

GRANT AGREEMENT

between

Santa Barbara County Air Pollution Control District

and

Santa Barbara County Association of Governments

This Grant Agreement, hereinafter referred to as "Agreement", is made this ___ day of _____, 2005, between the Santa Barbara County Air Pollution Control District, hereinafter referred to as "DISTRICT," and Santa Barbara County Association of Governments, hereinafter referred to as "GRANTEE".

RECITALS

WHEREAS, DISTRICT is a county air pollution control agency with the primary responsibility for preparing and implementing the Clean Air Plan to achieve and maintain state and federal air quality standards in the County of Santa Barbara as mandated by the California Clean Air Act (hereinafter "the Act") and Federal Clean Air Act;

WHEREAS, oxides of nitrogen ("NO_x") and reactive organic compounds ("ROC") are precursors to the formation of ozone, and the generation of NO_x and ROC by motor vehicles in the county are a significant contributor to the county's total emissions of these pollutants;

WHEREAS, DISTRICT is authorized pursuant to Health and Safety Code Section 44220 *et seq.* to levy fees on motor vehicles registered in Santa Barbara County for the purposes of reducing air pollution from motor vehicles and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the Act;

WHEREAS, DISTRICT has adopted a corresponding work program for the reduction of air pollution from motor vehicles pursuant to, and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the Act;

WHEREAS, GRANTEE has submitted a grant proposal for the reduction of air pollution from motor vehicles or for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the Act;

WHEREAS, GRANTEE represents it is highly qualified and experienced in its professional field and is able to perform the activities described in the Statement Of Grant Obligations attached to this Agreement as Attachment A; and

WHEREAS, DISTRICT has reviewed and decided to fund GRANTEE's proposal at an amount determined by the DISTRICT Board of Directors;

NOW, THEREFORE, in consideration of the mutual promises and conditions listed below, it is hereby agreed between DISTRICT and GRANTEE as follows:

GRANT TERMS AND CONDITIONS

1. Obligations to be Performed Under this Agreement.

Within the time specified in Paragraph 2 (Time of Performance), GRANTEE shall perform all of the obligations described in this Agreement and set forth in the Statement Of Grant Obligations, which is attached hereto as Attachment A and incorporated herein by this reference.

GRANTEE agrees to furnish all labor, materials, equipment, required licenses, permits, fees, and other appropriate legal authorization from all applicable federal, state, and local jurisdictions necessary to perform and complete, per schedule, in a professional manner, the obligations described herein.

2. Time of Performance.

This Agreement shall commence on the date of signing by the GRANTEE and the DISTRICT Board of Directors. GRANTEE shall operate the expanded Clean Air Express commuter bus service (two new routes) connecting Santa Barbara, Santa Maria, and Lompoc (hereinafter referred to as "bus service") as described in Attachment A (Statement of Grant Obligations) after the effective date of this Agreement, and shall continue operation for the balance of fiscal year 2004/2005.

3. Grant Funding.

DISTRICT hereby agrees to provide funds to GRANTEE in the amount not to exceed \$35,000 for or toward the operation of the expanded bus service. GRANTEE shall invoice the DISTRICT in accordance with the schedule specified in Attachment B (Grant Invoice Payment Schedule). GRANTEE shall provide DISTRICT any information necessary to verify the accuracy of the invoice. The DISTRICT will pay GRANTEE within thirty days of receipt of GRANTEE's invoice. All invoices or other payment documents must include the assigned DISTRICT contract number. Failure to properly reference this contract number may result in a delay of payment.

4. Matching Funds.

GRANTEE shall provide matching funds, as described in Attachment A (Statement of Grant Obligations), as a condition of receiving this grant from the DISTRICT. Failure to provide such funds shall, at the discretion of the Control Officer, be grounds for termination of this Agreement.

5. Non-Partnership.

This Agreement is not intended by the parties to constitute or create a joint venture, pooling arrangement, or formal business organization of any kind. The rights and obligations of the parties shall be only those expressly set forth herein.

6. Status of GRANTEE.

GRANTEE and GRANTEE's subcontractors shall perform all services under this Agreement as independent contractors and not as employees, officers or agents of DISTRICT or the County of Santa Barbara.

