

AGREEMENT BETWEEN COUNTY OF MONTEREY AND KITCHELL/CEM, INC.

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County", and KITCHELL/CEM, INC, hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, County has invited proposals through the Request for Proposals (RFP #10492) for **Condition Assessments on Facilities Located in Monterey County, California**, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

- 1.1 After consideration and evaluation of the CONTRACTOR'S proposal, the County hereby engages CONTRACTOR to provide the services set forth in RFP #10492 and in this AGREEMENT on the terms and conditions contained herein and in RFP #10492. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. This AGREEMENT is based on the following supporting documents:

AGREEMENT

RFP # 10492 dated July 3, 2014, including all attachments and exhibits

Addendum #1, dated July 24, 2014

Addendum #2, dated July 28, 2014

Addendum #3, dated July 28, 2014

Exhibit A: List of Facilities

Exhibit B: Pricing

CONTRACTOR'S Amended Proposal dated December 9, 2014

- 1.2 These documents are on file with the Contracts/Purchasing Division.
- 1.3 All of the above-referenced documents are intended to be complementary. Work required by one of the above-referenced documents and not by others shall be done as if

required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT, RFP #10492, Addenda #1, 2, 3, Exhibit A: List of Facilities, Exhibit B: Pricing, CONTRACTOR'S Amended Proposal, including all attachments and exhibits.

- 1.4 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.
- 1.5 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
 - 1.5.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.
- 1.6 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF SERVICE

- 2.1 Contractor Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT price before computing the amount of work required to be performed by CONTRACTOR with its organization.
- 2.2 The Scope of Work includes but is not limited to the following:
 - 2.2.1 CONTRACTOR shall assess 73 County facilities and related structures over the term of the AGREEMENT.
 - 2.2.2 CONTRACTOR shall perform assessments of buildings, systems, and major components while they are in operation. For each building or structure evaluated the deliverables shall include at a minimum the following reports:
 - 2.2.2.1 Two draft hard copies and one soft copy in Microsoft WORD 2007 for each of two draft review cycles.
 - 2.2.2.2 Final submittal shall consist of one hardcopy original and two copies in 8-1/2 x 11 formats and one soft copy in Microsoft WORD 2007 that include:

- 2.2.2.2.1 An estimate, with supporting discussion, on the remaining useful life of each building and major systems within the building; and
 - 2.2.2.2.2 Listing of building system and component items evaluated with identifying descriptive detail; and
 - 2.2.2.2.3 Detailed listing and description of building, system and component and the condition and deficiencies of each item; and
 - 2.2.2.2.4 Prioritized repair/replacement schedules by building, system and component deficiencies, using prioritization system agreed to with County; and
 - 2.2.2.2.5 A Facility Condition Index (FCI) for each building or structure with defined values indicating good, average, and poor indices; and
 - 2.2.2.2.6 Budget level cost estimates for asset repair or replacement suitable for major maintenance, capital renewal and capital replacement budgeting.
- 2.2.3 CONTRACTOR shall assess the following systems, as applicable to the building or structure:
- 2.2.3.1 All roof space
 - 2.2.3.2 Exteriors, including fenestrations
 - 2.2.3.3 Interiors (walls, doors, flooring, finishes, painting)
 - 2.2.3.4 Mechanical (HVAC)
 - 2.2.3.5 Electrical (supply and distribution)
 - 2.2.3.6 Plumbing (supply and waste system)
 - 2.2.3.7 Fire/life safety protection systems
 - 2.2.3.8 Specialties (kitchen, laundry, and other specific-use capital equipment)
 - 2.2.3.9 Site (grounds, paving systems, drainage, landscape irrigation)
 - 2.2.3.10 Obvious structural anomalies such as cracks in foundations, concrete or masonry walls and columns, wood rot, sagging structural members, extensive water damage, etc.
 - 2.2.3.11 Any conditions immediately dangerous to life or health.
- 2.2.4 The following services shall not be included within the approved scope:
- 2.2.4.1 Use of a camera or other invasive means to assess underground or hidden systems.
 - 2.2.4.2 Determine compliance with ADA.
 - 2.2.4.3 Determine compliance with any County or State code such as building, mechanical, electrical, or plumbing.
 - 2.2.4.4 Provide structural, seismic, or other engineering reports
- 2.2.5 County shall provide the following services:
- 2.2.5.1 A list of buildings to be assessed with address
 - 2.2.5.2 Drawings and information regarding systems age, and known problems, as available.

