

**CONTRACT FOR SPECIAL SERVICES  
BY INDEPENDENT CONTRACTOR**

**ASSISTANT PROJECT MANAGER FOR PHILLIPS 66 RAIL SPUR PROJECT  
(DRC2012-00095)**

THIS CONTRACT [hereafter "Contract"] is made and entered into on this \_\_\_\_ day of \_\_\_\_, 2013, by and between the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California [hereafter "County"] and SWCA Environmental Consultants, an Arizona corporation [hereafter "Assistant Project Manager," "Consultant," or "Contractor"]. The Environmental Coordinator for the County of San Luis Obispo [hereafter "Coordinator"] is an agent for the County.

WITNESSETH:

WHEREAS, Phillips 66 Company [hereafter "Applicant"] has made an application to the County for a proposed project identified as the Phillips 66 Rail Spur Project Development Plan / Coastal Development Permit (DRC2012-00095; ED12-201) [hereafter "Project"], which lies in the County of San Luis Obispo, and is more precisely located on the map attached hereto as Exhibit "A"; and

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

WHEREAS, it is understood that the Consultant shall be the independent contractor of the County as an Assistant Project Manager; and

WHEREAS, Applicant is obligated for all costs incurred by the County associated with Assistant Project Manager services; and

WHEREAS, Applicant has authorized County to contract for Consultant services, as an independent contractor to the County for Assistant Project Manager services; and

WHEREAS, it is understood that the attached work scope is intended to cover all Assistant Project Manager services for the Project.

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

## **I. ASSISTANT PROJECT MANAGER SERVICES**

### **A. General Provisions**

1. Assistant Project Manager services are described in the Scope of Work relating to the Project attached hereto as Exhibit B and incorporated by reference as if set forth in full at this point. The provisions for budget, cost and hourly rates which are included in Exhibit B are for information purposes only.

2. Priority. To the extent that there may be a conflict between the terms or conditions of this Contract or the terms and conditions of the Scope of Work, the specific language of this Contract shall control.

### **B. Duties of the Assistant Project Manager**

1. The duties of the Assistant Project Manager are described in the Scope of Work attached hereto as Exhibit B.

2. It is a fundamental requirement that the Assistant Project Manager duties be performed by a neutral and unbiased Consultant. To protect the neutral and unbiased requirement, the Assistant Project Manager agrees not to perform any other work for the Applicant on the Project concurrently with the performance of this Contract aside from the Assistant Project Manager obligations pursuant to this agreement. The Assistant Project Manager must disclose any other work being conducted for the Applicant currently or within the past five (5) years. The Assistant Project Manager shall not, directly or indirectly, accept anything of value, any further privilege or any promise from the Applicant, unless approved in advance by the Coordinator or unless such item of value, privilege or promise is offered by the Applicant to the general public.

### **C. Duties of the County**

1. The County will make any documents in its possession related to the Project available to the Assistant Project Manager. The Assistant Project Manager may identify and request documents from the Coordinator that may be in the possession of the Applicant. The Coordinator will forward these requests to the Applicant. Copies of any relevant documents made available by the Applicant to the Coordinator will be forwarded to the Assistant Project Manager.

2. The Coordinator will receive and file the documents submitted by the Assistant Project Manager.

3. The County will provide for payment to the Assistant Project Manager as provided by the terms of this Contract. The Applicant is responsible for all sums paid by the County to the Assistant Project Manager for performing the services described in Exhibit B. The Applicant is responsible for the reasonable costs and expenses of the County in administering this Contract.

#### **D. Payment**

1. County's maximum cost of payments to the Assistant Project Manager. This is a time and materials contract not to exceed ninety nine thousand six hundred and ninety three dollars (\$99,693). The County will pay the Assistant Project Manager the fees according to the cost estimate and based on hourly rates in Exhibit B up to this maximum amount for performing the assistant project management activities described herein.

2. Time of Payment. The payments shall be made as described below. For each payment, the County shall not become obligated to pay Assistant Project Manager until County is in receipt of Assistant Project Manager's itemized statement. If any itemized statement item is in dispute, the County will notify Assistant Project Manager of the disputed item within thirty (30) days of receipt of the itemized statement and will pay the Assistant Project Manager for the non-disputed items. Payment for a disputed item shall not become due until the dispute is resolved. The County has the right to access and copy the records to verify all items listed on the itemized statement. The Coordinator's thirty (30) day time limit to examine the itemized statement and dispute items for purposes of calculating the payment due amount does not limit the legal rights or liabilities of the parties pursuant to an audit described in paragraph IV.E. below.

a. Assistant Project Manager will be paid monthly, based on the Assistant Project Manager's correct itemized statement.

b. Payment is due thirty (30) days after receipt of the itemized statement.

