

Attachment A
EIR Contract (Clerk's File)

**AMENDMENT CONTRACT # 16 TO THE
CONTRACT FOR SPECIAL SERVICES BY SWCA ENVIRONMENTAL CONSULTANTS
FOR ENVIRONMENTAL STUDIES STANDBY ROSTER**

**EIR PREPARATION FOR THE DANA ADOBE NIPOMO AMIGOS LAND USE ORDINANCE
AMENDMENT AND CONDITIONAL USE PERMIT**

THIS CONTRACT is made and entered into on this _____ day of _____, 20____, by and between the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California [hereafter "County"], through its Environmental Coordinator [hereafter "Coordinator"] and SWCA, Inc., a Arizona Corporation [hereafter "Consultant"].

WITNESSETH:

WHEREAS, on September 20, 2005, Consultant and County entered into a retainer-type contract with the intention of executing subsequent contract amendments for individual projects as the need arises [hereinafter "Primary Contract"]; and

WHEREAS, the County has authorized the preparation of an Environmental Impact Report for the proposed project identified as Dana Adobe Amigos Land Use Ordinance Amendment and Conditional Use Permit (LRP2011-00001, DRC2011-00042), ED11-044, for a project which lies in the County of San Luis Obispo, and is more precisely located on the plat attached hereto as Exhibit "A" [hereinafter "the Project"]; and

WHEREAS, the County shall maintain high quality standards in the application of environmental laws in the County of San Luis Obispo; and

WHEREAS, the project requires an unbiased Environmental Impact Report [hereafter "EIR"], that is prepared in accordance with the California Environmental Quality Act, Public Resources Code, sections 21000 et seq. [hereafter "CEQA"], the State CEQA Guidelines, California Code of Regulations, title 14, section 15000 et seq. [hereafter "Guidelines"], and the County of San Luis Obispo Environmental Quality Act Guidelines [hereafter "Guidelines"], and that reflects the independent judgment of the County; and

WHEREAS, it is understood that the Consultant shall be the independent contractor of the County to prepare the EIR.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements and stipulations set forth herein, the parties agree as follows:

I. PREPARING THE EIR

A. DUTIES OF THE CONSULTANT.

1. It is a fundamental requirement that this EIR be prepared by an unbiased consultant.
2. To further protect the unbiased EIR requirement, the Consultant agrees that the duties described in this Contract shall be the only work Consultant performs on the Dana Adobe Amigos Land Use Ordinance Amendment and Conditional Use Permit (LRP2011-00001, DRC2011-00042), unless the Consultant obtains prior written consent from the Coordinator.
3. The Consultant shall complete the field exploration, research, tests and analysis necessary to complete an EIR which fulfills the requirements of the EIR content required by CEQA, the Guidelines, and the provisions set forth in Consultant's Scope of Work, [hereafter "scope of work" or "Exhibit B"]. Exhibit B is attached hereto and incorporated by reference at this point except that the information as to cost and time is attached for informational purposes only.
4. Some factors could severely inhibit or prohibit a proposed project. An objective of conducting an environmental impact study is to identify these factors as soon as possible in order to make a determination regarding the feasibility of whether to continue with the EIR or the project. While conducting the EIR, the Consultant shall diligently watch for and analyze those environmental factors which could inhibit or prohibit the Project. If such factors are identified, the Consultant shall immediately notify the Coordinator. The Coordinator will then advise the Consultant in writing on whether to stop work or continue with the EIR.
5. The Consultant shall submit the following documents in multiple copies in phases as described below: (1) an Administrative Draft EIR, (2) a Draft EIR, (3) an Administrative Final EIR and (4) a Final EIR. Consultant agrees to prepare the documents in compliance with the provisions of CEQA, the Guidelines, and Exhibit B.
 - a. The Administrative Draft EIR. The administrative draft EIR is an internal agency document and shall be transmitted only to the Environmental Coordinator, who then may provide it to agencies as needed. Consultant shall not release any part of the administrative

draft EIR to other agencies without advance direction from the Coordinator. Ten (10) weeks following the Early Public Consultation meeting, Consultant shall submit one (1) copy in a 3-ring binder and four (4) electronic copies on CD of an administrative draft EIR with appendices to the Coordinator for agency and staff review and comment. Fifteen (15) working days after the Coordinator submits comments to the Consultant, Consultant shall incorporate all of the Coordinator's comments and shall submit all changed or new pages showing the revisions to the Coordinator. The administrative draft EIR may be submitted and returned for changes as often as necessary until the Coordinator approves a copy as a complete administrative draft EIR. When the Coordinator notifies Consultant that the Coordinator has approved the administrative draft EIR, this phase is complete.