2.2.5.3 Access to building systems areas such as mechanical and electrical rooms, roofs, central plants, and other secured areas.

3.0 TERM OF AGREEMENT

- 3.1 The term of the AGREEMENT(s) shall be for a period of six (6) months beginning with the execution of the AGREEMENT with the option to extend the AGREEMENT for three (3) months.
 - 3.1.1 County is not required to state a reason if it elects not to renew.
- 3.2 If County exercises its option to extend, all applicable parties shall mutually agree upon the extension, including any changes in rate and/or terms and conditions in writing.
- 3.3 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 3.4 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.
- 3.5 The County's payments to CONTRACTOR under this Agreement are funded by local, state, and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying the Agreement.

4.0 COMPENSATION AND PAYMENTS

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto as **Exhibit B**, subject to the limitations set forth in this AGREEMENT. The total amount payable by County to CONTRACTOR under this AGREEMENT is not to exceed the sum of **\$165,000**.

- 4.2 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- 4.3 Tax:
- 4.3.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
- 4.3.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the **Resource Management Agency-Public Works** department at the following address:
168 West Alisal Street, 2nd Floor
Salinas, CA 93901
- 5.2 CONTRACTOR shall reference RFP #10492 on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included in the AGREEMENT must be approved by County in writing via an Amendment.

6.0 DESIGN PROFESSIONAL INDEMNIFICATION

- 6.1 For purposes of the following indemnification provisions (“Indemnification AGREEMENT”), “design professional” has the same meaning as set forth in California Civil Code section 2782.8. If any term, provision or application of this Indemnification AGREEMENT is found to be invalid, in violation of public policy or unenforceable to

any extent, such finding shall not invalidate any other term or provision of this Indemnification AGREEMENT and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of this Indemnification AGREEMENT and the provisions of California Civil Code Sections 2782 or 2782.8, the broadest indemnity protection for County under this Indemnity AGREEMENT that is permitted by law shall be provided by CONTRACTOR.

6.2 Indemnification for Design Professional Services Claims:

CONTRACTOR shall indemnify, defend and hold harmless County, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this AGREEMENT, excepting only liability arising from the sole negligence, active negligence or willful misconduct of County, or defect in a design furnished by County.

6.3 Indemnification for All Other Claims or Loss:

For any claim, loss, injury, damage, expense or liability other than claims arising out of CONTRACTOR's performance of design professional services under this AGREEMENT, CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to property, arising from or related to the performance of services under this AGREEMENT by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of COUNTY, or defect in a design furnished by COUNTY.

7.0 INSURANCE REQUIREMENTS

7.1 Evidence of Coverage:

7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.

7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

7.2 Qualifying Insurers: All coverage, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

7.3 Insurance Coverage Requirements:

7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

7.3.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

7.3.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

7.4 Other Insurance Requirements:

7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact

Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.

- 7.4.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insured with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.
- 7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

8.0 RECORDS AND CONFIDENTIALITY

- 8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- 8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.
- 8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.
- 8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

9.0 NON-DISCRIMINATION

- 9.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- 9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of

Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.

- 9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 10.1 Independent Contractor: In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and states income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- 10.2 Assignment and Subcontracting: The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 10.3 Any subcontractor shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in this AGREEMENT.