7. Records.

GRANTEE shall keep, and provide to DISTRICT or its agents upon request, accurate financial records (including expenditures, ridership counts, fares received, and contractor expenses) necessary to enable DISTRICT to review GRANTEE's performance of this Agreement. These records shall demonstrate the grant funding has been used for the operation of the commuter bus service described in the Grant Proposal. GRANTEE shall maintain all such records for at least three years after the termination of this Agreement.

8. Grant Reporting.

GRANTEE shall submit report(s) to the DISTRICT in accordance with the schedule and format specified in Attachment C (Grant Narrative Reports Format).

9. Audit and Review.

DISTRICT or its agents shall have the right to audit and review the records identified in paragraph 7 (Records), above, maintained by GRANTEE pursuant to the terms of this Agreement to the extent necessary to verify the grant has been used in accordance with the terms of this Agreement. Any such audit and review will be conducted by DISTRICT or County of Santa Barbara auditors or, at GRANTEE's option and expense, by a mutually acceptable third party accounting firm.

10. Indemnification and Insurance.

GRANTEE agrees to defend, indemnify and save harmless the DISTRICT and the County of Santa Barbara, and to procure and maintain insurance in accordance with the provisions of Attachment D (Standard Indemnification And Insurance Provisions for Grant Contracts) attached hereto and incorporated herein by this reference.

11. Nondiscrimination Clause.

GRANTEE shall abide by the Unlawful Discrimination Ordinance, Article XIII of

Chapter 2 of the Santa Barbara County Code, which is attached hereto as Attachment E (County Of Santa Barbara Unlawful Discrimination Ordinance) and incorporated herein by this reference.

12. Rights to Emission Reductions.

GRANTEE transfers and conveys to DISTRICT all rights and claim to ownership of the emission reductions achieved through the bus service funded by the Agreement. GRANTEE shall not use or attempt to use the emission reductions achieved by the bus service as emission reduction credits. GRANTEE hereby fully and completely relinquishes such rights for the useful life of the bus service.

13. Termination.

a) DISTRICT. DISTRICT may, in its sole discretion, terminate this Agreement for convenience by giving thirty (30) days prior written notice to GRANTEE. GRANTEE shall not incur any unnecessary expenses or costs which are reimbursable under this Agreement during this period except those absolutely necessary to close out all activities related to the Agreement. Any other charges incurred by GRANTEE during this period will not be compensated by DISTRICT unless approved in writing by the Control Officer.

The DISTRICT may terminate this Agreement for cause should GRANTEE default in the performance of this Agreement or materially breach any of its provisions. Such termination shall be by written notice and shall be effective upon receipt by GRANTEE.

b) GRANTEE. GRANTEE may terminate its obligation to operate the bus service funded under this Agreement for good cause provided that, if requested by the Control Officer, GRANTEE shall reimburse DISTRICT for the amount of the grant specified in Paragraph 3 (Grant Funding), subject to reduction as set forth below:

<u>Terminate Date</u>	<u>Reimbursement Due to DISTRICT</u>
Prior to Completing Year 1 of Operation	100 percent

The year of the operation shall be determined in reference to Paragraph 2 (Time of Performance). GRANTEE's Notice of termination shall be in writing and shall be effective upon completion of the terms of this paragraph. Such notice shall terminate GRANTEE's obligation under Paragraphs 1 (Obligations to be Performed Under this Agreement) and 2 (Time of Performance) of this Agreement.

14. Conflict of Interest.

GRANTEE understands and acknowledges that the funds awarded under this Grant Agreement may only be awarded to GRANTEE in compliance with the requirements of the

California Political Reform Act (“PRA”), California Government Code Section 87100 *et seq.* GRANTEE understands and acknowledges that the PRA prohibits any public official from participating in any governmental decision in which the public official knows he or she has a financial interest.

For the purposes of this provision, a “public official” is any person employed in the Innovative Technology Program at DISTRICT or any other public official of the DISTRICT or County of Santa Barbara who participated in the negotiation or making of this Agreement.

For the purposes of this provision, “GRANTEE” includes GRANTEE and GRANTEE’s subcontractors and employees, business associates and business partners (including all personnel named in GRANTEE’S Proposal) who will receive a financial benefit from this Grant Agreement.

