

Attachment J

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**AMENDMENT NO. 3
TO AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
KITCHELL/CEM, INC.**

THIS AMENDMENT NO. 3 to the Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Kitchell/CEM, 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 an Agreement with County on May 12, 2014 (hereinafter, "Agreement") to provide on-call services over \$100,000 for architectural and engineering design services for various correctional projects located in Monterey County (hereinafter, "services") through May 12, 2017 for an amount not to exceed \$5,000,000; and

WHEREAS, Agreement was amended by the Parties on January 20, 2016 (hereinafter, "Amendment No. 1", including Attachment K-1 – Revised Fee Schedule) to update the Fee Schedule effective January 15, 2016 with no term extension and with no increase in the not to exceed amount; and

WHEREAS, Agreement was amended by the Parties on May 15, 2017 (hereinafter, "Amendment No. 2", including Attachment K-2, Revised Fee Schedule) to update the Fee Schedule effective July 1, 2017 and to extend the term for one (1) additional year through May 12, 2018 with no increase in the not to exceed amount; and

WHEREAS, provisions of the Agreement require an update; and

WHEREAS, County has a continued need for services; and

WHEREAS, CONTRACTOR's Fee Schedule requires an update effective July 1, 2018; and

WHEREAS, additional time is necessary; and

WHEREAS, the Parties wish to further amend the Agreement to update the provisions of the Agreement, to update the Fee Schedule effective July 1, 2018, and to extend the term for one (1) additional year to May 12, 2019 with no associated dollar amount increase to allow CONTRACTOR to continue to provide services identified in the Agreement and as amended by this Amendment No. 3.

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

1. Amend Paragraph 1.1 of Section 1.0, Performance of the Agreement, to delete "This AGREEMENT with Attachment K-2: Revised Fee Schedule, effective July 1, 2017" and add "This AGREEMENT with Attachment K-3: Revised Fee Schedule, effective July 1, 2018".

2. In all places within the Agreement, any reference to Attachment K-2: Revised Fee Schedule, effective July 1, 2017 is hereby replaced with Attachment K-3: Revised Fee Schedule, effective July 1, 2018.

3. Amend Paragraph 3.1 of Section 3.0, "Term of Agreement", to read as follows:

The term shall commence with the signing of the AGREEMENT, May 12, 2014, through and including May 12, 2019.

4. Amend Paragraph 6.2, "Indemnification for Design Professional Services Claims", under Paragraph 6.0, "Design Professional Indemnification", to read as follows:

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, but in no event shall the amount of such CONTRACTOR's liability exceed such CONTRACTOR's proportionate percentage of fault as determined by a court, arbitrator or mediator, or as set out in a settlement agreement. In the event one or more defendants to any action involving such claim or claims against COUNTY is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, such CONTRACTOR shall meet and confer with the other parties to such action regarding unpaid defense costs.

5. Amend Paragraph 8.3 of Section 8.0, "Records and Confidentiality", to add the following:

CONTRACTOR shall maintain such records for a period of at least three (3) years after receipt of final payment under this AGREEMENT. If any litigation, claim, negotiation, audit exception, or other action relating to this AGREEMENT is pending at the end of the three (3) year period, then CONTRACTOR shall retain said records until such action is resolved.

6. Amend Section 8.0, "Records and Confidentiality", to add the following:

8.6 Royalties and Inventions: County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

7. Replace Paragraph 10.3 and Paragraph 10.4 of Section 10.0, "Overriding Contractor Performance Requirements", with the following:

10.3 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 the 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.

8. Amend County information in Paragraph 21.2 of Section 21.0, "Notices", to read as follows:

TO COUNTY:

Carl P. Holm, AICP
Resource Management Agency Director
County of Monterey, Resource Management Agency
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527
Phone: (831) 755-4800
Fax: (831) 755-4958
Email: holmcp@co.monterey.ca.us

9. Add Section, 23.0, "Miscellaneous Provisions", to read as follows:

23.01 Amendment: This AGREEMENT may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

23.02 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.

23.03 Contractor: The term "CONTRACTOR" as used in this AGREEMENT includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this AGREEMENT.

23.04 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.

23.05 Headings: The headings are for convenience only and shall not be used to interpret the terms of this AGREEMENT.

23.06 Non-exclusive Agreement: This AGREEMENT is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

23.07 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.

23.08 Counterparts: This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same AGREEMENT.

23.09 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.

23.10 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.

23.11 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.

10. All other terms and conditions of the Agreement remain unchanged and in full force.
11. This Amendment No. 3 and all previous amendments shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
12. The recitals to this Amendment No. 3 are incorporated into the Agreement and this Amendment No. 3.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 3 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By: W. J. Skirner
Contracts/Purchasing Officer

W.J. Skirner
Deputy Purchasing Agent
County of Monterey

Kitchell/CEM, Inc.
Contractor's Business Name

Date: 5/9/18

By: [Signature]
(Signature of Chair, President or Vice President)

Approved as to Form and Legality
Office of the County Counsel-Risk Management
Charles J. McKee, County Counsel-Risk Manager

Its: David Cassella, Jr VP
(Print Name and Title)

By: [Signature]
Mary Grace Perry
Deputy County Counsel

Date: 4/30/2018

Date: May 7, 2018

By: [Signature]
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Approved as to Fiscal Provisions
By: [Signature]
Auditor/Controller

Its: MICHAEL BRUGGEMAN, Asst Secretary
(Print Name and Title)

Date: 5-8-18

Date: 4/30/2018

Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Management
Charles J. McKee, County Counsel-Risk Manager

By: [Signature]

Name: Lester J. Gward

Title: Chief of County Counsel

Date: 5/8/18

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managing members. If CONTRACTOR is a partnership, the full legal 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 or Amendment to said Agreement.

ATTACHMENT K-3: REVISED FEE SCHEDULE

Effective July 1, 2018

CONTRACTOR'S SLAT	Fiscal Year 2019 Hourly Rates
Project Executive	\$250.00
Engineering Manager	\$221.00
Senior Project Manager	\$211.00
Project Manager	\$163.00
Senior Registered Architect	\$163.00
Security Specialist	\$163.00
Structural Engineer	\$163.00
Civil Engineer	\$163.00
Mechanical Engineer	\$151.00
Electrical Engineer	\$151.00
Commissioning Agent	\$151.00
Registered Architect	\$140.00
Senior Estimator	\$140.00
Senior Scheduler	\$140.00
CMMS Program Manager	\$119.00
Technical Services Manager	\$119.00
CAD/BIM Manager	\$114.00
Designer	\$114.00
Estimator	\$110.00
Scheduler	\$110.00
Stationary Building Engineer	\$107.00
Electronics/Security Technician	\$102.00
HVAC Technician	\$96.00
CAD/BIM Operator	\$88.00
Building Maintenance Technician	\$83.00
Clerical	\$82.00

*Fiscal Year = July 1 - June 30

Hourly rates include salary cost, general and administrative expense, and overhead and profit.

Cost of work and equipment provided by sub-contractors or sub-consultants to CONTRACTOR shall be negotiated and mutually agreed upon by the County and CONTRACTOR for each Delivery Order issued under this Agreement.

Sub-contractor or sub-consultant costs will be marked up by 10% to cover CONTRACTOR's cost of administration.

Reimbursable Expenses

- | | |
|---|---------------------------|
| • Reproduction Charges | Direct Cost + 10% |
| • Communication | Direct Cost + 10% |
| • Travel Outside CONTRACTOR's Home Office | Current Standard IRS Rate |