



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning & Development
Department No.: 053
For Agenda Of: 5-5-2009
Placement: Administrative
Estimated Tme: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director(s) John Baker, 568-2085
Contact Info: Dianne Black, 568-2086

SUBJECT: Contract for Assembling the Administrative Record for Santa Barbara Ranch

County Counsel Concurrence

As to form: Yes No N/A

Auditor-Controller Concurrence

As to form: Yes No N/A

Other Concurrence:

As to form: Yes No N/A

Recommended Actions:

That the Board of Supervisors approve the attached Agreement for Services with Kroll Ontrack, which would convert County Purchase Agreement Contract Number CN08725 to a Board Contract for assembling the administrative record for the Santa Barbara Ranch Project litigation in an amount not to exceed \$133,900 and a term to end on June 30, 2009.

Summary Text:

The Santa Barbara Ranch Project was approved by the Board of Supervisors on October 21, 2008. The County was subsequently served notice by the Environmental Defense Center, Surfrider and the Naples Coalition of its intent to initiate litigation. In preparation for that litigation, and with the request and consent of the applicant, the County began the process of assembling the administrative record. Naples Coalition, Environmental Defense Center and Surfrider Foundation filed Santa Barbara Superior Court Case No. 1304044 on November 20, 2008 to vacate County's approvals for this residential development project. The contract with Kroll Ontrack, which converts original documents into digital form and organizes electronic files, will allow the process to be completed.

Performance Measure:

N/A

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis: All costs incurred under this contract for the Santa Barbara Ranch Project are reimbursed by the applicant for the Santa Barbara Ranch Project. From December 15, 2008, through the present, Kroll Ontrack has been paid through Purchase Agreement No. CN08725 for an original amount of \$50,000 with an amendment dated February 9, 2009 in the amount of \$50,000 with a total not to exceed amount of \$100,000. The Purchase Agreement is nearing the \$100,000 limit and the new contract will provide \$33,900 to complete the records assemblage.

Staffing Impacts:

N/A

Special Instructions:

- Clerk of the Board will forward a copy of the Minute Order to Planning & Development;
Attn: Accounting
- Planning & Development will issue a Notice-to-Proceed to Kroll Ontrack.

Attachments:

Attachment A: Agreement for Services of Independent Contractor

Authored by:

Dianne Black

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Kroll Ontrack Inc., having its principal place of business at 9023 Columbine Road, Eden Prairie, MN 55347 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

RECITALS

COUNTY executed effective December 15, 2008 Purchase Agreement CN08725 with CONTRACTOR in the amount of \$100,000 for the period of December 15, 2008 through June 30, 2009. COUNTY has determined that during the term of this Purchase Agreement it will incur greater costs than originally anticipated under the Purchase Agreement and will exceed the \$100,000 limit before the end of the fiscal year. On this basis, COUNTY is converting the Purchase Agreement to a Board Contract. This Agreement, which is made to cancel, nullify, and supersede Purchase Agreement CN08725, provides for a total contract amount of \$133,900 for Fiscal Year 2008-09.

NOW, WHEREAS, Purchase Agreement contract number CN08725 provided prior contractual authorization for Contractor to render legal technological services on the Santa Barbara Ranch Project; and

WHEREAS, \$98,867.51 of the \$100,000.00 not-to-exceed amount under contract number CN08725 has been expended thus far; and

WHEREAS, an additional \$33,900.00 of funding is necessary to complete work on the Santa Barbara project; and

WHEREAS, County and Contractor have agreed that all obligations and warranties under contract number CN08725 shall remain in full force and effect, unless expressly superseded by this Agreement; and

WHEREAS, County and Contractor have agreed to perform their respective duties and obligations as described in this Agreement,

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE.** Dianne Black at phone number (805) 568-2086 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Dan Larson at phone number (952) 358-5363 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To COUNTY: County of Santa Barbara
Planning and Development
123 East Anapamu Street
Santa Barbara, CA 93101
Attn: Accounting

To CONTRACTOR: Kroll Ontrack
Legal Technologies
9023 Columbine Road
Eden Prairie, MN 55347
Attn: Dan Larson

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** CONTRACTOR shall commence performance on December 15, 2008, and shall continue until June 30, 2009, unless otherwise directed by COUNTY or unless earlier terminated. The parties were previously operating under a Purchase Agreement (CN08725).