GRANTEE represents and warrants that a “conflict of interest” did not exist during the process that led to the award of this Grant Agreement. A conflict of interest exists if any of the following are true:

- a) GRANTEE is a business entity in which a public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more;
- b) GRANTEE has been a source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500.00) or more in value provided to, received by, or promised to a public official within 12 months prior to GRANTEE’s submission of an application to the DISTRICT for this Grant award.
- c) GRANTEE is a business entity in which a public official is a director, officer, partner, trustee, employee, or holds any position of management;
- d) GRANTEE has been a donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating three hundred forty dollars (\$340.00) or more in value provided or promised to a public official within 12 months prior to GRANTEE’s submission of an application to the DISTRICT for this Grant award.

GRANTEE shall disclose any conflict of interest to DISTRICT in writing prior to execution of this Agreement. DISTRICT may, in its sole discretion, decline to award or may terminate the grant to GRANTEE if a conflict of interest existed prior to the full execution of this Agreement. Failure of GRANTEE to comply with this provision shall be a material breach of this Agreement and shall, at DISTRICT’s discretion, result in a total forfeiture of all Grant funds received under this Grant Agreement. GRANTEE shall also be liable to DISTRICT for treble damages of the amount of the Grant and DISTRICT’s reasonable attorney’s fees in any litigation necessary to enforce this provision.

15. Project Logos.

At the option of the DISTRICT, GRANTEE shall allow the placement of a DISTRICT logo on project facilities or equipment. The placement, design, style and color will be determined mutually by DISTRICT and GRANTEE.

16. Public Education.

GRANTEE, upon request of DISTRICT, will participate in and assist with a one-day public education and demonstration concerning the GRANTEE's project. GRANTEE will allow reasonable access by DISTRICT and the public to project facilities and equipment during this demonstration.

17. Remedies Not Exclusive.

No remedy herein conferred upon or reserved to DISTRICT 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.

18. Publication.

DISTRICT shall have the right of prior written approval of any document which shall be disseminated to the public by GRANTEE in which GRANTEE utilized information obtained from DISTRICT in connection with performance under this Grant Agreement.

Reports developed by GRANTEE for DISTRICT, pursuant to the Grant Agreement, shall be part of DISTRICT's public record. GRANTEE may use or publish, at its own expense, such information provided to DISTRICT. The following acknowledgment of support and disclaimer must appear in each report disseminated, whether copyrighted or not, and based upon the work performed under this Grant Agreement.

"This report was prepared as a result of work sponsored by the Santa Barbara County Air Pollution Control District (SBCAPCD). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of SBCAPCD. SBCAPCD, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report. SBCAPCD has not approved or disapproved this report, nor has SBCAPCD passed upon the accuracy or adequacy of the information contained herein."

GRANTEE shall inform its officers, employees, and subcontractors involved in the performance of this Grant Agreement of the restrictions contained herein and require compliance with the above publication terms.

19. Waivers.

The waiver by either party to this Agreement of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law, shall not be deemed to be a continuing waiver of such term, covenant, condition, or law, or of any subsequent breach or violation of the same, or of any other term, covenant, and ordinance of law.

20. Amendment.

This Agreement may only be amended in writing executed by the DISTRICT Board and GRANTEE or, where authorized by the Board, by the Control Officer and GRANTEE.

21. California Law to Apply.

This Agreement shall be construed under and in accordance with the laws of the State of California. All obligations created under this Agreement are performable in California.

22. Assignment.

This Agreement shall not be assigned by GRANTEE without the prior written consent of the Control Officer. In the event GRANTEE desires to sell, lease, or otherwise transfer the bus service, GRANTEE shall promptly notify DISTRICT and shall provide the potential buyer or other transferee with a copy of this Agreement. The buyer or other transferee must agree in writing to abide by the terms of this Agreement prior to GRANTEE closing any such sale, lease or other transfer.

23. Grant Agreement Integrated.

This Agreement represents the entire and integrated Agreement between DISTRICT and GRANTEE and supersedes any and all other negotiations, representations, and/or agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

24. Conflicts Between Grant Agreement and Incorporated Attachments.

With the exception of the County's Unlawful Discrimination Ordinance, to the extent that any provisions in any of the other attachment(s) which are incorporated into this Agreement by reference, conflict with any provision contained in this Agreement, the provision of this Agreement shall take precedence and govern.

25. Provisions Required by Law Deemed Inserted.

Each and every provision of law and clause required by law to be inserted in this Grant

Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon application of either party, this Grant Agreement shall forthwith be physically amended to make such insertion or correction.