3. Early Termination Payment. If the Contract with the Assistant Project Manager is terminated prior to the completion of the performance by the Assistant Project Manager for a reason other than breach by the Assistant Project Manager, the County will pay the Assistant Project Manager for work performed on the Contract from execution to termination on a time and materials basis based on the rates listed in Exhibit B. If the Contract is terminated due to breach by the Assistant Project Manager, the amount due to the Consultant shall be the maximum amount of this Contract less the amount required to hire and compensate a replacement Assistant Project Manager to complete the performance not performed by the Assistant Project Manager under this Contract.

**E. Minor Modifications.**

The Board of Supervisors delegates to the 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 fifteen percent (20%) of the total lump sum amount stated in paragraph I.D.1 above, or nineteen thousand nine hundred and thirty eight dollars and sixty cents (\$19,938.60). 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, 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. GENERAL CONTRACTUAL TERMS AND CONDITIONS.**

**A. Terms Controlling**

The terms contained in this Contract are controlling and consist of all terms and conditions agreed to by the parties to this contract.

**B. Independent Contractor**

The Assistant Project Manager shall be deemed to be an independent contractor of County. Nothing in this Contract shall be construed as creating an employer-employee relationship or a joint venture relationship. Nothing in this Contract authorizes, or permits, the County to exercise discretion or control over the professional manner in which Assistant Project Manager performs the services which are the subject of this contract; provided, however, that the services to be provided by Assistant Project Manager shall be provided in a manner consistent with all applicable standards and regulations governing such services.

**C. No Eligibility for Fringe Benefits**

Assistant Project Manager understands and agrees that its personnel are not, and will not be, eligible for membership in or any benefits from any County group plan for hospital, surgical, or medical insurance, or for membership in any County retirement program, or for paid vacation, paid sick leave, or other leave, with or without pay, or for any other benefit which accrues to a County employee.

**D. Indemnification**

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless the County, its officers, agents, and employees from all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement to the extent caused by the negligent performance or attempted performance of the provisions hereof, including any willful or negligent act or omission to act on the part of the Consultant or his agents or employees or independent contractors. This indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County.

**E. Insurance**

Contractor, at its sole cost and expense, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable) and shall provide products/completed operations coverage for four (4) years following completion of Contractor's work under this Agreement and

acceptance by the County. Any failure to comply with reporting provisions(s) of the policies referred to above shall not affect coverage provided to the County, its officers, employees, volunteers and agents. For purposes of the insurance policies required hereunder, the term "County" shall include officers, employees, volunteers and agents of the County of San Luis Obispo, California, individually or collectively.

1. Minimum Scope And Limits of Required Insurance Policies. The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the County:

a. COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL") Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage. (Occurrence Form CG 0001) with policy limits not less than the following:

- \$1,000,000 each occurrence (combined single limit);
- \$1,000,000 for personal injury liability;
- \$1,000,000 aggregate for products-completed operations; and,
- \$1,000,000 general aggregate.

The general aggregate limits shall apply separately to Contractor's work under this Agreement.

b. BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL"). Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability Coverage, Code 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than One-million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage. Such policy shall be applicable to vehicles used in pursuit of any of the activities associated with this Agreement. Contractor shall not provide a Comprehensive Automobile Liability policy which specifically lists scheduled vehicles without the express written consent of County.

c. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC/EL"). This policy shall include at least the following coverages and policy limits:

1. Workers' Compensation insurance as required by the laws of the laws of the State of California; and

2. Employer's Liability Insurance Coverage B with coverage amount not less than one million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and, one million (\$1,000,000) dollars each employee BI by disease.

d. PROFESSIONAL LIABILITY INSURANCE POLICY ("PL"). This policy shall cover damages, liabilities, and costs incurred as a result of Contractor's professional errors and omissions or malpractice. This policy shall include a coverage limit of at least One Million Dollars (\$1,000,000) per claim, including the annual aggregate for all claims (such coverage shall apply during the performance of the services under this Agreement and for two (2) years thereafter with respect to incidents which occur during the performance of this Agreement). Contractor shall notify the County if any annual aggregate is eroded by more than seventy-five percent (75%) in any given year.

2. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS. Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Contractor and approved by the County before work is begun pursuant to this Agreement. At the option of the County, Contractor shall either reduce or eliminate such deductibles or self-insured retentions as respect the County, its officers, employees, volunteers and agents, or shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

3. ENDORSEMENTS. All of the following clauses and endorsements, or similar provisions, are required to be made a part of insurance policies indicated in parentheses below:

a. A "Cross Liability", "Severability of Interest" or "Separation of Insureds" clause (CGL & BAL);

b. The County of San Luis Obispo, its officers, employees, volunteers and agents are hereby added as additional insureds with respect to all liabilities arising out of Contractor's performance of work under this Agreement (CGL & BAL);

c. If the insurance policy covers an "accident" basis, it must be changed to "occurrence" (CGL & BAL).

d. This policy shall be considered primary insurance with respect to any other valid and collectible insurance County may possess, including any self-insured retention County may have, and any other insurance County does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL, BAL & PL);

e. No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to County at the address set forth below (CGL, BAL, WC/EL & PL);

f. Contractor and its insurers shall agree to waive all rights of subrogation against the County, its officers, employees, volunteers and agents for any loss arising under this Agreement (CGL); and

g. Deductibles and self-insured retentions must be declared (All Policies).

4. ABSENCE OF INSURANCE COVERAGE. County may direct Contractor to immediately cease all activities with respect to this Agreement if it determines that Contractor fails to carry, in full force and affect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Contractor's delay and expense. At the County's discretion, under conditions of lapse, the County may purchase appropriate insurance and charge all costs related to such policy to Contractor.

5. PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION. Prior to commencement of work under this Agreement, and annually thereafter for the term of this Agreement, Contractor, or each of Contractor's insurance

brokers or companies, shall provide County a current copy of a Certificate of Insurance, on an Accord or similar form, which includes complete policy coverage verification, as evidence of the stipulated coverages. All of the insurance companies providing insurance for Contractor shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

Murry Wilson  
County of San Luis Obispo  
Department of Planning and Building  
976 Osos St., Room 300  
San Luis Obispo, California 93408-2040

#### **F. Warranty of Contractor**

Assistant Project Manager, its officers and employees, and subcontractors will comply with all applicable federal or state laws while performing this Contract. Assistant Project Manager warrants that it, and each of the personnel employed or otherwise retained by Assistant Project Manager, will at all times be properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to. Assistant Project Manager warrants that the persons performing the services for this Contract are specially trained, experienced, expert and competent to perform such special services of performing the assistant project management required for the Project. Assistant Project Manager warrants that the Assistant Project Manager, its subcontractors and real persons working on this Contract have no conflict of interest with this project and will produce an independent, objective and unbiased work product.

#### **G. Non-Assignment of Contract**

Inasmuch as this Contract is intended to secure the specialized services of the Assistant Project Manager, Assistant Project Manager shall not delegate its obligations under this Contract and shall not assign or otherwise transfer its rights under this Contract or any interest therein without the prior written consent of County. Any such assignment, transfer, delegation, or sublet without the County's prior written consent shall be null and void.

## **H. Nondiscrimination**

Assistant Project Manager will not discriminate, in any manner forbidden by law, against any person employed to perform services under this Contract.

## **I. Termination of Contract for Cause**

1. If any of the following occur, County shall have the right to terminate this contract effective immediately upon giving written notice to the Assistant Project Manager:

(a) Assistant Project Manager fails to perform its duties to the satisfaction of the County;

(b) Assistant Project Manager fails to fulfill in a timely and professional manner its obligations under this Contract; or

(c) Assistant Project Manager, or its agents or employees, fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the County.

2. The Assistant Project Manager may terminate this Contract for cause if the following conditions occur:

(a) If a representative of the Coordinator has unreasonably failed to perform the Coordinator's duties under this Contract in a timely and professional manner, causing unreasonable delay within the control of the Coordinator; and

(b) The Assistant Project Manager has given written notice to the Coordinator, stating specific reasons for the dissatisfaction of the Assistant Project Manager with the performance of the representative of the Coordinator; and

(c) If the Coordinator fails to cure the problem of performance within a reasonable time, the Assistant Project Manager must give written notice of the County's unreasonable failure to perform, stating the specific reasons therefore, to the Board of Supervisors of San Luis Obispo County.

