

**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:

	Current Budget Estimate	Amendment No. 5	Final Budget Estimate
Phase 1			
Task 1 – Condition Compliance/Mitigation Monitoring	\$0	\$7,387	\$7,387
Subtotal Phase 1	\$0	\$7,387	\$7,387
Phase 2			
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
Subtotal Phase 2	\$37,668	\$7,387	\$45,055
Phase 3			
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
Subtotal Phase 3	\$97,132	\$42,387	\$139,519
Total Estimated Fee (Not to Exceed)	\$134,800	\$57,160	\$191,960

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

By: [Signature]
Contracts/Purchasing Officer

Date: 8-24-17

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

By: [Signature]
Brian P. Briggs
Deputy County Counsel

Date: 6-30-17

Approved as to Fiscal Provisions

By: [Signature]
Auditor/Controller

Date: 7-3-17

Approved as to Indemnity and Insurance Provisions

By: _____
Risk Management

Date: _____

CONTRACTOR*

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

By: [Signature] PE (CAPE 49422)
(Signature of Chair, President or Vice President)

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

Date: JUNE 27th, 2017

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

Its: JOE KALTSAS, S.V.P. AND ASST. SECRETARY
(Print Name and Title)

Date: 6-27-17

*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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - AUTOMATIC STATUS WHEN
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II - Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable Limits of

Insurance shown in the Declarations;
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
ANY PERSON OR ORGANIZATION WHOM YOU BECOME OBLIGATED TO INCLUDE AS AN ADDITIONAL INSURED AS A RESULT OF ANY CONTRACT OR AGREEMENT YOU HAVE ENTERED INTO.	PER THE CONTRACT OR AGREEMENT.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that

which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

ENDORSEMENT

This endorsement, effective 12:01 A.M. 04/01/2017, forms a part of

policy No. 5288169

issued to KIMLEY-HORN AND ASSOCIATES, INC.

by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY COVERAGE FOR SPECIFIED PERSONS OR
ORGANIZATIONS NAMED AS ADDITIONAL INSURED -
ONGOING AND COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:


COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The following paragraph is added to **SECTION II - WHO IS AN INSURED** and applies only to persons or organizations we have added to your policy as additional insureds by endorsement to comply with insurance requirements of written contracts relative to: a) the performance of your ongoing operations for the additional insureds; or b) "your work" performed for the additional insureds and included in the "products-completed operations hazard":

This insurance is primary over any similar insurance available to any person or organization we have added to this policy as an additional insured. However, this insurance is primary over any other similar insurance only if the additional insured is designated as a named insured in the Declarations of the other similar insurance. We will not require contribution of limits from the other similar insurance if the insurance afforded by this endorsement is primary.

This insurance is excess over any other valid and collectible insurance, whether primary, excess, contingent or on any other basis, if it is not primary as defined in the paragraph above.

All other terms and conditions of the policy are the same.



Authorized Representative or
Countersignature (in States Where
Applicable)

ENDORSEMENT

This endorsement, effective 12:01 A.M. 04/01/2017 forms a part of

policy No. 4489663 issued to KINLEY-HORN & ASSOCIATES, INC.

by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - WHERE REQUIRED UNDER CONTRACT OR AGREEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

SCHEDULE

ADDITIONAL INSURED:

ANY PERSON OR ORGANIZATION FOR WHOM YOU ARE CONTRACTUALLY BOUND TO PROVIDE ADDITIONAL INSURED STATUS BUT ONLY TO THE EXTENT OF SUCH PERSON OR ORGANIZATIONS LIABILITY ARISING OUT OF THE USE OF A COVERED AUTO.

I. SECTION II - LIABILITY COVERAGE, A. Coverage, 1. - Who Is Insured, is amended to add:

d. Any person or organization, shown in the schedule above, to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of use of a covered "auto". However, the insurance provided will not exceed the lesser of:

- (1) The coverage and/or limits of this policy, or
- (2) The coverage and/or limits required by said contract or agreement.



Authorized Representative or
Countersignature (in States Where
Applicable)

ENDORSEMENT

This endorsement, effective 12:01 A.M. 04/01/2017 forms a part of

policy No. 4489863

issued to KIMLEY-HORN AND ASSOCIATES, INC.

by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INSURANCE PRIMARY AS TO CERTAIN ADDITIONAL INSURED

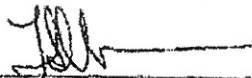
This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

Section IV - Business Auto Conditions, B., General Conditions, 5., Other Insurance, c., is amended by the addition of the following sentence:

The insurance afforded under this policy to an additional insured will apply as primary insurance for such additional insured where so required under an agreement executed prior to the date of accident. We will not ask any insurer that has issued other insurance to such additional insured to contribute to the settlement of loss arising out of such accident.

All other terms and conditions remain unchanged.



Authorized Representative or
Countersignature (in States Where
Applicable)

ENDORSEMENT

This endorsement, effective 12:01 A.M. 04/01/2017 forms a part of

policy No. 4489663

issued to KIMLEY-HORN & ASSOCIATES, INC.

by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

Section IV - Business Auto Conditions, A - Loss Conditions, 5. - Transfer of Rights of Recovery Against Others to Us, is amended to add:

However, we will waive any right of recover we have against any person or organization with whom you have entered into a contract or agreement because of payments we make under this Coverage Form arising out of an "accident" or "loss" if:

- (1) The "accident" or "loss" is due to operations undertaken in accordance with the contract existing between you and such person or organization; and
- (2) The contract or agreement was entered into prior to any "accident" or "loss".

No waiver of the right of recovery will directly or indirectly apply to your employees or employees of the person or organization, and we reserve our rights or lien to be reimbursed from any recovery funds obtained by any injured employee.



AUTHORIZED REPRESENTATIVE

BLANKET WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM 04/01/17 forms a part of Policy No. 015893686

Issued to KIMLEY-HORN AND ASSOCIATES, INC.

By NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

We have a right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against any person or organization with whom you have a written contract that requires you to obtain this agreement from us, as regards any work you perform for such person or organization.

The additional premium for this endorsement shall be 2.00 % of the total estimated workers compensation premium for this policy.