11.0 CONFLICT OF INTEREST

- 11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with COUNTY that CONTRACTOR has no present, and will have no future, conflict of interest between providing COUNTY services hereunder and any other person or entity (including but not limited to any federal or state environmental or regulatory agency) which has any interest adverse or potentially adverse to COUNTY, as determined in the reasonable judgment of the Board of Supervisors of COUNTY.

- 11.2 CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this AGREEMENT for COUNTY will be kept confidential and not be disclosed to any other person. CONTRACTOR agrees to immediately notify COUNTY in accordance with the Notices Section of this AGREEMENT, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this AGREEMENT. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to COUNTY hereunder.

12.0 COMPLIANCE WITH APPLICABLE LAWS

- 12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
- 12.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.
- 12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

13.0 DRUG FREE WORKPLACE

- 13.1 CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY'S policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR shall, within five days thereafter notify the head of the COUNTY department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

14.0 TIME OF ESSENCE

- 14.1 Time is of the essence in respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.

15.0 PERFORMANCE ASSURANCE AND WAIVER OF BREACH

- 15.1 Assurance of Performance: If at any time County believes CONTRACTOR may not be adequately performing its obligations under this AGREEMENT or that CONTRACTOR may fail to complete the Services as required by this AGREEMENT, County may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in CONTRACTOR'S performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this AGREEMENT. If County accepts the plan it shall issue a signed waiver.

- 15.1.1 Waiver: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this AGREEMENT shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

16.0 RIGHTS AND REMEDIES OF THE COUNTY FOR DEFAULT

- 16.1 In the case of default by CONTRACTOR, County may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance due to CONTRACTOR or by proceeding against any performance bond of CONTRACTOR, if any, or by suit against CONTRACTOR. The prices paid by County shall be considered the prevailing market price at the time such purchase(s) may be made. Inspections of deliveries or offers for deliveries that do not meet specifications shall be made at the expense of CONTRACTOR.

17.0 FORCE MAJEURE

- 17.1 "Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.
- 17.2 If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.
- 17.3 CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

18.0 INFORMATION PORTABILITY AND ACCOUNTABILITY ACT— HIPAA COMPLIANCE

- 18.1 CONTRACTOR agrees to operate its business in a manner as necessary to permit County to comply with its obligations under the Health Insurance Portability and Accountability Act of 1996, Subtitle F, Public Law 104-191, relating to the privacy and security of confidential health information, and any final regulations or rules promulgated by the U.S. Department of Health and Human Services thereunder (collectively, the "HIPAA Standards").

19.0 BACKGROUND CHECKS

- 19.1 CONTRACTOR shall be required to submit appropriate State level criminal background clearance(s) for all personnel required to work within County facilities that are deemed restricted or high security, including but not limited to the Sheriff's Office, Probation Department, 911 Center, and District Attorney's Office.
- 19.1.1 A California licensed Investigator must perform the required State level criminal background check(s) which must then be submitted to County prior to the personnel being allowed to work within such County facilities.
- 19.1.2 CONTRACTOR is responsible for the cost of the State level criminal background check(s).
- 19.1.3 EXCEPTION: personnel who are designated to provide services at any of the Sheriff's facilities are required to undergo fingerprinting and background checks through the Sheriff's main office, at no cost to CONTRACTOR.

- 19.2 The required background checks SHALL be completed prior to allowing the personnel to work within any of the limited access facilities.

20.0 WARRANTY BY CONTRACTOR

- 20.1 CONTRACTOR shall fully warrant all materials, equipment, and service against poor and inferior quality or workmanship for a period of not less than one (1) year from date of final acceptance by the COUNTY. Time is of the essence of this AGREEMENT. CONTRACTOR shall repair or replace any inoperable materials or equipment in a timely manner during warranty period.

21.0 ACCESSIBILITY

- 21.1 CONTRACTOR shall inform itself regarding any peculiarities and limitations of the spaces available for the installation of all work and materials furnished and installed under the AGREEMENT. CONTRACTOR shall exercise due and particular caution to determine that all parts of CONTRACTORS work are made quickly and easily accessible.

