter / Modeler	\$85.00/hour
• Survey Party Chief (W/Equipment in The Field)	\$225.00/hour
• Survey Field Technician (W/ Party Chief in The Field)	\$100.00/hour



**Exhibit B: Hourly Rate Schedule (Continued)**

**MECHANICAL / PLUMBING**

- Senior Project Manager \$125.00/hour
- Project Manager \$105.00/hour
- BIM Modeling - Lead \$125.00/hour
- BIM Modeling - Modeler \$100.00/hour
- Design / Engineer \$155.00/hour

**ELECTRICAL ENGINEERING**

- Professional Electrical Engineer \$198.00/hour
- Electrical Engineer / Designer \$173.00/hour
- Electrical Design Assistant \$122.00/hour
- Electrical Cost Estimator \$130.00/hour
- Field Technician / Electrician \$125.00/hour
- Computer Aided Design / Drafter \$110.00/hour
- Secretarial \$92.00/hour

**EXHIBIT C: New Animal Services Facility #320088**  
**General Conditions and Division 00 Section Amendments**

Section	Page	Item	Description of definitions, references, and clauses modified
00 65 30	2	1.6	Change paragraph 1.6 with the following: D-BE represents and warrants that it is the true and lawful owner of all claims and other matters pursuant to this "Agreement and Release", and that it has full right, title, and authority to enter into this instrument. Each party warrants that it has been represented by counsel of its own choosing in connection with this "Agreement and Release".
00 65 36	1	Second paragraph	Insert the following after the Sections first paragraph: Architectural and engineering design services are required to be performed to a professional level of quality and adequacy. Such design services are not to be deemed defective unless the professional failed to use the skill and care that a reasonably careful member of the profession would have used in similar circumstances. Notwithstanding the forgoing, the D-BE is solely and completely responsible for all architectural and engineering design work and all design documents contained in the D-BE Construction Documents, including any design documents provided or approved by the County, the Master Architect, or the Construction Manager.
00 72 53	1	As-Built Drawings Definition	Replace <b>As-Built Drawings</b> definition with the following: The set of the Drawings marked and prepared by the D-BE during the performance of the Work to indicate completely and accurately the actual as-built condition of the Work. The As-Built Drawings shall be sufficient for the Architect of Record to incorporate said modifications onto the Record Documents.
00 72 53	1	Change Order (CO) Definition	Change the Last paragraph of the <b>Change Order</b> definition to: All changes to the Project whether initiated by the County or internally within the D-BE must be formally approved and accepted by the County in writing.
00 72 53	2	Construction Documents (CDs) Definition	Change <b>Construction Documents</b> definition to include abbreviation (CDs), and replace with the following: The drawings, specifications, calculations, and reports prepared by D-BE and approved by the applicable permitting agencies including County of San Luis Obispo Dept. of Public Works.
00 72 53	2	Construction Manager (CM) Definition	Add the following definition: <b>Construction Manager (CM)</b> : The County's consultant representative (Kitchell) during the course of the execution of the D-BE Contract with the responsibility to advise the County, and to coordinate and document the communication between the D-BE and County representatives.
00 72 53	2	Contract Definition	Replace <b>Contract</b> definition with the following: The portion of the Contract Documents, signed by both Parties, that contains the Project name, Contract Price, Contract Time, Liquidated Damages, and other terms and conditions. (See Agreement Section 00 50 00).
00 72 53	2	Contract Documents Definition	Strike the abbreviation (CDs) and replace <b>Contract Documents</b> definition with the following: The contract documents consist of all component parts of the Contract as specified in the Agreement Section 00 50 00.
00 72 53	2	Contract Price Definition	Replace <b>Contract Price</b> definition with the following: The total maximum dollar amount of compensation payable to the D-BE under the Contract Documents. This total amount is identified in the Agreement (Section 00 50 00). The Contract Price may only be adjusted as provided in the Contract Documents. Any such adjustments must be in strict accordance with the Contract Documents "Changes in the work" Section 14.1 of the General Conditions.
00 72 53	2	Contract Time Definition	Replace <b>Contract Time</b> definition with the following: The number of calendar days specified in the Agreement that the D-BE has to complete all of the Work. The Contract Time may only be adjusted as provided in the Contract Documents. Any such adjustments must be in strict accordance with the Contract Documents.