b. The Draft EIR. The Consultant has fifteen (15) working days from Coordinator's approval of the administrative draft EIR to provide the draft EIR, ready for public review. The Consultant shall provide the County with two (2) camera-ready copies (one single-sided and one two-sided copy), twenty-five (25) bound copies and twenty-five (25) CDs (pdf format) and an electronic version in a county-acceptable format (e.g., Word, Excel, etc.) of the draft EIR with appendices, forty (40) bound copies and forty (40) attached CDs of the draft Executive Summary, and three (3) bound copies of the appendices. Also, the draft EIR using an HTML, PDF, or other similar format, shall be divided into chapters so text and graphics can be easily used/placed on the County's web site for quick downloads. The Coordinator must approve the draft EIR for this phase to be complete.

c. The Administrative Final EIR with a Mitigation Monitoring and Reporting Program (MMRP). After the comments described in CEQA and the Guidelines, including sections 15086 and 15087, have been collected by the Coordinator, the Coordinator shall transmit these comments to the Consultant. The Consultant shall prepare written responses to these comments in accordance with CEQA and the Guidelines, including section 15088. Within ten (10) working days of receipt of these comments, the Consultant shall provide the County with two (2) bound copies (3-hole drilled) and one (1) CD of the administrative final EIR with appendices and MMRP for the Coordinator's review, comment and approval. The Coordinator will submit comments to the Consultant. Consultant shall incorporate all of the Coordinator's comments and shall submit all changed or new pages showing the revisions to the Coordinator. The administrative final EIR and MMRP may be submitted and returned for

changes as often as necessary until the Coordinator approves a copy as a complete administrative final EIR and MMRP. When the Coordinator notifies Consultant that the Coordinator has approved the administrative final EIR and MMRP, this phase is complete.

d. The Final EIR. After the Coordinator approves the administrative final EIR, the Consultant shall, within ten (10) working days, provide the Coordinator with two (2) camera-ready copies (one single-sided and one two-sided copy), twenty (20) bound copies with final EIR CDs attached and two (2) additional CDs of the Executive Summary; twenty-five (25) bound copies of the final EIR with appendices, and twenty five (25) CDs (pdf format) with appendices; and three (3) copies (3-ring binder) and six (6) CDs of the appendices. In addition, the Consultant shall submit the following: one set of diskettes/ CDs of the final EIR and appendices in original software version; textual information shall be in Word format (as directed by county); spreadsheets and/or databases shall be in Excel format or other format acceptable to county. Computer spreadsheets and graphics generated for use in the EIR shall be formatted to be easily used as part of the County's ArcView geographic information system as follows:

Any geographic information electronically mapped as part of this project shall be provided as a .SHP file, a format compatible with ESRI's ArcView GIS software program, and shall be registered to the California State Plane NAD 83, Zone 5 coordinate system, units in feet. A .PRJ file shall be included reflecting this coordinate system.

All .SHP files submitted shall include sufficient metadata compatible with the ArcCatalog .XML format. This metadata shall include at minimum the following:

- An abstract containing a brief narrative summary of the data set including levels of accuracy and methods of data capture.*
- Brief descriptions of each mapping unit and its defining characteristics for this county project*
- Purpose for creating the data with a summary of the intentions with which the data set was developed*
- Citation including the name of the organization and/or individual that developed the dataset*
- Maintenance requirements noting the frequency with which changes (if any are necessary) are made to the data set after the initial data set is completed*
- Theme key words associated with the data set*
- Contact information for the creator of the data set and for the creator of the metadata*
- Date the data was published*

Descriptive text, thoroughly defining all features within each mapped data set, shall be incorporated into the data attribute tables. If codes or abbreviations were used for data attributes then a .LYR or other document explaining the codes shall be included. Map symbology shall be provided in a .LYR file which the County can import into any subsequent maps if desired.

