

Attachment 1

**Kitchell AMENDMENT No. 6 to
PROFESSIONAL SERVICES
AGREEMENT
for
CONSTRUCTION MANAGEMENT
AND RELATED PROFESSIONAL
SERVICES**

County of Santa Barbara
General Services
Capital Projects Division

**AMENDMENT No. 6 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

December 15, 2020

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AMENDMENT NO. 6 TO PROFESSIONAL SERVICES AGREEMENT

FOR

CONSTRUCTION MANAGEMENT AND RELATED PROFESSIONAL SERVICES

ADULT DETENTION FACILITY

This is the Sixth 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**, on June 02, 2020, 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 ("Fifth Amendment");
- 1.07 WHEREAS**, the parties hereto desire to amend the Agreement ("Sixth Amendment" or "Amendment No. 6"), 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;
- 1.08 WHEREAS**, the Project is currently in the Construction Phase and construction is estimated at 99% complete;
- 1.09 WHEREAS**, this Sixth 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
- 1.10 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 Sixth 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 5 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 Sixth 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 Sixth 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 Sixth 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 Sixth Amendment increases the previously amended maximum compensation limit of \$5,190,508 by \$500,526 for additional services added by this Sixth Amendment, and includes a contingency of \$100,000 for all services necessary to complete the Project for a maximum compensation limit of \$5,691,034. 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 **\$5,691,034 (Five Million, Six Hundred Ninety One Thousand, Thirty Four 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 four 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 February, 2021, 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 Sixth 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 Sixth 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 **105 months** from the date of execution of the original Agreement and all phases of work under this Sixth Amendment are to occur concurrently with the phases established under the Agreement.
- B. This Sixth 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 Sixth 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 Sixth 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 Sixth Amendment performed by Consultant's personnel and agents.

- A. Standard of Care.
 - 1. Consultant shall perform Services under this Sixth 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 Sixth Amendment in accordance the terms of the Jail Construction Agreement (JCA) and Project Delivery Construction Agreement (PDCA).
 - 3. Consultant shall perform Services under this Sixth 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 Sixth 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 53-month construction duration for purposes of establishing Consultant's fee:

8. Notice to Proceed	<u>September 2016</u>
9. Construction Complete	<u>February 2021</u>
10. Occupancy	<u>April 2021</u>
11. Warranty Period	<u>February 2022</u>

PART 3 - GENERAL PROVISIONS

4.01 Authority and Counterparts

Each party represents that this Sixth Amendment has been executed in compliance with the requirements of Section 16.03 of the Agreement and the signatories to this Sixth Amendment have the authority to bind the parties. This Sixth 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 Sixth 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 Sixth Amendment, the provision of this Sixth Amendment shall control.

PART 5 – EXHIBITS

EXHIBIT A1

Amendment No. 6. Consultant Services Fee Schedule

	Hourly Rate	Project Executive	Project Director	EAS Department Manager Heather Brown	EAS Ops Manager Sergio Rodriguez	Project Manager Chris Lowm	Senior Architect / Engineer Brad Schultz, Mil Backovich, Robard Thomas	Architect / Engineer	BIM Specialist	Scheduler / Estimator	Admin Support	Total Hrs	Total Fee	Trips
Santa Barbara North Branch Jail														
Description	Hourly Rate	\$220	\$208	\$195	\$185	\$175	\$165	\$160	\$130	\$150	\$90			
November - Substantial Completion														
1.1 Field Visits						64	60		60			184	\$ 28,900	10
1.2 Submittal/ RFI Reviews & Revisions							140		40			180	\$ 28,300	
1.3 Change Order Review						8	24		24			56	\$ 8,480	
1.4 Meeting Minutes and other Reports						8	6					14	\$ 2,390	
1.5 Agency Coordination						8	8					16	\$ 2,720	
1.6 Project Management				6	16							22	\$ 4,130	
Subtotal November		0	0	6	16	88	238	0	124	0	0	472	\$ 74,920	
December														
1.1 Field Visits						64	60		60			184	\$ 28,900	3
1.2 Submittal/ RFI Reviews							140		40			180	\$ 28,300	
1.3 Change Order Review						8	24		24			56	\$ 8,480	
1.4 Meeting Minutes and other Reports						8	6					14	\$ 2,390	
1.5 Agency Coordination						8	8					16	\$ 2,720	
1.6 Project Management				6	16							22	\$ 4,130	
Subtotal December		0	0	6	16	88	238	0	124	0	0	472	\$ 74,920	
January														
1.1 Field Visits						64	60		60			184	\$ 28,900	4
1.2 Submittal/ RFI Reviews							140		40			180	\$ 28,300	
1.3 Change Order Review						8	24		24			56	\$ 8,480	
1.4 Meeting Minutes and other Reports						8	6					14	\$ 2,390	
1.5 Agency Coordination						8	8					16	\$ 2,720	
1.6 Project Management				6	16							22	\$ 4,130	
Subtotal January		0	0	6	16	88	238	0	124	0	0	472	\$ 74,920	
12 Month Warranty & Project Closeout														
1.1 Field Visits						64	64					128	\$ 21,760	4
1.2 Issue Reviews							60		16			76	\$ 11,980	
1.4 Meeting Minutes and other Reports							8					8	\$ 1,320	
1.5 Agency Coordination							8					8	\$ 1,320	
1.6 Project Management				4	16							20	\$ 3,740	
Subtotal Warranty / Closeout		0	0	4	16	64	140	0	16	0	0	240	\$ 40,120	
Total Hours		-	-	22	64	328	854	-	368	-	-	1,656	\$ 264,880	21
Total Fee Per Discipline		\$ -	\$ -	\$ 4,290	\$ 11,840	\$ 57,400	\$ 140,910	\$ -	\$ 50,440	\$ -	\$ -			
													\$ 19,000	
													\$ 2,850	
													\$ 113,796	
													Proposed Fee	\$ 400,526