**EXHIBIT C: New Animal Services Facility #320088**  
**General Conditions and Division 00 Section Amendments**

Section	Page	Item	Description of definitions, references, and clauses modified
00 72 53	2	Correction Notice Definition	Replace <b>Correction Notice</b> definition with the following: Written notice from the County to the D-BE requiring correction or repairs to the Work to bring the Work into conformity with any laws, codes, ordinances, safety orders or practices determined to be deficient at the work site and surrounding areas affected by the Work, or to correct deficiencies in the Work in regard to compliance with the Contract Documents. Correction Notices shall be promptly executed and are not grounds for adjustment to the Contract Price or the Contract Time.
00 72 53	2	County Definition	Replace <b>County</b> definition with the following: The County of San Luis Obispo, a political subdivision of the State of California which is governed by an elected Board of Supervisors.
00 72 53	2	County's representative Definition	Replace <b>County's Representative</b> definition with the following: Any person, firm, agent or corporation employed by or hired by the County to act as project manager, construction manager, Inspector, project administrator and/or Project Coordinator for the Work who is acting within the scope of his/her/its authority.
00 72 53	2	D-BE Drawings and Specifications definition	Replace <b>D-BE Drawings and Specifications</b> definition with the following: written graphic representation of the Work prepared by D BE.
00 72 53	3	Design-Build Entity (D-BE) definition	Replace <b>Design-Build Entity (D-BE)</b> definition with the following: is used in the Public Contract Code Section 22161(d) to describe the corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed, architectural, engineering, construction and contracting services as needed pursuant to a design-build contract. For purposes of these General Conditions, D-BE means F&H Construction.
00 72 53	3	Due Diligence Material Definition	Strike <b>Due Diligence Material</b> definition.
00 72 53	3	Final Completion Definition	Replace <b>Final Completion</b> definition with the following: The point at which all of the Work, including "punch list" items, is complete in accordance with the Contract Documents and the Construction Documents. Final Completion cannot be attained until after the County Board of Supervisors has formally accepted the Work, including but not limited to all deliverables that the D-BE is required to provide the County, including but not limited to all warranties, manuals, Record Documents, as-builts and releases.
00 72 53	3	Final Payment Definition	Replace <b>Final Payment</b> definition with the following: Compensation equivalent to the balance of the Contract Price owed to the D-BE by the County for completion of the Work of the Contract, less any deductions and withholdings allowed under the Contract Documents or applicable law.
00 72 53	3	Master Architect Definition	Replace <b>Master Architect</b> definition with the following: refers to Swatt Miers Architects, the architectural firm working under the County's CM, Kitchell, and responsible to provide the building program, conceptual design, and bridging documents. The Master Architect will continue to provide consultant services to the County through the D-BE design submittal process and through construction as needed.
00 72 53	3	Project Definition	Replace <b>Project</b> definition with the following: means the New Animal Services Facility in the County of San Luis Obispo as generally described in the Contract under Section 00 50 00, Article 1 Scope of Services, and Section 00 11 19 of the RFP.
00 72 53	4	Record Documents Definition	Replace <b>Record Documents</b> definition with the following: The D-BE Drawings and Specifications, addenda, Change Orders, Change Directives, approved shop drawings and other approved submittals, showing the base work and all changes to the Work. Refer to Article 11.12.
00 72 53	4	RFP Drawing and Specifications Definition	Replace <b>RFP Drawing and Specifications</b> definition with the following: The Drawings and Specifications are that portion of the Bridging Documents prepared by the County and County Consultants consisting of the written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services.

