

# Attachment A

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**AMENDMENT NO. 5  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN COUNTY OF MONTEREY AND  
KIMLEY-HORN AND ASSOCIATES, INC.**

**THIS AMENDMENT NO. 5** to the Professional Services Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Kimley-Horn and Associates, Inc. (hereinafter, "CONTRACTOR") is hereby entered into between the County and the CONTRACTOR (collectively, the Parties) and effective as of the last date opposite the respective signatures below.

**WHEREAS**, CONTRACTOR entered into a Professional Services Agreement with County on March 26, 2014 (hereinafter, "Agreement") to provide plan review services as built plan review, off-site roadway plans, and other miscellaneous plan review services (hereinafter, "services") for the East Garrison Phase 2 Improvement Plans and Final Map (hereinafter, "Phase 2 of the East Garrison Project") through March 31, 2015 for an amount not to exceed \$50,000; and

**WHEREAS**, Agreement was amended by the Parties on March 23, 2015 (hereinafter, "Amendment No. 1") to extend the term for fifteen (15) additional months through June 30, 2016 with no increase in the not to exceed amount; and

**WHEREAS**, Agreement was amended by the Parties on June 30, 2016 (hereinafter, "Amendment No. 2") to extend the term for three (3) additional years through June 30, 2019 with no increase in the not to exceed amount; and

**WHEREAS**, Agreement was amended by the Parties on February 24, 2017 (hereinafter, "Amendment No. 3") to increase the amount by \$84,800 which resulted in a total not to exceed amount of \$134,800 to include plan review services for Phase 3 of the development, including the Subdivision Improvement Agreement, Final Map and Infrastructure Plans (hereinafter, "Phase 3 of the East Garrison Project") with no extension to the term; and

**WHEREAS**, Agreement was amended by the Parties on May 11, 2017 (hereinafter, "Amendment No. 4") to reallocate an unexpended balance in the amount of \$12,332 from Phase 2 to Phase 3 of the East Garrison Project with no increase in the not to exceed amount and with no extension to the term; and

**WHEREAS**, due to a number of factors, including additional meetings required by County, separation of the on-site and off-site improvement plans into separate documents, and additional review to additional plan sheets for these plans, additional funding is necessary for Task 1, Condition Compliance/Mitigation Monitoring, Task 2, Plan Check & Final Map Review, and Task 4, Meetings and Project Management, for completion of Phase 3; and

**WHEREAS**, additional funding is necessary to allow CONTRACTOR to create and upload Condition Compliance Forms (CCFs) for Phase 1, Phase 2 and Phase 3 of the East Garrison Project into the County's computerized permit tracking system (Accela); and

**WHEREAS**, the Parties wish to further amend the Agreement to increase the amount by \$57,160 for a total amount not to exceed \$191,960 to allow CONTRACTOR to continue to provide services identified in the Agreement and as amended by this Amendment No. 5.

**NOW, THEREFORE**, the Parties agree to amend the Agreement as follows:

1. Amend the second sentence of Paragraph 2, "Payments by County", to read as follows:

The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$191,960.

2. Amend Paragraph 15, "Miscellaneous Provisions", to add Section 15.18, "Intellectual Property Rights", to read as follows:

**DATA OWNERSHIP:**

All data provided by County belongs to County. All records compiled by CONTRACTOR in completing the work described in this AGREEMENT, including but not limited to written reports, studies, drawings, blueprints, negatives of photographs, graphs, charts, plans, source codes, specifications and all other similar recorded data, shall become and remain the property of County. All data entered by the end users or through a conversion, shall remain the property of the County. Use or distribution of County data by CONTRACTOR is prohibited unless CONTRACTOR obtains prior written consent from County. County may, at any time, request to have all data delivered in a non-proprietary format to County either electronically, on common or standard type media, or both. A complete copy of all system data must be delivered to the County within thirty (30) days of the termination of any agreement.

