

**Attachment 2**

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**Amendment No. 5 to the PSA with Kitchell  
CEM, Inc.**

County of Santa Barbara  
General Services  
**Capital Projects Division**

**AMENDMENT No. 5 TO  
PROFESSIONAL SERVICES AGREEMENT**

Between

**THE COUNTY OF SANTA BARBARA**

And

**Kitchell/CEM, Inc.**

For

**CONSTRUCTION MANAGEMENT AND RELATED PROFESSIONAL SERVICES**

For

**Northern Branch Jail Project**

**PROJECT NUMBER: 8600**

**June 02, 2020**

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**AMENDMENT NO. 5 TO PROFESSIONAL SERVICES AGREEMENT**

**FOR**

**CONSTRUCTION MANAGEMENT AND RELATED PROFESSIONAL SERVICES**

**ADULT DETENTION FACILITY**

**This is the Fifth Amendment to the Agreement between THE COUNTY OF SANTA BARBARA (hereinafter "Owner" or "County") and Kitchell/CEM, Inc. (hereinafter "Consultant").**

**PART 1 - RECITALS**

- 1.01 WHEREAS**, on May 14, 2013, the parties hereto entered into an agreement for Construction Management and related professional services ("Agreement"), by Consultant in connection with the Northern Branch Jail Project ("Project");
- 1.02 WHEREAS**, on September 13, 2013, the parties hereto amended the Agreement to include Commissioning Services by Consultant in connection with the Project ("First Amendment");
- 1.03 WHEREAS**, on September 20, 2016, the parties hereto amended the Agreement to include Additional Services by Consultant in connection with the Project ("Second Amendment");
- 1.04 WHEREAS**, on November 6, 2018, the parties hereto amended the Agreement to add additional services and compensation for said services and extend the contract term in connection with the Project ("Third Amendment");
- 1.05 WHEREAS**, on July 16, 2019, the parties hereto amended the Agreement to add additional services and compensation for said services and extend the contract term in connection with the Project ("Fourth Amendment");
- 1.06 WHEREAS**, the parties hereto desire to amend the Agreement ("Fifth Amendment" or "Amendment No. 5"), in accordance with Section 16.03 of the Agreement, to add additional services and compensation for said services and extend the contract term as provided in Part 2 and 3 below;
- 1.07 WHEREAS**, the Project is currently in the Construction Phase and construction is estimated at 99% complete;
- 1.08 WHEREAS**, this Fifth Amendment is to extend Construction Management and Architectural and Engineering Services until the revised completion date for the remainder of the Project including the Construction, Operation/Project Close-Out, and Warranty Phases; and
- 1.09 WHEREAS**, Consultant represents itself as a Construction Management and Design Professional having the requisite qualifications, licenses and agrees to perform such services.

**NOW, THEREFORE, Owner and Consultant agree as follows:**

**PART 2 - PROJECT AUTHORIZATION, TERM AND MAXIMUM COMPENSATION**

**2.01 Agreement For Services**

- A. This Fifth Amendment to the Agreement expands the Consultant's scope of work for the Project to include additional Professional Services as a result of an approximate 9 month extended construction period requiring expanded Construction Management services essential to complete the Construction Phase of the Project and Architectural and Engineering Professional Services. This Fifth Amendment sets forth the terms and conditions



pursuant to which Consultant shall provide services that are essential to complete the Construction, Closeout, and Warranty Phases of the Project. This Fifth Amendment represents a negotiated scope of work and associated compensation for the additional services and term defined and at a stated maximum amount.

- B. This Fifth Amendment to the Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both Owner and Consultant.

## 2.02 Compensation

- A. This Fifth Amendment increases the previously amended maximum compensation limit of \$4,582,689 by \$607,819 for additional services added by this Fifth Amendment, for all services necessary to complete the Project for a maximum compensation limit of \$5,190,508. Part 2, paragraph 2.02 "Maximum Compensation" of the Agreement is hereby amended to read:

Compensation for entire Project, which equals the sum of all Project Phases issued pursuant to this PSA, shall not exceed \$5,190,508 (Five Million One Hundred Ninety Thousand, Five Hundred Eight Dollars). If Consultant performs services or incurs expenses beyond this Maximum Compensation Limit, Consultant does so at Consultant's sole risk and expense. County shall not be obligated to pay more than the amount set forth in this paragraph except as may be provided in a written Amendment signed by both parties.

Related specifically to the additional three month Construction Management Services Term, consultant further agrees the maximum monthly invoice amount will not exceed \$71,123.00 and Consultant will only invoice monthly for the actual construction duration. If the contractor completes the construction period prior to September, 2020, Kitchell will consider construction services complete and transition into "operations/closeout & warranty" periods per the provisions of the PSA.

