

SECOND AMENDMENT TO AGREEMENT

1 THIS SECOND AMENDMENT TO AGREEMENT (Second Amendment) is made and
2 entered into this 25th day of May, 2021, by and between the County of
3 Fresno (OWNER or COUNTY) and Kitchell Capital Expenditure Managers, Inc.
4 (CONSULTANT).
5

6 WITNESSETH:

7 WHEREAS, the COUNTY and CONSULTANT entered into an Agreement dated
8 December 16, 2014 identified as Agreement No. 14-736, incorporated herein by reference (the
9 Agreement), for CONSULTANT to provide construction management services for the West
10 Annex Jail project; and

11 WHEREAS, the COUNTY and CONSULTANT entered into the First Amendment to the
12 Agreement dated August 4, 2020 identified as Agreement No. 14-736-1, incorporated herein by
13 reference (First Amendment), which provided for an increase of \$579,739 to the maximum
14 Extra Services compensation amount; and

15 WHEREAS, the additional \$579,739 amount provided by the First Amendment
16 increased the maximum Extra Services allocation to \$1,656,134, and increased the maximum
17 Total Fee amount under the Agreement to \$5,379,986; and

18 WHEREAS, since the date of approval of the First Amendment, additional delays to the
19 construction schedule, including the ongoing inability to obtain final approval from the Office of
20 State Fire Marshal of the plans for the project's fire/smoke control systems, have resulted in the
21 need to extend further the period for CONSULTANT's continued provision of construction phase
22 services; and

23 WHEREAS, the extent to which any redesign and potentially reconstruction work is
24 required in order to obtain such final approval of the plans for the project's fire/smoke control
25 systems, has caused considerable uncertainty regarding the anticipated date for completion of
26 construction; and

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1 WHEREAS, OWNER and CONSULTANT now desire to increase the maximum Extra
2 Services allocation payable under the Agreement by an additional \$1,039,532, in order to
3 ensure adequate funding to compensate CONSULTANT for continuing to provide construction
4 management staff for the anticipated duration of the extended construction schedule and the
5 post-construction phase, and

6 WHEREAS, the increase of \$1,039,532 to the maximum Extra Services allocation is the
7 estimated amount needed to compensate CONSULTANT for continuing to provide construction
8 management services for such additional time as is required, up to 52 weeks (through January
9 18, 2022); and

10 WHEREAS, the increase of \$1,039,532 is based upon the "average per week fee" of
11 \$19,991 listed in Exhibit F-1 (attached to this Second Amendment and incorporated by this
12 reference), multiplied by the projected maximum number of weeks (52) that may be required for
13 completion of CONSULTANT's services; provided, however, that it is expressly understood and
14 acknowledged by the Parties that the actual amount of compensation paid under the
15 Agreement as hereby amended will continue to be governed by the invoices submitted by
16 CONSULTANT, based on the rates listed in Exhibit A to the original Agreement (and subject to
17 any adjustments in the interim pursuant to Paragraph V.A.2 thereof); and

18 WHEREAS, approval of this Second Amendment will increase the maximum amount
19 payable to CONSULTANT for Extra Services to \$2,695,666, and will increase the maximum
20 Total Fee amount payable to CONSULTANT to \$6,419,518, with no change to the Agreement's
21 expiration date, which shall remain as December 31, 2022.

22 NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of
23 which is hereby acknowledged, the parties agree as follows:

24 1. That existing County Agreement No. 14-736, Article IV, Section A, Paragraph 1,
25 at Page twenty-three (23), Lines twenty-one (21) through twenty-three (23), is hereby deleted in
26 its entirety and replaced with the following paragraph:

27 "Notwithstanding any other provision in this Agreement, the Total Fee (Basic Fee and
28 Extra Services Allocation) for the services required under this Agreement shall not exceed a

1 total amount of \$6,419,518.”

2 2. That existing County Agreement No. 14-736, Article IV, Section C, Paragraph 1,
3 at Page twenty-four (24), Line twenty-four (24), beginning with the word “There” and ending on
4 Page twenty-five (25), Line three (3) with the word “exceeded” is hereby deleted in its entirety
5 and replaced with the following paragraph:

6 “There will be an additional maximum allocation of \$2,695,666 to pay for authorized
7 Extra Services. Payment of Extra Services in excess of \$2,695,666 is unauthorized and can
8 only be made pursuant to a prior written amendment to this Agreement when the cumulative
9 total of the Basic Fee and Extra Services allocation would thereby be exceeded. The COUNTY
10 Representative shall have the discretion to adjust in writing the Basic Fee and Extra Services
11 limits as long as the total Agreement amount of \$6,419,518 is not exceeded.”

12 All other terms, conditions, mutual covenants, and promises contained in the
13 Agreement, shall remain in full force and effect, except as hereinabove amended by this
14 Second Amendment. COUNTY and CONTRACTOR agree that this Second Amendment is
15 sufficient to amend the Agreement and that upon execution of this Second Amendment, the
16 original Agreement, the First Amendment, and this Second Amendment shall together be
17 considered as comprising the entire Agreement.

18 The Agreement, as hereby amended, is ratified and continued. All provisions, terms,
19 covenants, conditions and promises contained in the Agreement, and not amended herein,
20 shall remain in full force and effect.

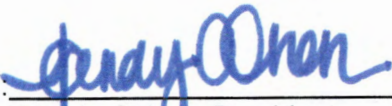
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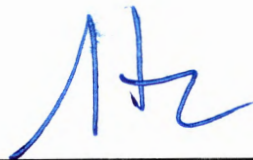
EXECUTED AND EFFECTIVE as of the date first above set forth.

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CONSULTANT

COUNTY OF FRESNO

BY: 
Wendy Cohen, President,
Kitchell Capital Expenditure Managers, Inc.
2450 Venture Oaks Dr. Suite 500
Sacramento, CA 95833


Steve Brandau, Chairman of the Board
of Supervisors of the County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By 
Deputy

FOR ACCOUNTING USE ONLY

ORG No. 43601150, 8845, 8846, 8847
Account No. 7295, 8150
Fund No. 0001, 0400
Subclass No. 10000, 10045, 10046, 10047

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Average Construction Management and Inspection Fee per Week: The below average per week fees represent construction manager, office staff and inspection staff. The below average per week fees exclude specialized basic services such as design phase estimating, value engineering , life cycle costs reviews and constructability reviews.

Extension of Services beyond Original Contract (January 18, 2021) \$19,991/wk