For systems hosted or stored on equipment not owned by County, CONTRACTOR shall furnish all data to County upon request by County at any time during the term of this AGREEMENT in a useable format as specified by County and at no additional cost to County.

Notwithstanding anything to the contrary contained in this AGREEMENT, it is understood and agreed that CONTRACTOR shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by CONTRACTOR prior to this AGREEMENT.

**INTELLECTUAL PROPERTY RIGHTS:**

All deliverables created under this AGREEMENT by CONTRACTOR are to be considered "works made for hire". If any of the deliverables do not qualify as "works made for hire", CONTRACTOR hereby assigns to County all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows County to obtain in its name copyrights, registrations and similar protections which may be available. CONTRACTOR

agrees to assist County, if required, in perfecting these rights. CONTRACTOR shall provide County with at least one (1) complete copy of each deliverable.

CONTRACTOR shall indemnify and hold harmless County for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, CONTRACTOR agrees to enable County's continued use of the deliverable, or to modify or replace it. If County determines that none of these alternatives is reasonably available, the deliverable will be returned.

**GUARANTEE OF MALWARE FREE GOODS:**

CONTRACTOR guarantees that it shall not install plant or otherwise introduce into any County computer or computer system any malicious code such as viruses, Trojan horse programs, worms, spyware, etc. Malicious code or malware (short for malicious software) is defined as software (or firmware) designed to damage or do other unwanted actions on a computer system. Common examples of malware include viruses, worms, Trojan horses and spyware. Viruses, for example, can cause havoc on a computer's hard drive by deleting files or directory information. Spyware can gather data from a user's system without the user knowing it. This can include anything from the web pages a user visits to personal information, such as credit card numbers. Contractor shall be held strictly liable for breach of this term and County's damages in event of breach of this term will include but not be limited to loss of revenue.

- Amend the Project Budget Estimate table in "Exhibit A-1, Scope of Services/Payment Provisions" of the Agreement to read as follows:

	<b>Current Budget Estimate</b>	<b>Amendment No. 5</b>	<b>Final Budget Estimate</b>
<b>Phase 1</b>			
Task 1 - Condition Compliance/Mitigation Monitoring	\$0	\$7,387	\$7,387
<b>Subtotal Phase 1</b>	<b>\$0</b>	<b>\$7,387</b>	<b>\$7,387</b>
<b>Phase 2</b>			
Task 1 - Condition Compliance/Mitigation Monitoring	\$4,695	\$7,387	\$12,082
Task 2 - Plan Check & Final Map Review	\$19,108	\$0	\$19,108
Task 3 - Review and Approval of Field Changes/Plan Revisions	\$13,865	\$0	\$13,865
<b>Subtotal Phase 2</b>	<b>\$37,668</b>	<b>\$7,387</b>	<b>\$45,055</b>
<b>Phase 3</b>			
Task 1 - Condition Compliance/Mitigation Monitoring	\$15,000	\$7,387	\$22,387
Task 2 - Plan Check & Final Map Review	\$47,332	\$15,000	\$62,332
Task 3 - Review and Approval of Field Changes/Plan Revisions	\$10,000	\$0	\$10,000
Task 4 - Meetings and Project Management	\$20,000	\$20,000	\$40,000
Task 5 - Expenses	\$4,800	\$0	\$4,800
<b>Subtotal Phase 3</b>	<b>\$97,132</b>	<b>\$42,387</b>	<b>\$139,519</b>
<b>Total Estimated Fee (Not to Exceed)</b>	<b>\$134,800</b>	<b>\$57,160</b>	<b>\$191,960</b>

4. Amend Task 1, Condition Compliance/Mitigation Monitoring, of "Exhibit A-1, Scope of Services/Payment Provisions" of the Agreement to add the following:

**1.2 Upload Phase 1 and Phase 2 Condition Compliance Forms (CCFs) and Documentation to Accela**

Condition Compliance and Mitigation Monitoring for Phases 1 and 2 was completed, and hard copies of CCFs and supporting documentation are on file in the East Garrison Condition Compliance binders maintained by the RMA - Land Use & Community Development Division.