22.0 DAMAGE

- 22.1 The CONTRACTOR shall be held responsible for any breakage, loss of the COUNTY's equipment or supplies through negligence of the CONTRACTOR or his employee while working on the COUNTY's premises. The CONTRACTOR shall be responsible for restoring/replacing any equipment, facilities, etc. so damaged. The CONTRACTOR shall immediately report to the COUNTY any damages to the premises resulting from services performed under this AGREEMENT.

23.0 NOTICES

- 23.1 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:

Contracts/Purchasing Officer
County of Monterey, Contracts/Purchasing
168 W. Alisal Street, 3rd Floor.
Salinas, CA 93901-2439
Tel. No.: (831) 755-4990
FAX No.: (831) 755-4969
derrm@co.monterey.ca.us

TO CONTRACTOR:

Heather Brown, PE, LEED AP, CPMP
Kitchell/CEM, Inc.
255 West Julian Street, Suite 400
San Jose, CA 95110
Tel. No.: (408) 280-7889
FAX No.: (408) 280-7192
hbrown@kitchell.com

24.0 LEGAL DISPUTES

- 24.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
- 24.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.
- 24.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.
- 24.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

25.0 MISCELLANEOUS PROVISIONS

- 25.1 Amendment: This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 25.2 Waiver: Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 25.3 Contractor: The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees action on CONTRACTOR's behalf in the performance of this Agreement.


- 25.4 Successors and Assigns: This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 25.5 Headings: The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 25.6 Construction of Agreement: The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 25.7 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 25.8 Authority: Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 25.9 Integration: This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 25.10 Interpretation of Conflicting Provisions: In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

IN WITNESS WHEREOF, the County and CONTRACTOR execute this AGREEMENT as follows:

MONTEREY COUNTY

CONTRACTOR

Contracts/Purchasing Officer

By: 

Signature of Chair, President, or
Vice-President

Dated: _____

Russell Fox, President

Printed Name and Title

Approved as to Fiscal Provisions:

Dated: 1/20/2015



Deputy Auditor/Controller

By: Michael Bruggeman

(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*

Dated: 1-26-15

MICHAEL BRUGGEMAN, ASST SECRETARY

Printed Name and Title

Approved as to Liability Provisions:

Dated: 1/20/2015

Risk Management

Dated: _____

Approved as to Form:



Deputy County Counsel

Dated: 1/23/15

County Board of Supervisors' Agreement Number: _____.