5. **COMPENSATION OF CONTRACTOR.** CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 **NOTICES.** above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice. COUNTY agrees that in the event the net purchase price is not paid according to the above terms, COUNTY will pay a late payment charge which shall be added in the amount of 1 1/2% per month, or the maximum percentage allowable under state law; and to pay all CONTRACTOR's costs of collection including, without limitation, reasonable attorney's fees.

6. **INDEPENDENT CONTRACTOR.** CONTRACTOR shall perform all of its services under this Agreement as an independent contractor and not as an employee of COUNTY. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure.

7. **STANDARD OF PERFORMANCE.** CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. **TAXES.** COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security),

unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

9. **CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR.

10. **RESPONSIBILITIES OF COUNTY.** COUNTY shall provide all information reasonably necessary to CONTRACTOR for the services provided herein.

11. **OWNERSHIP OF DOCUMENTS.** Upon payment in full of CONTRACTOR's fees, COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever (paper or electronic), whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any materials under this section except after prior written approval of COUNTY.

Copyright. No materials delivered in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of COUNTY. COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

12. **RECORDS, AUDIT, AND REVIEW.** CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice.

13. **INDEMNIFICATION AND INSURANCE.** CONTRACTOR shall agree to defend, indemnify and save harmless the COUNTY and to procure and maintain insurance in accordance with the provisions of EXHIBIT C attached hereto and incorporated herein by reference.

14. **NONDISCRIMINATION.** COUNTY hereby notifies CONTRACTOR that the COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

15. **NONEXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

16. **ASSIGNMENT.** CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

17. **TERMINATION.** *For Convenience:* Either CONTRACTOR or COUNTY may, for any reason, prior to the expiration date of this Agreement, terminate this Agreement upon thirty (30) days notice in writing to the other. *For Cause:* Upon a material breach of the Contract by either CONTRACTOR or COUNTY, the other may terminate by written notice as specified in paragraph 17.

17.1. *Work In Progress.* Unless otherwise directed in the notice of termination, all work under the Agreement must be immediately halted, and CONTRACTOR must deliver to COUNTY all documents specified in paragraph 11.

17.2. *Payment.* COUNTY will pay CONTRACTOR for services evident to, and performed to the satisfaction of, the COUNTY prior to notice of termination. However, in no event will COUNTY pay CONTRACTOR any amount that exceeds the stated value of this Agreement (unless COUNTY or its agents have previously approved such additional payments via amendment or otherwise), nor for profit on unperformed portions of service. CONTRACTOR must furnish to COUNTY, if requested, such financial information as COUNTY determines necessary to assess the reasonable value of any services CONTRACTOR may have performed prior to any termination. These provisions are cumulative and will not affect any right or remedy which COUNTY may have in law or equity.

18. **SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

19. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

20. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

21. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

22. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

23. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

24. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

25. **COMPLIANCE WITH LAW.** CONTRACTOR shall, at his sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the

admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY be a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

26. **PARKING.** This Contract does not entitle CONTRACTOR to park in any COUNTY lot at the Santa Barbara downtown complex. **Failure to comply may result in CONTRACTOR's vehicle being ticketed or towed without notice.** Exceptions for extraordinary circumstances may only be made upon prior written approval of the Parking Coordinator (568-2650). For on-street parking for construction or delivery operations, CONTRACTOR may instead wish to seek a "Parking Restriction Waiver Permit" from the City of Santa Barbara (564-5385). Public parking lots are available across from the County's downtown complex along Anacapa Street.

27. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

28. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

29. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

30. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

31. **COUNTY'S REPRESENTATION.** COUNTY warrants to CONTRACTOR that COUNTY owns, and/or has the right to be in possession of, all equipment, data, media and documents furnished to CONTRACTOR for CONTRACTOR's performance of Services hereunder, that such equipment, data, media and documents are furnished for a lawful purpose, and that, COUNTY's collection, possession, processing and transfer of such equipment, data, media and documents to CONTRACTOR is in compliance with any and all applicable laws (including the common law) concerning privacy.

32. **LIMITATION OF DAMAGES.** In no event will CONTRACTOR or CONTRACTOR's suppliers be liable for incidental, consequential, or indirect damages arising from the Services set forth in Exhibit A, even if CONTRACTOR or any of CONTRACTOR's authorized representatives has been advised of the possibility of such damages. COUNTY acknowledges that the estimated and actual fees and charges reflect this limitation of liability and allocation of risk. With the exception of: (i) damages for personal injury and property damage to the extent directly caused by CONTRACTOR; and (ii) CONTRACTOR's indemnification obligations, CONTRACTOR's total liability to COUNTY under this Agreement shall in no event exceed the total sums actually paid by COUNTY to CONTRACTOR for the Services.