When the Coordinator notifies Consultant that Coordinator has approved the final EIR, this phase is complete.

B. DUTIES OF THE COUNTY.

1. The Coordinator will be responsible for ensuring that the EIR reflects the independent judgment of the County as the Lead Agency as required by Section 15084(e) of the Guidelines.

2. The Coordinator will make any documents, relevant to the proposed project, in the possession of Coordinator, available to the Consultant.

3. It is understood that repeated revisions to the EIR are costly for the Consultant and the Coordinator. Therefore the Coordinator shall make every effort to reduce the number of iterations of the EIR to a minimum by diligently reviewing each submittal by the Consultant.

4. Coordinator will advise the Consultant whether to continue with the EIR or stop work when situations are identified, such as environmental, economic, technical, legal or other factors, which could inhibit or prohibit the project.

5. The Coordinator will accomplish the tasks required of the Coordinator described in Paragraph I.A. above.

6. Other agencies and the public may make comments to the draft EIR pursuant to CEQA and the Guidelines, sections 15086 and 15087. The Coordinator will make any of these comments which raise environmental points available to the Consultant.

7. The County will provide for payment to the Consultant as provided by the terms of this Contract. The Coordinator will expeditiously review all work submitted by the Consultant in order to assure prompt payment of invoices. At the request of the Consultant, the Coordinator will explain in writing any delay, not the result of the Consultant, that would prevent payment of the invoice within 30 days of receipt by the Coordinator.

C. PAYMENT.

1. County's Maximum Cost of the EIR. The Contract for the preparation of the EIR is a lump sum Contract. It is not a time and materials Contract. The County will pay the Consultant a maximum amount of thirty seven thousand three hundred thirty three dollars

(\$37,333) for a Coordinator-approved, final EIR. The County will pay Consultant in staged payments throughout the performance of the Contract. The sums due under the timing of these staged payments are tied to products delivered by the Consultant to the Coordinator and approval of such products by the Coordinator.

2. Time of payment. At the request of the Coordinator, the Consultant shall submit itemized statements for work performed on each phase or from the execution of the Contract to the date of the request. The County has the right to access and copy the records to verify all work performed on the Contract to date. The County's right to inspect and copy records is in addition to the legal rights and liabilities of the parties pursuant to an audit described in paragraph III.M. of the Primary Contract.

a. Consultant will be paid twenty percent (20%) of the maximum amount in paragraph I.C.1. above, seven thousand four hundred sixty six dollars and sixty cents (\$7,466.60), within thirty (30) days after the Coordinator receives a correct invoice and approves two (2) copies of the project description and EIR outline. If the Contract is terminated before the Consultant expends twenty percent (20%) of the maximum contract price in billable items, the County is entitled to a refund of the difference between the twenty percent (20%) down payment and an itemized billing amount for the work to termination date based on the rates and schedules in Exhibit B.

b. Consultant will be paid forty percent (40%) of the maximum amount in paragraph I.C.1. above, fourteen thousand nine hundred thirty three dollars and twenty cents (\$14,933.20), within thirty (30) days after the Coordinator receives a correct invoice, and receives and approves the contracted number of copies of the administrative draft EIR.

c. Consultant will be paid twenty percent (20%) of the maximum amount in paragraph I.C.1. above, seven thousand four hundred sixty six dollars and sixty cents (\$7,466.60), within thirty (30) days after the Coordinator receives a correct invoice, and receives and approves the contracted number of copies of the draft EIR.

d. Consultant will be paid twenty percent (20%) of the maximum amount in paragraph I.C.1. above, seven thousand four hundred sixty six dollars and sixty cents (\$7,466.60), within thirty (30) days after the Coordinator receives a correct invoice, and receives and approves the contracted number of copies of the final EIR and MMRP.

3. Early Termination Payment. If the Contract is terminated prior to the completion of the final EIR for a reason other than breach by the Consultant, the County will pay Consultant for work performed on the Contract from execution to termination, but not to exceed the maximum percentages listed above for each approved phase plus an additional amount for work performed in any incomplete phases prior to termination date based on the rates and schedules in Exhibit B. Payment for attendance at meetings and hearings, travel and per diem shall be allocated to the phase in which the travel occurred. If any phase is not completed and the Contract is terminated due to breach by the Consultant, the amount due Consultant shall be the maximum amount of the EIR less the amount required to hire and compensate a replacement Consultant to complete the EIR.