- B. Pursuant to Section 2.02 A above, Exhibit C of the Agreement is hereby amended to include the attached Exhibit C-1, which is incorporated herein, and specifies the Maximum Compensation Limit (MCL) that Owner will pay to Consultant for additional services performed under this Fifth Amendment. The MCL includes all authorized Services and authorized Reimbursable expenses.
- C. Sections 11.08 "Maximum Payment to Consultant" and 11.09 "Maximum Payment to Consultant by Phase" of Part 11 "Compensation and Payment" of the Agreement are hereby amended as reflected above and as stated in Exhibit C-1.

## 2.03 Term

- A. This Fifth Amendment modifies the term of the Agreement as set forth in Part 2, paragraph 2.03 and shall remain in effect for a period of 100 months from the date of execution of the original Agreement and all phases of work under this Fifth Amendment are to occur concurrently with the phases established under the Agreement.
- B. This Fifth Amendment is effective upon the date of full execution by County, and shall remain in effect for the full term of the Project, unless earlier terminated under Part 12 of the Agreement.

## 2.04 Scope

- A. The Services and Deliverables identified in Part 3, "Consultant's Responsibilities, Services, And Deliverables", of this Fifth Amendment, establish the full extent of the additional services and deliverables agreed to between parties.
- B. Any act or event affecting any particular Project Phase, such as its completion, termination, acceptance, non-acceptance, continuation or modification, shall not affect any other Project

Phase or this Fifth Amendment unless specifically provided herein or agreed in writing by the parties.

### **2.05 Consultant Qualifications**

- A. Consultant represents that it has the ability to provide staffing and resources necessary to meet the schedules and needs of this Project.

### **2.06 Project Phases**

- A. The Project Phases of the Agreement under which Consultant shall provide services as required in this Amendment are as follows:
  1. Construction Phase
  2. Operation/Project Closeout Phase
  3. Warranty Phase

## **PART 3 - CONSULTANT'S RESPONSIBILITIES, SERVICES, AND DELIVERABLES**

### **3.01 Consultant's General Responsibilities**

The following General Responsibilities shall apply to all services under this Fifth Amendment performed by Consultant's personnel and agents.

- A. Standard of Care.
  1. Consultant shall perform Services under this Fifth Amendment in accordance with those standards of care that are generally recognized as being used by competent persons in Consultant's area of specialty in the State of California when performing similar services under similar conditions.
  2. Consultant shall perform Services under this Fifth Amendment in accordance the terms of the Jail Construction Agreement (JCA) and Project Delivery Construction Agreement (PDCA).
  3. Consultant shall perform Services under this Fifth Amendment in compliance with applicable and most stringent written federal, state and local codes, statutes, laws, regulations and ordinances.
  4. All Construction Documents shall comply with applicable and most stringent California and local regulations and standards, including those of the Fire Marshal having jurisdiction over the Project, and in effect during performance of Consultant's services.
  5. Unless otherwise agreed upon by the County, where the deliverables include review comments, Consultant shall provide comments within 10 working days of receipt of items to review.

### **3.02 Basic Services & Deliverables**

- A. Unless the requirements for the Services and Deliverables described herein are specifically modified in writing, Consultant shall provide its Services and Deliverables in conformance with the requirements described in this section. The services to be included as this Fifth Amendment include:
  1. Increase Construction Phase Services to accommodate the expanded construction duration experienced on the Northern Branch Jail Project.
- B. Part 6, paragraph 6.01.B, "Completion Milestones", of the Agreement is hereby amended to extend the Completion Milestones as follows:

Completion Milestones: Unless otherwise provided for in a Project Phase, Consultant shall complete the following Milestones by the corresponding dates shown below.

Notwithstanding the Milestone dates shown, Consultant shall assume a **48**-month construction duration for purposes of establishing Consultant's fee:

8. Notice to Proceed	<b><u>September 2016</u></b>
9. Construction Complete	<b><u>September 2020</u></b>
10. Occupancy	<b><u>November 2020</u></b>
11. Warranty Period	<b><u>September 2021</u></b>

### **PART 3 - GENERAL PROVISIONS**

#### **4.01 Authority and Counterparts**

Each party represents that this Fifth Amendment has been executed in compliance with the requirements of Section 16.03 of the Agreement and the signatories to this Fifth Amendment have the authority to bind the parties. This Fifth Amendment may be executed in counterparts, each of which shall be deemed to be an original, and all of such counterparts shall together constitute one executed original instrument.

#### **4.02 Effect on Agreement**

Except as otherwise amended by this Fifth Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect. In the event of a conflict between any provision of the Agreement and a provision of this Fifth Amendment, this provision of this Fifth Amendment shall control.