33. **LIMITED WARRANTY; DISCLAIMER OF ALL OTHER WARRANTIES.** COUNTY UNDERSTANDS THAT CONTRACTOR AGREES TO PERFORM THE SERVICES CONTEMPLATED

BY THIS AGREEMENT IN A PROFESSIONAL MANNER WHICH INCLUDES: (i) PROPER CARE AND MAINTENANCE OF THE PAPER DOCUMENTS AND ELECTRONIC MEDIA PROVIDED TO CONTRACTOR; (ii) PROPER CARE AND HANDLING OF DOCUMENTS AND ELECTRONIC MEDIA IN THE PROCESS OF CONTRACTOR'S PICK-UP AND DELIVERY. CONTRACTOR WILL RETURN THE DOCUMENTS AND ELECTRONIC MEDIA IN THE SAME ORDER AND CONDITION IN WHICH IT WAS RECEIVED. CONTRACTOR MAKES AND COUNTY RECEIVES NO WARRANTIES OR CONDITIONS FOR ANY GOOD OR SERVICE, EXPRESS, IMPLIED OR STATUTORY, AND CONTRACTOR SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE. CONTRACTOR DOES NOT WARRANT ANY PARTICULAR RESULT OR CONCLUSION, NOR THAT CONTRACTOR'S ANALYSIS WILL RESULT IN, OR CONTRIBUTE TO, ANY PARTICULAR DECISION IN A LEGAL PROCEEDING OR CONTROVERSY.

The parties hereto, having read in its entirety, this Agreement for Services of Independent Contractor between the County of Santa Barbara and Kroll Ontrack, do agree thereto in each every particular term and covenant.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by County.

COUNTY OF SANTA BARBARA

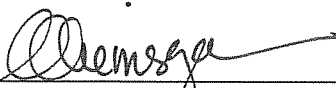
By: _____
Chair, Board of Supervisors

Date: _____

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

CONTRACTOR

By: _____
Deputy

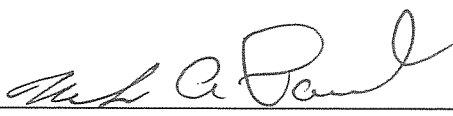
By:  _____
Tax ID Number: 41-01521650

By: _____
Tax ID Number: _____

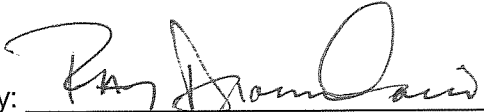
APPROVED AS TO FORM:
DENNIS MARSHALL
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W GEIS, CPA
AUDITOR-CONTROLLER

