

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

**AMENDMENT No. 3 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**

**November 06, 2018**

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**AMENDMENT No. 3 TO PROFESSIONAL SERVICES AGREEMENT**

**FOR**

**CONSTRUCTION MANAGEMENT AND RELATED PROFESSIONAL SERVICES**

**ADULT DETENTION FACILITY**

**This is the Third 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"); and
- 1.04 WHEREAS**, the parties hereto desire to amend the Agreement ("Third Amendment"), 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 below.

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

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

**2.01 Agreement For Services.**

- A. This Third Amendment to the Agreement expands the scope of work for the Project to include additional Professional Services as a result of an approximate 11 month extended construction period requiring expanded Construction Management services essential to complete the Construction Phase of the Project. This Third Amendment sets forth the terms and conditions pursuant to which Consultant shall provide services during the Construction Phase to the County. This Third Amendment represents a negotiated scope of work and associated compensation for the additional services and term defined.
- B. This Third 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 Maximum Compensation.**

- A. This Third Amendment increases the previously amended maximum compensation limit of \$2,513,290 by \$787,853 for a maximum compensation limit of \$3,301,143. Part 2, paragraph 2.02 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 **\$3,301,143 (Three Million Three Hundred One Thousand, One Hundred Forty Three 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.

- 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 each Project Phase for additional services performed under this Third Amendment. The MCL includes all authorized Services and authorized Reimbursable expenses. Total payment by Owner pursuant to any Project Phase will not exceed the MCL specified in the Project Phase, and Consultant shall provide all Services and Deliverables set forth in each Project Phase, compensation for which will not exceed the specified MCL.

### **2.03 Term**

- A. This Third Amendment modifies the term of the Agreement and shall remain in effect for a period of **88 months** from the date of execution of the original Agreement and all phases of work under this Third Amendment are to occur concurrently with the phases established under the Agreement. This Third 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. All Project Phases shall be executed, but Services not necessarily completed, within the Term of this Agreement.

### **2.04 Scope**

- A. The Services and Deliverables identified in [Part 3, "Consultant's Responsibilities, Services, And Deliverables"](#), of this Third 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 Third 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 are as follows:
  - 1. Construction 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 Third Amendment performed by Consultant's personnel and agents.

- A. Standard of Care.
  - 1. Consultant shall perform Services under this Third 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 Third Amendment in accordance the terms of the Jail Construction Agreement (JCA) and Project Delivery Construction Agreement (PDCA).
3. Consultant shall perform Services under this Third Amendment in compliance with applicable and most stringent written federal, state and local codes, statutes, laws, regulations and ordinances in force at the time a Project Phase is awarded.
4. 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 in a particular Project Phase, when a particular phase of Services is specified and authorized in an individual Project Phase, Consultant shall provide its Services and Deliverables for that phase in conformance with the requirements described in this section. The services to be included in the construction management scope 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 36-month construction duration for purposes of establishing Consultant's fee:

8. Notice to Proceed	<u>September 2016</u>
9. Construction Complete	<u>September 2019</u>
10. Occupancy	<u>November 2019</u>
11. Warranty Period	<u>September 2020</u>

- C. Consultant further agrees the maximum monthly invoice amount will be \$71,123.00 plus reimbursable expenses, and Consultant will only invoice monthly for the actual construction duration. If the contractor completes the construction period prior to 9/12/2019, Kitchell will consider construction services complete and transition into "operations/closeout & warranty" periods per the provisions of the PSA.

## **PART 4 - GENERAL PROVISIONS**

### **4.01 Authority and Counterparts**

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

**PART 5 – EXHIBITS**

**EXHIBIT C-1**

**COMPENSATION OF PROJECT PHASES FOR AMENDMENT NO 3**

<p>AMENDMENT NO. 3 BETWEEN THE COUNTY OF SANTA BARBARA AND  <b>Kitchell/CEM, Inc., 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
<b>Additional CM Services</b>	0032	980	7460	2000	0001	3206	\$787,853

**COMPENSATION**

Project Phase	Basic Services	Other Cost Item	Supplementary Services	Travel and Expenses	Maximum Compensation Limit for Project Phase
Construction	\$782,353		Extended Construction Phase	\$5,500	\$787,853
<b>Maximum Compensation Limit on Amendment:</b>					<b>\$787,853</b>

Consultant shall submit appropriate documentation and information to support each invoice, including a 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.

**END EXHIBIT C-1**

**PART 5 - SIGNATURES**

**Amendment No. 3 to Agreement for CONSTRUCTION MANAGEMENT AND RELATED PROFESSIONAL SERVICES**

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

**COUNTY**

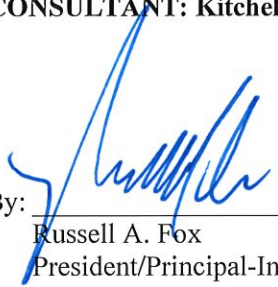
By: \_\_\_\_\_  
DAS WILLIAMS, CHAIR  
BOARD OF SUPERVISORS

Dated: \_\_\_\_\_

**ATTEST:**  
MONA MIYASATO,  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

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

**CONSULTANT: Kitchell/CEM, Inc.**

By:  \_\_\_\_\_ 10/18/2018  
Russell A. Fox  
President/Principal-In-Charge

**APPROVED AS TO FORM:**  
MICHAEL C. GHIZZONI,  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:**  
THEODORE A. FALLATI, CPA  
AUDITOR-CONTROLLER

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

**APPROVED AS TO FORM:**  
RAY AROMATORIO, ARM, AIC  
RISK MANAGER

By: \_\_\_\_\_  
Risk Manager

**RECOMMENDED FOR APPROVAL:**  
JANETTE D. PELL  
DIRECTOR OF GENERAL SERVICES

By: \_\_\_\_\_  
Department Head



**END OF AGREEMENT**