This task includes the creation of the electronic records, and shall include:

- a. CONTRACTOR shall upload to County's web-based permit tracking program (Accela) pertinent approval data for all Conditions of Approval (COA) pertaining to Phases 1 and 2 of the East Garrison development. Uploaded data shall include the date the COA was satisfied, how the COA was satisfied, and the name of the consultant and respective responsible department which verified compliance with the COA.
- b. CONTRACTOR shall upload an electronic copy of the CCFs and supporting documentation into Accela using the correct naming convention, and shall place a hard copy of each CCF with supporting documentation in the East Garrison Condition Compliance binders maintained by the RMA - Land Use & Community Development Division. If the supporting documentation cannot be stored electronically, the CCF shall indicate where the hard copy of the document is kept.

**1.3 Upload Phase 3 CCFs and Documentation to Accela**

- a. CONTRACTOR shall upload to County's web-based permit tracking program (Accela) pertinent approval data for all COA pertaining to Phase 3 of the East Garrison development. Uploaded data shall include the date the COA was satisfied, how the COA was satisfied, and the name of the consultant and respective responsible department which verified compliance with the COA.
- b. CONTRACTOR shall create in Accela a CCF for each COA pertaining to Phase 3 of the East Garrison development. CONTRACTOR shall upload an electronic copy of the CCF and supporting documentation into Accela using the correct naming convention, and shall place a hard copy of each CCF with supporting documentation in the East Garrison Condition Compliance binders maintained by the RMA - Land Use & Community Development Division. If the supporting documentation cannot be stored electronically, the CCF shall indicate where the hard copy of the document is kept.

5. Amend Subtask 4.1, Issues Resolution Meetings and Consultation, under Task 4, Meetings and Project Management, of "Exhibit A-1, Scope of Services/Payment Provisions" of the Agreement to add the following:

- a. CONTRACTOR shall work at County offices for up to three (3) days to receive training on the Accela permit tracking system and to initiate compliance documentation.

- CONTRACTOR's Project Manager and Project Planner shall meet with County as part of a kick-off meeting to review the scope of work and project schedule.
- b. CONTRACTOR's Project Manager and Project Planner shall conduct "check-in" meetings with County to review progress on the compliance documentation and discuss unresolved issues. It is assumed that up to four (4) meetings will be required.
6. All other terms and conditions of the Agreement remain unchanged and in full force.
  7. This Amendment No. 5 and all previous amendments shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
  8. The recitals to this Amendment No. 5 are incorporated into the Agreement and this Amendment No. 5.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 5 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

**COUNTY OF MONTEREY**

**CONTRACTOR\***

By: \_\_\_\_\_  
Contracts/Purchasing Officer

Kimley-Horn and Associates, Inc.  
Contractor's Business Name

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

By: Enda Melvin PE (CA PE 49422)  
(Signature of Chair, President or Vice President)

Its: ENDA MELVIN, SR. VICE PRESIDENT  
(Print Name and Title)

Date: JUNE 27<sup>th</sup>, 2017.

**Approved as to Form and Legality  
Office of the County Counsel**

By:   
Brian P. Briggs  
Deputy County Counsel

By:  PE (#83104)  
(Signature of Secretary, Asst. Secretary, CFO,  
Treasurer or Assistant Treasurer)

Its: JOE KALTSAS, SR. VICE PRESIDENT  
(Print Name and Title) AND ASST. SECRETARY

Date: 6-30-17

Date: 6-27-2017

**Approved as to Fiscal Provisions**

By: \_\_\_\_\_  
Auditor/Controller

Date: 7-3-17

**Approved as to Indemnity and Insurance Provisions**

By: \_\_\_\_\_  
Risk Management

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

\*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.