By:  _____
Deputy County Counsel

By:  _____
Deputy

APPROVED AS TO FORM:
RAY AROMATORIO,
RISK PROGRAM ADMINISTRATOR

By: 
Risk Program Administrator

KROLL ONTRACK®

	Unit	Price Per Unit	Low Estimated Quantity	High Estimated Quantity	Low Estimated Price	High Estimated Price
STAGE 1: MEDIA COLLECTION						
On-Site Data Collection	Hour	\$295.00	-	-	\$0.00	\$0.00
Plus expenses (8 hour min/weekday + 2 hour prep time/onsite)						
Media Processing	Tape	\$500.00	-	-	\$0.00	\$0.00
	HD	FREE	1	1	\$0.00	\$0.00
	CD/DVD	\$50.00	25	35	\$1,250.00	\$1,750.00
STAGE 2: FILTERING						
Custodian Filter	User	\$700.00	5	10	\$3,500.00	\$7,000.00
(Flat Fee, no limit to the amount of data filtered per custodian)						
(Includes de-duplication, keyword, data range and file type filtering)						
			Source GB/Cust	30	30	
			Source GB Total	150	300	
Early Processing Metrics Fee	Pre-Filtered GB	\$100.00	-	-	\$0.00	\$0.00
Up to 3 iterations of filtering criteria						
GBs and TIFFs Available for Review						
Estimated GB (post-filter)	GB		32	35		
Estimated Pages per Custodian (post-filter)	Pages		325,000	325,000		
Estimated Total Pages (post-filter)	Pages		1,625,000	3,250,000		
STAGE 3: PROCESSING AND REVIEW						
Native File Processing (Ontrack Inview)	GB	Total	32	35	\$86,400.00	\$94,500.00
1-100 gigabytes	GB	\$2,700.00	32	35	\$86,400.00	\$94,500.00
101-500 gigabytes	GB	\$2,600.00	-	-	\$0.00	\$0.00
500+ gigabytes	GB	\$2,600.00	-	-	\$0.00	\$0.00
Assumes 100% to 100% of Source Data will be uploaded						
Import 3rd Party Docs to Ontrack Inview	Page	\$0.05	-	-	\$0.00	\$0.00
STAGE 4: PRODUCTION OPTIONS						
Ontrack Inview Document Tiff Production	Page	\$0.06	TBD	TBD		
Responsive Rate 20%						
*The following production format options include Bates and Confidential Stamping						
Production Processing Fee - Load File	Page	\$0.02	TBD	TBD		
MISCELLANEOUS						
Ontrack Inview Topic/Concept Set-Up and Support (Optional)	1 Time Set-up	\$2,000.00			Optional Service	
Engineering Analysis	Hour	\$295.00	-	-	\$0.00	\$0.00
Ontrack Inview Administrative Support (If Applicable)	Hour	\$295.00	-	-	\$0.00	\$0.00
A typical project accrues 2-4 hours of Admin Support						
Travel & Expenses				as Incurred		
Media (output)	CD/DVD	\$4.00	-	-	\$0.00	\$0.00
	Hard Drive			as incurred		
Freight (cut)				as incurred		
Total Electronic Discovery Charges					\$89,900.00	\$101,500.00

HOSTING (Monthly Hosting Fees Not Shown in Total Charges)						
Ontrack Inview Hosting (Native Processing)	GB	\$30.00	32	35	\$2,880.00	\$6,300.00
Monthly Hosting	Est. # of Months		3	6		
Ontrack Inview Tiff Image Hosting	Page/Month	\$0.004	TBD	TBD		
Applies to produced and third-party tiff images	Est. # of Months		3	6		

Please Note

Electronic data frequently contain compressed and/or container files. The presence of these files, in source data, may significantly increase the data volumes for processing, once the compressed/container files are uncompressed. The amount of uncompressed data submitted for processing may be beyond original project assumptions.

Assumptions:

Partial unit volumes are rounded up to the nearest whole unit.

The presence of documents with non-Unicode characters in the data or OCR text may preclude processing.

Ontrack Inview search features support English, Western European and East Asian languages

Files and email will be processed in the GMT base-0 global standard time format.

The ability to image, preserve, copy, analyze, and/or produce data from PDA/Cell Phone devices cannot be ensured without initial testing by Kroll Ontrack. In addition, all passwords and administrative restrictions in place must either be supplied or removed prior to any attempt to image, preserve, copy and/or analyze any such device.

Notes:

- Labor hours are estimated based on information available at the time of creating this document. Actual labor hours incurred will be used for billing. Kroll Ontrack anticipates an average of 2-4 hours of Ontrack Inview Administrative Support services per project. The number of hours may vary from project to project and is based upon the client specified
- Page/processing volumes are estimated based on historical averages. Actual volumes will be determined by the nature of the files to be processed and the culling techniques
- Any previous iteration of the filtering scheme will not be saved after a new iteration is run. Should a previous iteration of filtered data be requested as the filtering criteria for processing, Kroll Ontrack will re-filter the data to return to the previous filtering results. The number of passes already incurred will dictate whether a secondary pass at a previously run filter will be billable (each filtering cycle includes 3 passes).
- Assumes 100% to 100% of Source Data will be uploaded
- As incurred costs are not included in estimate.
- Subject to monthly hosting charges.
- Native File upload hosting is applied immediately after upload to the online repository.
- Source Audio Files are converted to a common format for Kroll Ontrack processing and compressed to limit the amount of bandwidth required for playback. Audio file download from Ontrack Inview will be in the converted file format and Native Source file will be available for Productions.
- Tiff production fee does not apply.

Service Description**On-Site Data Collection**

Deployment of data collection experts to customer site as part of an Electronic Discovery production of data.

Maintain a chain-of-custody on all original customer media.

Use proprietary software to create an exact byte-by-byte copy of the suspect desktop(s)/laptop(s) and/or server(s) to Kroll Ontrack's destination media.