4. Cost Containment. In no event is the Consultant authorized to incur additional costs beyond the maximum amounts in this Contract without prior written agreement signed by the County. Before incurring additional costs or providing additional services, Consultant must inform Coordinator, in writing, of the estimated additional costs. Without prior written approval signed by the County, the County shall not be liable for any amount over the amounts specified herein.

5. Early Payment. For good cause, and in the sole discretion of the County, the County may make such early payments during any phase without terminating this Contract. The Consultant shall preserve the work performed to date and minimize the need to repeat work on the current phase. Before receiving an early payment, the Consultant shall submit an itemized statement showing time and materials spent from execution to date, specifically identifying the work done on the phase in progress and the estimated amounts remaining to complete the phase in progress. In no event shall Consultant be entitled early payment for a future phase. The Board of Supervisors delegates the authority to make early payments to the Environmental Coordinator provided the Environmental Coordinator retains sufficient funds to complete the phase in progress including costs to re-start a delayed phase. The County shall incur no liability for declining to make an early payment.

6. Delegation of County Signatory Authority for Minor Modifications. The Board of Supervisors delegates to the Environmental Coordinator the authority to sign amendments to this Contract that make reasonable modifications to the time performance or that increase the scope of work and provide additional compensation, provided that all amendments do not total

more than ten percent (10%) of the total lump sum amount stated in paragraph I.C.1 above, three thousand seven hundred and thirty-three dollars and thirty cents (\$3,733.30). Any amendment beyond that cumulative amount or an amendment pertaining to any performance other than increasing the scope of work, including but not limited to insurance, indemnity, property and other provisions in this Contract or the Primary Contract must be in writing and signed by the Board of Supervisors. These additional funds are intended to provide for flexibility needed to respond to changes generated in writing by the County; not by the Consultant. Any modification to the Contract within the scope of this paragraph need only be signed by the Consultant and the Coordinator; after approval as to form and legal effect by a Deputy County Counsel.

II. PROJECT MEETINGS AND PUBLIC HEARINGS

This section of the Contract, Section II, "Project Meetings and Public Hearings," is an option to be exercised solely at the discretion of the Coordinator.

A. NUMBER OF MEETINGS AND HEARINGS.

At the Coordinator's request, Consultant will send appropriate representatives to five (5) project meetings and three (3) public hearings.

B. PAYMENT CALCULATIONS.

Attendance at project meetings and public hearings. The Consultant shall be paid for the time spent by Consultant's representatives in preparing for and attending the project staff meetings and public hearings. The Consultant shall submit an itemized billing for each meeting or hearing attended. For preparation and attendance at such meetings or hearings, Consultant's staff will be paid at the hourly rates as described in Exhibit B.

The total maximum for preparation, attendance and participation of all of Consultant's representatives in all (up to 5) project meetings and all (up to 3) public hearings on the project and appeal, if any, is seven thousand seven hundred thirty three dollars (\$7,733.00). This is in addition to the amount stated in paragraph I.C.1. above.

III. PROPOSED FINDINGS

This section of the Contract, Section III, "Proposed Findings," is an option to be exercised solely at the discretion of the Coordinator.

A. DUTIES FOR FINDINGS.

At the Coordinator's request, Consultant shall prepare and deliver to Coordinator, two (2) copies and one (1) CD of proposed findings for use by the Planning Commission and Board of Supervisors. The findings shall be prepared in accordance with the requirements of the Guidelines, sections 15091 and 15093. The Coordinator will notify Consultant of a reasonable due date for the proposed findings. The Coordinator must approve the proposed findings for this performance to be complete. Findings shall also be provided to the County on diskette(s), using WordPerfect or Word (County's latest version); any spreadsheets and/or databases developed for these findings will be provided on these diskettes in Excel format or other county-approved format.

B. PAYMENT FOR FINDINGS.

County shall pay Consultant on a time and materials basis for preparing proposed Findings, up to a total maximum amount of four thousand five hundred thirty eight dollars (\$4,538.00) for Coordinator-approved proposed findings. Consultant will submit an itemized statement. The Project Manager will be billed based on the rates and schedules in Exhibit B. Payment will be due thirty (30) days after approval of proposed findings and receipt of Consultant's correct invoice. Payment for findings is in addition to the amounts stated in paragraphs I.C.1. and II.B. above.