**EXHIBIT C: New Animal Services Facility #320088**  
**General Conditions and Division 00 Section Amendments**

Section	Page	Item	Description of definitions, references, and clauses modified
00 72 53	5	Work Hours Definition	Replace <b>Work Hours</b> definition with the following: Normal working hours for the project shall be Monday thru Friday 7:00 am to 6:00 pm local time, less specified County adopted holidays. In the event the D-BE performs work outside of the normal working hours requiring inspection and/or testing services, the D-BE will be responsible for the premium increment hourly rate of the inspector, inspection and/or testing services required. Nothing in the preceding sentence affects any responsibility the D-BE may have under the Contract Documents for costs relating to any inspection, testing, reinspecting and/or retesting for reasons other than the work being performed outside of normal work hours.
00 72 53	5	1.1 definitions	Change reference in last sentence under 1.1 Definitions as follows: Reference to "Section 01 42 00 (References and Definitions)" change to 01 42 00 (References).
00 72 53	5	1.3	Precedence of Contract Documents. Refer to revisions to this item were made in the final Agreement, Section 00 50 00.
00 72 53	7	Item D.	Add the following sentence to the end of paragraph D.: Title 15 of the California Code of Regulations is only applicable to the Project's design and construction in a manner consistent with the County's use, monitoring, and management of an inmate work force as part of the County's Animal Services operations and facility functions.
00 72 53	8	2.2 A.	Change the title for Section 01 110 01 to D-BE Design Services.
00 72 53	10	Item E.	Insurance requirements are under Article 8 and Indemnification is under Article 9 of the Agreement, Section 00 50 00 of the Contract Documents.
00 72 53	11	Item L.	Change title for Section 01 56 00 to "Security and Safety".
00 72 53	11	Item S.	Change Section number to 01 32 10 for Progress Schedules and Reports.
00 72 53	14	Item C., 1.	Change "Construction Performance Bond to Performance Bond".
00 72 53	14	Item C., 2.	Change "Construction Labor and Material Payment Bond" to "Payment Bond".
00 72 53	15	Item A. last sentence.	Change last sentence of last paragraph to read: "See also Section 01 26 00: Modification Procedures and Pricing of Changed Work, and Section 00 72 53, Article 14: Modifications of Contract Documents."
00 72 53	15	Item D.	Change referenced title of Article 14 to "Modifications of Contract Documents".
00 72 53	16	Item 4.4, B., 3.	Change "Summary of Work - Design Build Contractor Services" to "Summary of Work - Design-Build Construction Services".
00 72 53	16	Item 4.4, D.	Change title of referenced Section 00 43 30 to "Supplements to Proposal Forms".
00 72 53	21	Item 6.1	Add to the last sentence following (Agreement): "or the communication list established by the County Representative".
00 72 53	22	Item 6.4, B.	Change the referenced title to Section 01 31 00 to read "Project Management and Coordination".
00 72 53	23	Item D.	Change referenced Article from 6 to Article 2.
00 72 53	24	Item 7.1	Change the referenced item from 7.3 to 7.2
00 72 53	28	Item 3., d.	Change reference article 11.12 title to "Record Documents".
00 72 53	29	Item 7.	Change reference "Director of General Services" to "Director of Public Works".
00 72 53	30	Item 8.1	Change "(Design-Build Certifications)" to "(Design-Build Entity (D-BE) Certifications)".
00 72 53	40	Item 11.1, A.	Change the title of referenced Section 01 11 02 to Summary of Work - D-BE Construction Services.
00 72 53	40	Item 11.1, A., 2.	Change referenced Section to 00 32 10: Progress Schedules and Reports.

**EXHIBIT C: New Animal Services Facility #320088**  
**General Conditions and Division 00 Section Amendments**

Section	Page	Item	Description of definitions, references, and clauses modified
00 72 53	40	Item 11.1, A., 3.	Change "other submittals" to "Submittals".
00 72 53	42	Item 11.4, A.	Strike "Document 00 31 32 (Geotechnical Data and Existing Conditions)" and replace with "the D-BE geotechnical information, and site inspections and surveying by D-BE subcontractors and consultants".
00 72 53	48	Item 11.12, A., 2.	Change the "California Uniform Building Code" to the "California Building Code".
00 72 53	49-56	reference terms	Clarification: References to "Section 11 or 12" are the same as subsections or Articles of the General Conditions.
00 72 53	53- 66	reference terms	Clarification: References to "Document 00 72 53" is the same as Section 00 72 53 (General Conditions).
00 72 53	63	Item 13.11	Third Paragraph, change the reference "(Instructions to Proposers)" to "((Requests for Proposals (RFP) Instructions and Information))".
00 72 53	66	Item J.	First sentence change to read: "Changes in the work made pursuant to this Article 14, <b>and</b> Section 01 26 00..."
00 72 53	67	top of page, Item 15.2, A.	Last Sentence add "Contract Time Allowances" after "Article 15".
00 72 53	68	Article 15.3, item 6.	Change to read: D-BE's request for "Time Critical Status" for RFIs or other submittals to the County and County representatives. Refer to Section 01 26 00: Modification Procedures and Pricing of Changed Work.
00 72 53	74	Item E.	Strike the first sentence that refers to CalTrans Specifications as follows: "Attention is directed to the provisions in Section 7-1.01A (2), "Prevailing Wage", of the Standard Specifications and these Special Provisions".
00 72 53	74	Item E.	Last Paragraph, strike the following: "to the general IFC-53 prevailing wage rate".
00 72 53	78	Item 3.	Change "Section 00 2000 (Measurement and Payment)" to "General Conditions, Section 00 72 53, Article 7 – County Communication and Payment".
00 72 53	65	Article 14.1, item C.	Strike the last paragraph of this section as follows: "The County may consider changes that the D-BE initiates that provide a benefit to the County and are mutually agreed to the cost and time changes."
00 72 53	68	Article 15.3, item A., 6.	Change paragraph as follows: D-BE's request for "Time Critical Status" for RFIs or other submittals to the County and County representatives. Refer to Section 01 26 00: Modification Procedures and Pricing of Changed Work.