Ability to capture data any time - day or night, work day or weekend.

Customary business expenses may include applicable travel and per diem expenses as required.

Media Processing

Maintenance of a chain-of-custody on all customer media

Restore data from each piece of media associated with project

Extract defined electronic information for further data management

Custodian Filter

Migrate all data into common format for additional preparation and high-speed processing

Include the processing of both e-mail data and data files

Identify files for further processing

Provide keyword searching for relevant and/or privilege data

Identify data from a specific time period

De-duplicate e-mail/attachments and/or data files

Filtering of data for relevant custodians, time periods, keyword searching and date restrictions

Early Processing Metrics

Perform text and meta data extraction, identification of duplicates, filtering of data and report the results.

Up to 3 iterations of filtering criteria.

Native Processing

Capture document text meta-data as defined by customer and Kroll Ontrack project manager for the purpose of importing data into Ontrack Inview

Upload native files into Ontrack Inview for review.

Topic Review / Concept Searching

Organizes documents based on topics inherent to the document set.

Allows the document set to be searched for specific concepts.

KROLL ONTRACK®

	Unit	Price Per Unit	Low Estimated Quantity	High Estimated Quantity	Low Estimated Price	High Estimated Price
STAGE 1: IMAGE ACQUISITION / DATA CAPTURE						
Estimated Standard Pages to be processed			75,000	100,000		
Estimated Pages per Document			3.5	3.5		
Scanning - Originals (50% of collection)	Page	\$0.07	75,000	100,000	\$5,250.00	\$7,000.00
Document Prep and Reassembly	Page	\$0.02	75,000	100,000	\$1,500.00	\$2,000.00
(We are estimating 35 boxes at 2,000 - 2,500 pages per box, includes the normal paper and 11" x 17")						
Capture File Folder Boundary & Title	Page	\$0.04	75,000	100,000	\$3,000.00	\$4,000.00
Capture File Largest Physical Fastener	Page	\$0.01	75,000	100,000	\$750.00	\$1,000.00
Color Scanning	Page	\$0.95	-	-	\$0.00	\$0.00
(We are estimating 1/2 to 1 box of color documents)						
Oversized Document Scanning	Page	\$6.00	-	-	\$0.00	\$0.00
(We are estimating no pages of oversized plans)						
Optical Character Recognition (OCR)	Page	\$0.04	75,000	100,000	\$3,000.00	\$4,000.00
Scanning Glasswork Photocopy	Page	\$0.25	as incurred			
STAGE 2: CODING						
International Coding						
Unitization, only (0% of collection)	Page	\$0.08	-	-	\$0.00	\$0.00
Limited Coding (100% of collection, estimating 70%)	Page	\$0.14	75,000	100,000	\$10,500.00	\$14,000.00
Standard Bibliographic Coding (0% of collection)	Page	\$0.16	-	-	\$0.00	\$0.00
Standard Bibliographic Coding (0% of collection)	Page	\$0.16	-	-	\$0.00	\$0.00
STAGE 3: REVIEW						
Ontrack Inview Tiff Image Hosting	Page/Month	\$0.004	75,000	100,000	\$300.00	\$400.00
Applies to produced and third-party tiff images			Est. # of Months	1	1	
STAGE 4: PRODUCTION OPTIONS						
Production Processing Fee - Load File	Page	\$0.02	TBD	TBD		
Responsive Rate		20%				
Production Processing Fee - Searchable PDF Output	Page	\$0.02	TBD	TBD		
Printed Paper	Page	\$0.10	-	-	\$0.00	\$0.00
Kroll Ontrack Provided Service						
MISCELLANEOUS						
Engineering Analysis	Hour	\$295.00	-	-	\$0.00	\$0.00
Media (output)	CD/DVD	\$4.00	-	-	\$0.00	\$0.00
	Hard Drive		as incurred			
Freight (out)			as incurred			
Total Paper Discovery Charges					\$24,300.00	\$32,400.00

Assumptions:

All processing will be performed during standard business hours. An emergency processing fee of 25%, of the project total, is applicable if processing outside of standard business hours is required. The presence of documents with non-Unicode characters in the data or OCR text may preclude processing. Ontrack Inview search features support English, Western European and East Asian languages

Scanning Assumptions

Approximately 65000 to 75000 pages will be received by Kroll Ontrack for scanning.