END OF EXHIBIT A1

EXHIBIT C-1**COMPENSATION OF PROJECT PHASES FOR AMENDMENT NO. 6**

AMENDMENT NO. 6 BETWEEN THE COUNTY OF SANTA BARBARA AND Kitchell/CEM, Inc. FOR Construction Management Services and Related Professional Services
PROJECT TITLE: Northern Branch Jail Project

This Table For Owner's Use Only

Item	Fund	<i>Dept No</i>	<i>Acct #</i>	<i>Program</i>	<i>OrgUnit</i>	<i>Activity</i>	<i>Amount</i>
Additional CM Services	0032	980	7460	2000	0001	3206	\$113,796
Architectural & Engineering Services	0032	980	7460	2000	0002	3205	\$286,730

COMPENSATION

Project Phase	Basic Services	Other Cost Item	Supplementary Services	Travel and Expenses*	Maximum Compensation Limit for Project Phase
Construction	\$100,000		(5) Month Extended Construction Phase	N/A	\$113,796
Construction, Project Closeout, Warranty	\$286,730		Architectural and Engineering Services	N/A	\$286,730
Compensation For Services Added by this Amendment					\$400,526
*Contingency					\$100,000
Maximum Amount of Compensation for All Services Added by this Amendment to be Performed within the Term provided in this Amendment					\$500,526

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.

*Contingency is to be used for additional services at the County's discretion. Consultant shall not bill against contingency unless additional services are authorized by the County's Authorized Representative.

END EXHIBIT C-1

PART 5 - SIGNATURES

COUNTY SIGNATURE PAGE

Amendment No. 6 to Agreement for ARCHITECTURAL AND ENGINEERING AND RELATED PROFESSIONAL SERVICES

IN WITNESS WHEREOF, the parties have executed this Sixth 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. 6 to Agreement for ARCHITECTURAL AND ENGINEERING AND RELATED PROFESSIONAL SERVICES

**RECOMMENDED FOR APPROVAL:
GENERAL SERVICES**

By: Janette D. Pell
**Janette D. Pell, Director
General Services
Department**

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

By: 
Deputy

**APPROVED AS TO FORM:
Michael C. Ghizzoni
County Counsel**

By: Johannah L. Hartley
Deputy County Counsel

**APPROVED AS TO FORM:
Risk Management**

By: Ray Aromatorio
Risk Management

CONTRACTOR SIGNATURE PAGE

Amendment No. 6 to Agreement for ARCHITECTURAL AND ENGINEERING AND RELATED PROFESSIONAL SERVICES

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

CONTRACTOR:

Wendy Cohen

DANIEL G. MILLS FOR WENDY COHEN

COHEN

President

SR. VICE PRESIDENT OF OPERATIONS


Kitchell/CEM, Inc.

2450 Venture Oaks Way, Suite 500

Sacramento, CA 95833

(916) 648-9700

By:



Authorized Representative

Date:

12-1-20

END OF AGREEMENT