26. Unusual Circumstances.

The parties shall be excused from performing their respective obligations in the event they are prevented from performing so by reason of circumstances beyond their control, including, but not limited to, strikes and other labor disputes, wars, civil commotion, natural calamity, fire, equipment breakdown or failures. In the event of any delay described above, the time for performance may be extended by mutual agreement for a period equal to the length of the delay.

27. Point of Contact.

All notices referenced in this Agreement shall be in writing and shall be given by first class mail addressed as follows, or at such other address or to such person that the parties may from time to time designate in writing:

GRANTEE
Santa Barbara County Association of Governments
260 North San Antonio Rd., Suite B
Santa Barbara, California 93110
Attn: Scott Spaulding

DISTRICT
Santa Barbara County Air Pollution Control District
260 North San Antonio Rd., Suite A
Santa Barbara, California 93110
Attn: Gary Hoffman

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This Grant Agreement between Santa Barbara County Air Pollution Control District and Santa Barbara County Association of Governments executed at _____, California on the day and year first above written.

ATTEST:

TERRY DRESSLER
Clerk of the Board

Santa Barbara County Air Pollution Control
District, State of California

By _____
Deputy

By _____
Chairperson

Santa Barbara County
Association of Governments

By _____
Executive Director

Date: _____

APPROVED AS TO INSURANCE FORM:

STEPHEN D. UNDERWOOD
Chief Assistant County Counsel

By _____

APPROVED AS TO FORM:

ROBERT W. GEIS
Auditor Controller

By _____
Auditor Controller for APCD

APPROVED AS TO FORM:

STEPHEN SHANE STARK
County Counsel

APPROVED AS TO FORM:

STEPHEN SHANE STARK
County Counsel

By _____
Attorney for SBCAG

By _____
Attorney for APCD

ATTACHMENT A
STATEMENT OF GRANT OBLIGATIONS

PROJECT DESCRIPTION:

GRANTEE has administered the Clean Air Express commuter bus service since 2001, pursuant to a Memorandum of Understanding (MOU) with the District, for the purpose of reducing emissions and traffic congestion from commuter automobiles in Santa Barbara County. In September 2004, GRANTEE added two expansion routes to the bus service that were not included in the fiscal year 2004/05 funding request to the District for the on-going operational subsidy of the bus service, under the MOU. The new routes, serving Santa Maria and Lompoc, offer bus service to employees working an 8-5 schedule to/from downtown Santa Barbara, a market previously not served by the Clean Air Express. This Agreement provides partial funding to the GRANTEE towards their operational cost for the two Clean Air Express expansion routes in fiscal year 2004/05 only. As part of its annual review for program funding under the MOU, the District will consider the expanded service in GRANTEE's request for funding for its oversight of the Clean Air Express commuter bus service for fiscal year 2005/06. District funding for this program will comply with the California Air Resources Board (CARB) cost-effectiveness criteria for DMV projects (i.e., must not exceed \$20,000 per ton).

Under this Agreement, GRANTEE will provide coach type buses (i.e., MCI D4500) capable of carrying 55 passengers per bus, and ensure that the expanded service provides at least one round trip between Santa Maria and downtown Santa Barbara, and one round trip between Lompoc and downtown Santa Barbara, during peak weekday commute times. All buses will utilize engines certified by CARB to have emissions of 2.5 g/bhp-hr (NO_x+NMHC) or less. Details of this service are included in GRANTEE's proposal letter to DISTRICT; this proposal letter is incorporated herein by this reference.

MATCHING FUNDS:

The Matching Funds required per Paragraph 4 of this Agreement are described as follows:

- ❖ GRANTEE shall apply passenger fare box revenue received towards the cost of this bus service.
- ❖ GRANTEE shall provide any additional funding needed which is not otherwise provided via this Grant Agreement or the above-mentioned funding sources.

PROJECT SCHEDULE:

GRANTEE shall implement the project during FY 2004/05 consistent with following schedule:

Task	Mo 1	Mo 2	Mo 3	Mo 4	Mo 5	Mo 6	Mo 7	Mo 8	Mo 9	Mo 10	Mo 11	Mo 12
Operate CAE expansion routes												
Reporting to District												

ATTACHMENT B

GRANT INVOICE PAYMENT SCHEDULE

Upon approval of this Agreement, GRANTEE may invoice the District up to the grant amount shown in Paragraph 3 (Grant Funding) provided the quarterly reports for the first six months of operating the two expansion bus service routes during fiscal year 2004/05 are submitted concurrently to the District. These reports are described in Attachment C (GRANT NARRATIVE REPORTS FORMAT).