Paper condition is originals/working copies

Scanning is performed at a Kroll Ontrack facility.

Kroll Ontrack guarantees a minimum of 99.5% accuracy for image capture.
Kroll Ontrack guarantees a minimum of 97% accuracy for scanning data capture.

Coding Assumptions

Approximately 66,000 - 95,750 pages will be received by Kroll Ontrack for coding.
Average pages-per-document equals x

Average characters-per-document = 136
Kroll Ontrack guarantees a minimum of 97% accuracy on all coded data.

Notes:

- 1 See scanning assumptions, above. Data Capture of physical ranges represents the cost for each level of fastener captured. These fees are additive if multiple physical ranges are captured.
- 2 OCR is the process of converting the characters on a scanned document to a full-text database program in which the words of a document can be searched. After the paper is scanned, Kroll Ontrack will de-skew the document images with specialized software and extract text data from the enhanced images. Kroll Ontrack will merge the OCR text with the coded data for loading to various software packages.
- 3 If any of the following document conditions are encountered, the page(s) will be photocopied first in order to be scan ready. There is an additional charge of \$.25/page for the glasswork photocopying:
 - 4 See coding assumptions, above:
 - 5 Labor hours are estimated based on information available at the time of creating this document. Actual labor hours incurred will be used for billing. Kroll Ontrack anticipates an average of 2-4 hours of engineering services per project. The number of hours may vary from project to project and is based upon the client specified information and/or
 - 6 As incurred costs are not included in estimate.

EXHIBIT B

PAYMENT ARRANGEMENTS Periodic Compensation

- A. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed \$133,900.00. This amount includes payments made under Purchasing Agreement CN08725.
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **EXHIBIT A**. Invoices submitted for payment that are based upon **EXHIBIT A** must contain sufficient detail to enable an audit of the charges and provide supporting documentation specified in **EXHIBIT A**.
- C. Monthly, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. The invoices or claims shall be sent to Santa Barbara Planning and Development-Accounting, 123 E. Anapamu Street, Santa Barbara, CA 93101. COUNTY REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of presentation.
- D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

EXHIBIT C

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts REQUIRING professional liability insurance

CONTRACTOR shall defend, indemnify, and hold COUNTY, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of then performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the gross negligence or willful misconduct on your part of that of your officers, employees, agents. CONTRACTOR's indemnification obligations are expressly conditioned on: (i) the receipt of prompt written notice from COUNTY as to the existence of any such claims; and (ii) CONTRACTOR having sole control over the defense and related settlement of any such claims.

Without limiting CONTRACTOR's indemnification of the COUNTY, CONTRACTOR will procure the following required insurance coverage at CONTRACTOR's sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A-: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the County Risk Manager. This insurance coverage must be maintained throughout the term of this Agreement. Failure to comply with the insurance requirements will CONTRACTOR in default. Upon COUNTY's request, CONTRACTOR will provide a certificate of insurance evidencing the insurance policies required herein within ten (10) working days.

1. **Workers' Compensation Insurance.** Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work related to the performance of this Agreement. The policy shall not be cancelled or materially modified until CONTRACTOR has endeavored to give COUNTY at least thirty (30) days notice of that event. If CONTRACTOR is legally self-insured, CONTRACTOR will furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if a) CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement, and b) CONTRACTOR has submitted to COUNTY a document stating that fact.
2. **General and Automobile Liability Insurance.** CONTRACTOR's *general liability* insurance must include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations by CONTRACTOR and shall include contractual liability coverage. The *automobile liability* insurance must cover all owned, non-owned and hired motor vehicles that are operated on CONTRACTOR's behalf pursuant to CONTRACTOR's activities hereunder. CONTRACTOR is required to include all subcontractors under CONTRACTOR's policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. The COUNTY OF SANTA BARBARA, its officers and employees shall be **Additional Insured status** on the policies with respect to their vicarious liability arising from CONTRACTOR's provision of services hereunder. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. **A copy of the endorsement evidencing that the COUNTY has been added as an additional insured on the policy, must be attached to the certificate of insurance.** The limit of liability for the general liability insurance shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate and the Automobile Liability shall be for a combined single limit of \$1,000,000 each accident. Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. The policy or policies must contain a

provision of the following form: "The insurance afforded by this policy shall be primary and if the County has other valid and collectible insurance, that other insurance shall be excess and non-contributory" but only to the extent the claim arises solely from CONTRACTOR's provision of services hereunder. *If the policy is a "claims made" policy, CONTRACTOR will maintain such a claims made policy for a minimum of three (3) years after expiration of the Agreement.* You shall endeavor to provide at least thirty (30) days written notice prior to cancellation or material modification of the policy.

