

County of Santa Barbara
General Services
Capital Projects Division

**AMENDMENT No. 7 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 16, 2021

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AMENDMENT NO. 7 TO PROFESSIONAL SERVICES AGREEMENT

FOR

CONSTRUCTION MANAGEMENT AND RELATED PROFESSIONAL SERVICES

ADULT DETENTION FACILITY

This is the Seventh 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, on December 15, 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 ("Sixth Amendment");
- 1.08 WHEREAS, the parties hereto desire to amend the Agreement ("Seventh Amendment" or "Amendment No. 7"), 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;
- 1.09 WHEREAS, the Project is currently in the Construction Phase and construction is estimated at 99.9% complete;
- 1.10 WHEREAS, this Seventh Amendment is to extend Construction Management, Commissioning 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
- 1.11 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 Seventh 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 6 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 Seventh 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 Seventh 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 Seventh 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 Seventh Amendment increases the previously amended maximum compensation limit of \$5,691,034 by \$460,869 for additional services added by this Seventh Amendment, and includes a contingency of \$80,000 for all services necessary to close out the Project for a maximum compensation limit of \$6,151,903. 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 **\$6,151,903 (Six Million, One Hundred Fifty One Thousand, Nine Hundred 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.

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.

- 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 Seventh 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 Seventh 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 **111 months** from the date of execution of the original Agreement and all phases of work under this Seventh Amendment are to occur concurrently with the phases established under the Agreement.
- B. This Seventh 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 Seventh 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 Seventh 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 Seventh Amendment performed by Consultant's personnel and agents.

- A. Standard of Care.
 - 1. Consultant shall perform Services under this Seventh 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 Seventh Amendment in accordance the terms of the Jail Construction Agreement (JCA) and Project Delivery Construction Agreement (PDCA).
 - 3. Consultant shall perform Services under this Seventh 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 Seventh 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 59-month construction duration for purposes of establishing Consultant's fee:

- | | |
|--------------------------|-----------------------|
| 8. Notice to Proceed | <u>September 2016</u> |
| 9. Construction Complete | <u>July 2021</u> |
| 10. Occupancy | <u>December 2021</u> |
| 11. Warranty Period | <u>July 2022</u> |

PART 4 - GENERAL PROVISIONS

4.01 Authority and Counterparts

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

PART 5 – EXHIBITS

EXHIBIT A1

Amendment No. 7. Consultant Services Fee Schedule

Santa Barbara County Northern Branch Jail Project
 Kitchell Additional Services beyond Amendment 6
 Date: 10/5/2021

Payment Method	
Due Now	T&M NTE

CM Additional Services Calculation

CM Extension 2/6/21 thru 7/30/21
 Mitigation: Reduce Staffing by 1 PE
 Mitigation: Luz Remote
 *An \$80k contingency fund will be reserved for close out support

Qty	Unit	Unit Price	Total
5.8	months	\$ 71,123	\$ 412,513
78	work days	\$ (808)	\$ (63,024)
122	work days	\$ (160)	\$ (19,520)
*Total CM:			\$ 329,969

249,969 80,000

Cx'g Additional Services Calculation

Excessive Onsite Cx'g Meetings 21 vs. 18 per PSA
 Excessive Offsite Cx'g Meetings 72 hrs vs. 40 hrs per PSA
 Additional NTE Travel Allowance

Qty	Unit	Unit Price	Total
60	hours	\$ 130	\$ 7,800
20	hours	\$ 130	\$ 2,600
1	ls	\$ 10,000	\$ 10,000
Total Cx'g:			\$ 20,400

7,800
 2,600
 10,000

A&E Additional Services Calculation

PCI Amendment No. 3
 Dewberry Revised Proposal plus \$5k Allowance
 A&E Mgmt of PCI Amendment No. 3 & Dewberry
 12 Month Warranty & Project Closeout (See Below*)

Qty	Unit	Unit Price	Total
1	ls	\$ 36,400	\$ 36,400
1	ls	\$ 24,800	\$ 24,800
1	ls	\$ 9,180	\$ 9,180
1	ls	\$ 40,120	\$ 40,120
Total A&E:			\$ 110,500

110,500

***Applied Billing Rates**

EAS Dept Mgr - Heather Brown
 EAS Ops Mgr - Sergio Rodriguez
 PM - Heather Brown
 Sr. Architect - Brad Schultz
 Sr. Mech. Engr - Ahmad Elkot
 Sr. Elec Engr - Mil Backovich
 BIM Specialist - Lee Tribbie

Billing Sched Rate	Hours Allocation	Total
\$ 195	4	\$ 780
\$ 185	16	\$ 2,960
\$ 175	64	\$ 11,200
\$ 165	84	\$ 13,860
\$ 165	28	\$ 4,620
\$ 165	28	\$ 4,620
\$ 130	16	\$ 2,080
		\$ 40,120

Grand Total: \$ 460,869 260,369 200,500

END OF EXHIBIT A1

EXHIBIT C-1

COMPENSATION OF PROJECT PHASES FOR AMENDMENT NO. 7

AMENDMENT NO. 7 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	Dept No	Acct #	Program	OrgUnit	Activity	Amount
Additional CM Services	0032	980	7460	2000	0001	3206	\$249,969
Additional Commissioning Services	0032	980	7460	2000	0001	3206	\$10,400
Additional Commissioning Travel	0032	980	7460	2000	0005	3207	\$10,000
Architectural & Engineering Services	0032	980	7460	2000	0002	3205	\$110,500

COMPENSATION

Project Phase	Basic Services	Other Cost Item	Supplementary Services	Travel and Expenses	Maximum Compensation Limit for Project Phase
Construction	\$260,369		(6) Month Extended Construction Phase	10,000	\$270,369
Construction, Project Closeout, Warranty	\$110,500		Architectural and Engineering Services	N/A	\$110,500
Compensation For Services Added by this Amendment					\$380,869
*Contingency					\$80,000
Maximum Amount of Compensation for All Services Added by this Amendment to be Performed within the Term provided in this Amendment					\$460,869

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.

*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. 7 to Agreement for ARCHITECTURAL AND ENGINEERING AND RELATED PROFESSIONAL SERVICES


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

ATTEST:

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

By: 
Deputy Clerk

County of Santa Barbara:

By: 
**Bob Nelson, Chair
Board of Supervisors**

Date: 11-16-2021

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ADDITIONAL COUNTY SIGNATURE PAGE

Amendment No. 7 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: DocuSigned by:
Janette D. Pell
1FBA9BD673A445F...
**Janette D. Pell, Director
General Services
Department**

By: DocuSigned by:
[Signature]
6BAAEA15901943F
Deputy

**APPROVED AS TO FORM:
Rachel Van Mullem
County Counsel**

By: DocuSigned by:
Johannah Hartley
BD0FDC916C3B46B
Deputy County Counsel

**APPROVED AS TO FORM:
Risk Management**

By: DocuSigned by:
Ray Aromatario
D3BB8526E16F47F...
Risk Management

CONTRACTOR SIGNATURE PAGE

Amendment No. 7 to Agreement for ARCHITECTURAL AND ENGINEERING AND RELATED PROFESSIONAL SERVICES

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

CONTRACTOR:

Wendy Cohen
Kitchell/CEM, Inc.
2450 Venture Oaks Way, Suite 500
Sacramento, CA 95833

President

(916) 648-9700

By: 
Authorized Representative

Date: 10.20.21

END OF AGREEMENT