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

EXHIBIT A – LIST OF FACILITIES

	Department	Address	City	County Purpose	Sq. Ft.
1	Administration - Government Center	168 West Alisal Street	Salinas	General Office & Jury Assembly	136,500
2	Agricultural Commissioner - Administration	1428 Abbott Street	Salinas	General Office	25,278
3	Agricultural Commissioner - Coop Extension	1432 Abbott Street	Salinas	General Office & Conference	8,949
4	Agricultural Commissioner - King City Office	522 North Second Street	King City	General Office	1,680
5	Agricultural Commissioner - King City Shop/Storage	522 North Second Street	King City	Shop & Material Storage	4,296
6	District Attorney - Administration	230 Church Street Modular # 2	Salinas	General Office	8,700
7	District Attorney - Investigations	2620 First Avenue	Marina	General Office	1,200
8	District Attorney - Offices	230 Church Street, Modular # 3	Salinas	General Office	17,711
9	Health - Animal Shelter (land leased from City of Salinas)	160 Hitchcock Road	Salinas	General Office & Animal Shelter	13,000
10	Health - Behavioral Health (Marina Office)	298 Twelfth Street	Marina	General Office	23,359
11	Health - Broadway Health Center	1292 Olympia Avenue	Seaside	Health Care Services	4,500
12	Health - Monterey Courthouse Annex	1200 Aguajito Road	Monterey	General Office	24,210
13	Health - New Administration Building	1270 Natividad Road	Salinas	General Office & Lab	47,600
14	Information Technology	1590 Morfett Street	Salinas	General Office & Communications	31,980
15	Library - Big Sur (Modular)	Highway 1 Ripplewood Resort	Big Sur	Library	816
16	Library - Castroville w/ District 2 Supervisor (New)	11140-11160 Speegle Street	Castroville	Library & General Office	13,750
17	Library - Greenfield	315 El Camino Real	Greenfield	Library	7,489
18	Library - Parkfield (Modular)	Parkfield School	Parkfield	Library	800
19	Natividad Medical Center -New Complex (11 Bldgs.)	1441 Constitution Boulevard	Salinas	County Hospital	472,097
20	Natividad Medical Center - Old Complex (11 Bldgs.)	1330 Natividad Road	Salinas	Mixed	134,135
21	Office of Emergency Services - 911	1322 Natividad Road	Salinas	General Office & Communications	16,396
22	Parks - Headquarters	855 East Laurel Drive, Building G	Salinas	General Office	2,880
23	Parks - Jack's Peak Park (10 Buildings)	25020 Jack Peaks Park Road	Monterey	Recreation Facilities	2,528
24	Parks - Leguna Seca (43 Buildings)	1025 Highway 68	Salinas	Recreation Facilities	40,820
25	Parks - Manzanita Park (3 Buildings)	1700 Castroville Boulevard	Salinas	Recreation Facilities	440
26	Parks - Royal Oaks Park (9 Buildings)	537 Maher Road	Watsonville	Recreation Facilities	4,914
27	Parks - San Antonio Lake, North Shore (19 Building)	Star Route Box 2091	Bradley	Recreation Facilities	12,532
28	Parks - San Antonio Lake, South Shore (43 Buildings)	Star Route 2610 SS	Bradley	Recreation Facilities	22,273
29	Parks - San Lorenzo Park (30 Buildings)	1160 Broadway	King City	Recreation Facilities	37,808
30	Parks - Toro Park (16 Buildings)	501 Monterey/Salinas Hwy 68	Salinas	Recreation Facilities	18,576