3. **Professional Liability Insurance.** For those agreements where required, professional liability insurance shall include coverage for the activities of CONTRACTOR's professional staff with a limit of \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. CONTRACTOR shall endeavor to provide the COUNTY with at least thirty (30) days written notice prior to cancellation or material modification of the policy. *If the policy is a "claims made" policy, CONTRACTOR will endeavor to maintain such a claims made policy for a minimum of three (3) years (ten (10) years for Construction defects Claims) after the expiration of the Agreement.*
4. **Compliance Coverage.** In the event that CONTRACTOR is not able to comply with COUNTY's insurance requirements, the COUNTY may, at its sole discretion, have the right to terminate the Agreement.
5. **Certificate(s) of Insurance.** CONTRACTOR must submit to COUNTY its Certificate(s) of Insurance and necessary endorsements documenting the required insurance as specified above prior to this Agreement becoming effective. CONTRACTOR must ensure that current Certificate(s) of Insurance are at all times available in the COUNTY's office as a **condition precedent to any payment by COUNTY** under this Agreement. COUNTY's approval of any insurance shall neither relieve nor decrease CONTRACTOR's liability under this Agreement.
6. **Periodic Review of Insurance.** The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonably based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change requiring additional types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

- D1. Fiscal Year..... : FY 08/09
- D2. Budget Unit Number : 053
- D3. Requisition Number : N/A
- D4. Department Name..... : Planning and Development
- D5. Contact Person..... : Dianne Black
- D6. Phone : (805) 568-2086

- K1. Contract Type (check one): Personal Service Capital Project/Construction
- K2. Brief Summary of Contract Description/Purpose : Assembling Administrative Record for Santa Barbara Ranch
- K3. Original Contract Amount..... : Purchase Order \$50,00.00 (CN08725)
- K4. Contract Begin Date : December 15, 2008
- K5. Original Contract End Date..... : February 28, 2009
- K6. Amendment History : 01
- K7. -Total Previous Amendments..... : \$50,000.00
- K8. -This Amendment Amount : \$33,900.00
- K9. -Revised Total Contract Amount..... : \$133,900.00
- K10. -Revised End date : June 30, 2009
- K11. -Department Project Number : N/A

- B1. Is this a Board Contract? (Yes/No) : Yes
- B2. Number of Workers Displaced (if any) : None
- B3. Number of Competitive Bids (if any)..... : N/A
- B4. Lowest Bid Amount (if bid)..... : \$N/A
- B5. If Board waived bids, show Agenda Date..... : N/A
- B6. ... and Agenda Item Number..... : # N/A
- B7. Boilerplate Contract Text Unaffected? (Yes / or cite ¶¶) Yes – Added to #5 Compensation of Contractor, Added two paragraphs to #9 Conflict of Interest, Added Section #30, Subcontractors, #31 Handling of Proprietary Information, #32 Immaterial Changes, #33 News Releases/Interviews. :

- F1. Encumbrance Transaction Code..... : 1701
- F2. Current Year Encumbrance Amount..... : \$0.00
- F3. Fund Number : 0001
- F4. Department Number : 053
- F5. Division Number (if applicable) : 2000
- F6. Account Number..... : 7510
- F7. Cost Center number (if applicable)..... : N/A
- F8. Payment Terms : Net 30

- V1. Vendor Numbers : 230962
- V2. Payee/Contractor Name..... : Kroll Ontrack Inc.
- V3. Mailing Address..... : 9023 Columbine Road
- V4. City State : Eden Prairie, MN 55347
- V5. Telephone Number : (952) 949-4160
- V6. Contractor's Federal Tax ID Number..... : 411613148
- V7. Contact Person : Dan Larson
- V8. Workers Comp Insurance Expiration Date : 09-30-09
- V9. Liability Insurance Expiration Date : 09-30-09
- V10. Professional License Number..... : #
- V11. Verified by : Ruth Reverdy
- V12. Company Type (Check one): Individual Sole Proprietorship Partnership Corporation

I certify: information complete and accurate; designated funds available; required concurrences evidenced on signature page. Date : 04-14-09 Authorized Signature 