**EXHIBIT C-1**

**COMPENSATION OF PROJECT PHASES FOR AMENDMENT NO. 5**

<p>AMENDMENT NO. 5 BETWEEN THE COUNTY OF SANTA BARBARA AND  <b>Kitchell/CEM, Inc.</b>                  FOR  <b>Construction Management Services and Related Professional Services</b></p>
<p><b>PROJECT TITLE:</b>                  Northern Branch Jail Project</p>

*This Table For Owner's Use Only*

Item	Fund	Dept No	Acct #	Program	OrgUnit	Activity	Amount
Additional CM Services	0032	980	7460	2000	0001	3206	\$216,369
Additional Commissioning Travel & Expenses	0032	980	7460	2000	0005	3207	\$12,000
Architectural & Engineering Services	0032	980	7460	2000	0002	3205	\$379,450

**COMPENSATION**

Project Phase	Basic Services	Other Cost Item	Supplementary Services	Travel and Expenses*	Maximum Compensation Limit for Project Phase
Construction	\$213,369		(3) Month Extended Construction Phase	*\$3,000	\$216,369
Commissioning	N/A		(3) Month Extended Construction Phase	*\$12,000	\$12,000
Construction, Project Closeout, Warranty	\$379,450		Architectural and Engineering Services	N/A	\$379,450
<b>Maximum Amount of Compensation for All Services Added by this Amendment to be Performed within the Term provided in this Amendment</b>					<b>\$607,819</b>

Consultant shall submit appropriate documentation and information to support each invoice, including a detailed narrative description of services performed during the period; completed milestones and deliverables. Consultant shall break-out cost items by line items identified in the Compensation Summary table, and label each category the same title. See Exhibit E for example.

**\*Travel and Expenses:** Amendment No.5 increases the Reimbursable account by NTE \$15,000. Reimbursable account for travel not to exceed (NTE) \$1,500.00 per site visit, per person. Consultant must submit all travel related receipts with invoice.

**END EXHIBIT C-1**

**PART 5 - SIGNATURES**

**COUNTY SIGNATURE PAGE**

**Amendment No. 5 to Agreement for ARCHITECTURAL AND ENGINEERING AND RELATED PROFESSIONAL SERVICES**

IN WITNESS WHEREOF, the parties have executed this Fifth Amendment to the Agreement to be effective on the date executed by COUNTY.

**ATTEST:**  
**Mona Miyasato**  
**County Executive Officer**  
**Clerk of the Board**

**County of Santa Barbara:**

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

**By:** \_\_\_\_\_  
**Gregg Hart, Chair**  
**Board of Supervisors**

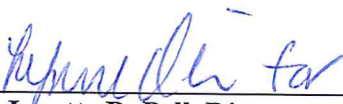
**Date:** \_\_\_\_\_

ADDITIONAL COUNTY SIGNATURE PAGE

Amendment No. 5 to Agreement for ARCHITECTURAL AND ENGINEERING AND RELATED PROFESSIONAL SERVICES


RECOMMENDED FOR  
APPROVAL:  
GENERAL SERVICES

APPROVED AS TO ACCOUNTING  
FORM:  
Betsy Schaffer, CPA, CPFO  
Auditor-Controller

By:   
\_\_\_\_\_  
Janette D. Pell, Director  
General Services  
Department

By:   
\_\_\_\_\_  
Digitally signed by Ed Price  
Date: 2020.05.21 11:22:04 -07'00'  
  
Deputy

APPROVED AS TO FORM:  
Michael C. Ghizzoni  
County Counsel

By:   
\_\_\_\_\_  
Johannah Hartley  
Digitally signed by Johannah  
Hartley  
Date: 2020.05.21 11:13:44 -07'00'  
Deputy County Counsel

APPROVED AS TO FORM:  
Risk Management

By:   
\_\_\_\_\_  
Ray Aromatorio, Risk  
Manager  
Digitally signed by Ray Aromatorio,  
Risk Manager  
Date: 2020.05.21 13:44:15 -04'00'  
Risk Management



**CONTRACTOR SIGNATURE PAGE**

**Amendment No. 5 to Agreement for ARCHITECTURAL AND ENGINEERING AND RELATED PROFESSIONAL SERVICES**

IN WITNESS WHEREOF, the parties have executed this Fifth Amendment to the Agreement to be effective on the date executed by COUNTY.

**CONTRACTOR:**

Wendy Cohen, CCM

Kitchell/CEM, Inc.

2450 Venture Oaks Way, Suite 500

Sacramento, CA 95833

Vice President of Operations

(916) 648-9700

By:

  
Authorized Representative

Date:

05.19.20

END OF AGREEMENT