ATTACHMENT C
GRANT NARRATIVE REPORTS FORMAT

GRANTEE shall submit a narrative report to the APCD after each quarter of bus operation of the expanded routes funded by this Agreement. Reports shall be submitted within 45 days of the end of each calendar quarter, and may be submitted with the bus operation reports required under the MOU. The reports shall include the following information:

1. A description of the service, including any additions, reductions or changes to the service since the previous reporting period.
2. A description of outreach activities implemented during the reporting period.
3. Monthly ridership levels for each bus/route, as well as the length of each route (in miles).
4. Monthly fuel use and mileage for each bus, including backup buses.

ATTACHMENT D
STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS

INDEMNIFICATION

GRANTEE shall defend, indemnify and save harmless DISTRICT and the County of Santa Barbara (COUNTY), their officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the GRANTEE or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the DISTRICT.

GRANTEE shall notify DISTRICT immediately in the event of any accident or injury arising out of or in connection with this Agreement.

INSURANCE

Without limiting the GRANTEE's indemnification of DISTRICT and the COUNTY, GRANTEE shall procure the following required insurance coverages at its 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 DISTRICT. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place GRANTEE in default. Upon request by DISTRICT, GRANTEE shall provide a certified copy of any insurance policy to DISTRICT within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all GRANTEE's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by DISTRICT. In the event GRANTEE is self-insured, it shall furnish to DISTRICT 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 GRANTEE has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and GRANTEE submits a written statement to DISTRICT stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of GRANTEE and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the GRANTEE in the indemnity and save harmless provisions [above] of the

Indemnification Section of this Agreement between DISTRICT and GRANTEE. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of GRANTEE pursuant to GRANTEE's activities hereunder. GRANTEE shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. DISTRICT and the COUNTY, their officers, agents, and employees shall be Additional Insured status on any policy. 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 policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by DISTRICT.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is 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."

If the policy providing liability coverage is on a 'claims-made' form, the GRANTEE is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that DISTRICT shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

GRANTEE shall submit to the office of the designated DISTRICT representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. DISTRICT shall maintain current certificate(s) of insurance at all times in the office of the designated DISTRICT representative as a condition precedent to any payment under this Agreement. Approval of insurance by DISTRICT or acceptance of the certificate of insurance by DISTRICT shall not relieve or decrease the extent to which the GRANTEE may be held responsible for payment of damages resulting from GRANTEE's services or operations pursuant to the contract, nor shall it be deemed a waiver of DISTRICT rights to insurance coverage hereunder.

In the event the GRANTEE is not able to comply with DISTRICT's insurance requirements, DISTRICT may, at its sole discretion and at the GRANTEE's expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by DISTRICT and 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 reasonable based on changed risk of loss or in light of past claims against DISTRICT and the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of DISTRICT's or the COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. GRANTEE agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

ATTACHMENT E
COUNTY OF SANTA BARBARA UNLAWFUL DISCRIMINATION ORDINANCE

Sec. 2-95. Prohibition of unlawful discrimination in employment practices. The County of Santa Barbara reserves the right to terminate forthwith each and every written contract and agreement (except purchase orders) for goods and/or services entered into by the County of Santa Barbara or by its joint powers, agencies or agents with the consent of the other parties (hereinafter called "contractor") including but not limited to concessions, franchises, construction agreements, leases, whether now in effect or hereinafter made if the county finds that the contractor is discriminating or has discriminated against any employee or applicant for employment in violation of any applicable state or federal laws, rules or regulations which may now or hereafter specifically prohibit such discrimination on such grounds as race, religion, sex, color, national origin, physical handicap when otherwise qualified, Vietnam era veteran/disabled, or age.