The Board of Supervisors has a right to cure such defect in performance within a reasonable time by causing performance or by giving written notice to Assistant

Project Manager of an intention to perform within a reasonable time thereafter. If the Board of Supervisors fails to cure the defect within a reasonable time, the Assistant Project Manager may give written notice of termination for cause delivered to the Board of Supervisors with an information copy to the Coordinator.

**J. Entire Agreement and Modifications**

This Contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto concerning the matters addressed herein. Assistant Project Manager shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations to the Assistant Project Manager's obligations or performance shall be effective unless in writing and signed by the parties. The Assistant Project Manager specifically acknowledges that in entering into and executing this Contract, Assistant Project Manager relies solely upon the provisions contained in this contract and no others.

**K. Applicable Law and Forum Selection**

This Contract has been executed and delivered in the State of California and covers services to be performed in California. The parties agree that the validity, enforceability, and interpretation of the Contract or any of its provisions shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo, State of California, and the forum for any action or proceeding that may be brought, or arise out of, this Contract shall be a state court in the State of California and in the County of San Luis Obispo.

**L. Severability**

The invalidity of any provision of this contract shall not affect the validity or enforceability of any other provision of this contract.

**M. Records**

Pursuant to California Government Code § 10532, every county contract involving the expenditure of more than \$10,000 in public funds is subject to examination and audit of the Auditor General for a period of three years after final payment under the

Contract. Assistant Project Manager shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Contract. The foregoing constitutes "records" for the purposes of this paragraph. Assistant Project Manager shall maintain and preserve, until three years after termination of this agreement, and permit the State of California or any of its duly authorized representatives, including the Comptroller General of the United States, to have access to and to examine and audit any pertinent books, documents, papers, and records of Assistant Project Manager related to this Contract. Assistant Project Manager and County shall ensure the confidentiality of any records that are required by law to be so maintained.

#### **N. Cost Disclosure - Documents and Written Reports**

Pursuant to Government Code section 7550, if the total cost of this Contract is over \$5,000.00, the Assistant Project Manager shall include in all final documents and in all written reports submitted, a written summary of costs, which shall set forth the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report. The Contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

### **IV. SPECIAL CONDITIONS TO CONTRACT**

#### **A. Notices**

Any notice required to be given pursuant to the terms and provisions hereof shall be in writing, and shall be sent by first class mail to the following address as appropriate:

1. To the Environmental Coordinator

Environmental Division  
Co. Planning & Bldg. Department  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408

2. To the Board of Supervisors

Board of Supervisors  
County Government Center  
1055 Monterey Street D430  
San Luis Obispo, California 93408

3. To the Assistant Project Manager

SWCA Environmental Consultants  
1422 Monterey St., Suite C200  
San Luis Obispo, CA 93401

**B. Copyright**

Any reports, maps, documents or other materials produced in whole or part under this Contract shall be the property of the County and none shall be subject to an application for copyright by or on behalf of Assistant Project Manager.

**C. Confidentiality**

No reports, maps, information, documents, or any other materials given to or prepared by Assistant Project Manager under this Contract shall be made available to any individual or organization not affiliated with the County by Assistant Project Manager without the prior written approval of County. However, Assistant Project Manager shall be free to disclose such data as is publicly available.

**D. Equipment and Supplies**

Assistant Project Manager will provide all necessary equipment and supplies in order to carry out the terms of this Contract.

**E. Access to Records and Financial Data**

All recorded data, preserved in any form, but not limited to materials generated for this project or existing information compiled for this project and any financial documents pertaining to this project are the property of the County. At the request of the Board of Supervisors, the Coordinator, the County Director of Planning and Building, the County Counsel, the County Chief Administrative Officer or the County Auditor, the County's agents or employees have a right to access these records wherever located during reasonable hours. This right to access includes the right to make copies of such information.

**F. Terms of this Contract as Controlling**

To the extent that any terms or conditions set forth in the Assistant Project Manager's Proposal, or past business practices between Assistant Project Manager and

County or Coordinator, differ from the terms and conditions of this Contract, the terms and conditions expressed in this Contract are controlling.

**ASSISTANT PROJECT MANAGER**

SWCA ENVIRONMENTAL CONSULTANTS

An Arizona Corporation

By: \_\_\_\_\_

Cara Corsetti, Principle

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: 7/12/13