IV. OPTIONAL TASKS

This section of the Contract, Section IV, "Optional Tasks," is an option to be exercised solely at the discretion of the Coordinator.

A. DUTIES FOR OPTIONAL TASKS.

Additional tasks may be needed in order to complete the EIR. The necessity of these tasks are dependent upon the review of existing information and evaluation of the project site that are included within the scope of work (Exhibit B). Based on the review, Consultant may recommend, and Coordinator may authorize additional tasks related to cultural resource

recordation and evaluation. These additional tasks are described in Exhibit B and may include the following, or some combination thereof:

- Site Recording
- Additional Expanded Phase I
- GeoArchaeological Assessment
- Archaeological Evaluation
- Final Cultural Resources Report

No work on any Optional Task may be undertaken by Consultant without prior written authorization of the Coordinator.

B. PAYMENT FOR OPTIONAL TASKS

The County shall notify the applicant when one or more optional tasks are required and shall request payment for each as described in IV – Optional Tasks. Upon receiving the required payment from the applicant for each optional task, the Coordinator shall authorize in writing, the Consultant to begin work on each optional task. The Consultant has twenty (20) working days from the Coordinator's request for each optional task to provide the product to the County, ready for the Coordinator's review, comment, and approval. The Consultant shall provide the County with two (2) copies of each optional task product.

County shall pay Consultant on a time and materials basis for the Optional tasks, up to a total maximum amount of forty two thousand seven hundred forty three dollars (\$42,743.00) for the successful completion of these tasks. Consultant will submit an itemized statement. The payment for the Optional Tasks will be as follows:

1. Site Recording - seven thousand five hundred fifty six dollars (\$7,656.00)

Payment will be due thirty (30) days after completion of the Optional task to the satisfaction of the Coordinator and receipt of the Consultant's correct invoice. The total maximum for completion of the Optional Task is seven thousand five hundred fifty six dollars (\$7,656.00).

2. Additional Expanded Phase I – ten thousand two dollars (\$10,002.00). Payment will be due thirty (30) days after completion of the Optional task to the satisfaction of the Coordinator and receipt of the Consultant's correct invoice. The total maximum for completion of the Optional Task is ten thousand two dollars (\$10,002.00).

3. GeoArchaeological Assessment – one thousand four hundred ninety dollars (\$1,490.00). Payment will be due thirty (30) days after completion of the Optional task to the satisfaction of the Coordinator and receipt of the Consultant's correct invoice. The total maximum for completion of the Optional Task is one thousand four hundred ninety dollars (\$1,490.00).

4. Archaeological Evaluation – eighteen thousand nine hundred fifty six dollars (\$18,956.00). Payment will be due thirty (30) days after completion of the Optional task to the satisfaction of the Coordinator and receipt of the Consultant's correct invoice. The total maximum for completion of the Optional Task is eighteen thousand nine hundred fifty six dollars (\$18,956.00).

5. Final Cultural Resources Report – four thousand six hundred thirty nine dollars (\$4,639.00). Payment will be due thirty (30) days after completion of the Optional task to the satisfaction of the Coordinator and receipt of the Consultant's correct invoice. The total maximum for completion of the Optional Task is four thousand six hundred thirty nine dollars (\$4,639.00).

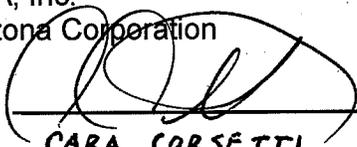
V. GENERAL CONDITIONS

All other provisions of the Primary Contract not specifically altered by this Contract remain in full force and effect and are incorporated herein by reference.

CONSULTANT

SWCA, Inc.
A Arizona Corporation

By: _____


CARA CORSETTI

3/13/2013

Date

By: _____

Date

COUNTY OF SAN LUIS OBISPO

By: _____
Chairman of the Board of Supervisors

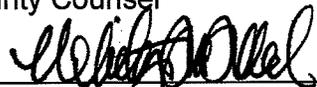
ATTEST:

Clerk of the Board of Supervisors

Date

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By:  _____
Deputy County Counsel

Dated: March 18, 2013