31	Probation - Headquarters & Adult Services	20 E. Alisal Street	Salinas	General Office	28,850
32	Probation - Juvenile Services	1422 Natividad Road	Salinas	General Office	22,565
33	Probation - Rancho Cielo (100 ac. lease)	700-710 Old Stage Road	Salinas	Juvenile Rehabilitation	22,483
34	Probation - Silver Star Program	855 East Laurel Drive, Building H	Salinas	General Office	7,320
35	Probation - Youth Center	970 Circle Drive	Salinas	Juvenile Detention	26,818
36	Probation - Youth Center (School)	970 Circle Drive	Salinas	Juvenile Detention	5,400
37	Public Defender	111 West Alisal Street, Modular # 4	Salinas	General Office	8,650
38	Public Works - Collocation with IT & WRA	855 East Laurel Drive, Building D	Salinas	General Office & Shop	14,400
39	Public Works - Environmental Services & Bridge Maintenance	855 East Laurel Drive, Building F	Salinas	General Office & Shop	3,750
40	Public Works - Facilities (Grounds Shop)	855 East Laurel Drive	Salinas	Shop & Material Storage	1,420
41	Public Works - Facilities (Project Staging Area)	312 East Alisal Street	Salinas	Shop & Material Storage	27,155
42	Public Works - Facilities (Mail Operations and IT Radio)	855 East Laurel Drive, Building C	Salinas	General Office & Shop	20,100
43	Public Works - Fleet Management	855 East Laurel Drive, Building A	Salinas	General Office & Shop	12,157
44	Public Works - Fleet Management (Fuel Garage)	855 East Laurel Drive	Salinas	Shop & Material Storage	2,016
45	Public Works - Fleet Management (Fuel Island)	855 East Laurel Drive	Salinas	Fuel Station	1,221
46	Public Works - Greenfield Yard (Office)	41801 East Elm Avenue	Greenfield	General Office	620
47	Public Works - Greenfield Yard (Shop & Storage)	41801 East Elm Avenue	Greenfield	Shop & Material Storage	3,960
48	Public Works - King City Yard (Office)	522 North Second Street	King City	General Office	310
49	Public Works - King City Yard (Shop & Storage)	522 North Second Street	King City	Shop & Material Storage	3,240
50	Public Works - Road District & Traffic Maintenance	855 East Laurel Drive, Building B	Salinas	General Office & Storage	12,100
51	Public Works - Road Maintenance	855 East Laurel Drive, Building E	Salinas	General Office & Shop	12,100
52	Public Works - San Ardo Yard	Jolon Road & Main Street	San Ardo	General Office & Shop	1,931
53	Public Works - San Miguel Canyon Road Yard	1171 San Miguel Canyon Road	Salinas	General Office & Shop	4,235
54	Redevelopment & Housing - Child & Family Resource Center	10601 McDougall Street	Castroville	Community Center & General Office	5,000
55	Redevelopment & Housing - FORA Prop. (leased to Ord Market)	2700 Imjin Road	Marina	Convenience Store	4,700
56	Redevelopment & Housing - Pajaro Community Center	29-A Bishop Street	Watsonville	Community Center	3,385
57	Redevelopment & Housing - Porter Vallejo Mansion	29 Bishop Street	Watsonville	General Office	9,624
58	Redevelopment & Housing - Porter Vallejo Mansion (Water Tower)	29-A Bishop Street	Watsonville	Historical Structure	324
59	Redevelopment & Housing - Japanese School Site	Gell Street and Pajaro Street	Castroville	Historical Structure	1,560
60	Sheriff - Adult Rehabilitation	1412 Natividad Road	Salinas	Adult Detention	5,944
61	Sheriff - Correctional	1410 Natividad Road	Salinas	Adult Detention	38,666
62	Sheriff - New Jail	1410 Natividad Road	Salinas	Adult Detention	167,289
63	Sheriff - Public Safety Building	1414 Natividad Road	Salinas	General Office	85,125
64	Sheriff - Storage	1414 Natividad Road	Salinas	Warehouse	4,288
65	Social & Employment Services - w/DA, PBI & District 4 Supervisor	2620 First Avenue	Marina	General Office	13,300

66	Social & Employment Services - FS	1 Medical Drive	Salinas	Family Social Services	5,520
67	Social & Employment Services - Seaside District Office	1281 Broadway Avenue	Seaside	General Office	10,888
68	County Training and Law Library	230 Church Street, Modular # 1	Salinas	Offices and Library	9,420
69	Superior Court - King City Courthouse	250 Franciscan Way	King City	Courts & General Office	12,497
70	Superior Court - Monterey Courthouse	1200 Aguajito Road	Monterey	Courts & General Office	57,291
71	Superior Court - Parking Structure	1200 Aguajito Road	Monterey	Parking Structure	34,200
72	Vacant (Former GSD Printing/Mail Services)	1220 Natividad Road	Salinas	To be determined.	5,446
73	Vacant (Former Juvenile Center)	1352 Natividad Road	Salinas	Surplus Furniture Storage	16,460
				Total Square Footage	1,870,945

EXHIBIT B – PRICING

**Per amended cost proposal submitted by Kitchell/CEM, Inc. on December 9th, 2014.*

	Report Type
Square Footage	Basic (per SF)
Up to 30,000	\$0.22
30,000-49,999	\$0.17
50,000-99,999	\$0.12
100,000-199,999	\$0.10
200,000-299,999	\$0.08
300,000-399,999	\$0.05
400,000-499,999	\$0.04
500,000 and above	\$0.03