Such finding may only be made after contractor has had a full and fair hearing on notice of thirty (30) days before an impartial hearing officer at which hearing contractor may introduce evidence, produce witnesses and have the opportunity to cross-examine witnesses produced by the county. Further, any finding of discrimination must be fully supported by the facts developed at such hearing and set forth in a written opinion; and in addition, contractor may move in the appropriate court of law for damages and/or to compel specific performance of a contractor or agreement if any the above procedures are not afforded to the contractor. If contractor is not found to have engaged in unlawful discriminatory practices, county shall pay all costs and expense of such hearing, including reasonable attorneys' fees to contractor in accordance with current Santa Barbara County Superior Court schedule of attorneys' fees for civil trials. If contractor is found to have engaged in such unlawful discriminatory employment practices, contractor shall pay all such costs, expenses and attorneys' fees.

Whether or not a contract or agreement is still in existence at the time of final determination of such unlawful discrimination, the contractor shall forthwith reimburse county for all damages directly stemming from such discrimination; however, those damages shall not exceed and are not reimbursable in an amount which exceeds amounts paid contractor under the terms of the contract or agreement.

Nothing in this section 2-95 shall directly or by interpretation give a private cause of action to any third party (not a signatory to the contract or agreement) including employees past or present, or applicants for employment to contractor, it being the sole purpose of this clause to administratively assure compliance with the nondiscrimination clauses contained herein.

Employment practices shall include, but are not limited to employment, promotion, demotion, transfer, recruitment and advertising for recruitment, layoff or other termination, rate of pay, employee benefits and all other forms of compensation selection for training and apprenticeship and probationary periods.

Contractor shall permit access at all reasonable time and places to all of its records of employment, advertising, application forms, tests and all other pertinent employment data and records, to the County of Santa Barbara, its officers, employees and agents for the purpose of investigation to ascertain if any unlawful discrimination as described herein has occurred or is being practiced, provided that such records are relevant to a complaint of an unlawful discriminatory practice which

has been forwarded to contractor reasonably prior to the time contractor is asked to make such records available. In addition, all such records shall be deemed "Confidential" by the officers, employees and agents of the county. No records or copies of such records may be removed from the premises of contractor and no disclosure, oral or written of such record, may be made to third parties except as provided within the agreement.

Provided, however, that in the event of a hearing to determine whether or not contractor is engaging in unlawful discrimination in employment practices as defined herein, the board of supervisors of Santa Barbara County may issue subpoenas to require that certified copies of such records be made available to the hearing.

Failure to fully comply with any of the foregoing provisions relating to unlawful discrimination in employment practices shall be deemed to be a material breach of any contract or agreement with the County of Santa Barbara. All persons contracting with or who have contracts for goods or services with the county shall be notified that this chapter applies to their contract or agreement with the County of Santa Barbara. (Ord. No. 2946, SS 1; Ord. No. 2993, SS 1; Ord. No. 3018, SS 1)

Sec. 2-95.5. Exceptions. Notwithstanding any other provisions in this article, any party contracting with the County of Santa Barbara having an affirmative action program which has been approved within thirty-six (36) months from the date of the contract by an agency of the federal government shall be deemed to be in compliance with the provisions of this article upon furnishing documentary evidence of such approval satisfactory to the county affirmative action officer. Loss of such approval shall be immediately reported by such party to the county affirmative action officer.

Sec. 2-96. Purchase orders. Purchase orders shall contain the following clause as grounds for termination of such purchase order.

"If complaint is made that seller is engaging in discriminatory employment practices made unlawful by applicable state and federal laws, rules or regulations, and the State Fair Employment Practice Commission or the Federal Equal Employment Opportunities Commission determines that such unlawful discrimination exists, then the County of Santa Barbara may forthwith terminate this order." (Ord. No. 2946, § 1)

Sec. 2-97. Affirmative action officer. At the discretion of the county affirmative action officer, he or she shall promptly and thoroughly investigate, or cause to be investigated reports and complaints from whatever source, that any party contracting with the County of Santa Barbara is engaging, or during the term of a contract or agreement with the County of Santa Barbara has engaged, in any unlawful discriminatory employment practices as described in Section 2-95 of this Code. If the investigation discloses reason to believe such unlawful discrimination does exist or has existed and the conditions giving rise thereto have not been changed so as to prevent further such unlawful discrimination, and the said party shall not forthwith terminate such unlawful discrimination, take all appropriate steps to prevent a recurrence of such or other unlawful practices, and compensate the person or persons unlawfully discriminated against for any and all loss incurred by reason of such unlawful discrimination, all to the satisfaction of the affirmative action officer, then the affirmative action officer shall cause the matter to be presented for action to the State Fair Employment Practices Commission or the Federal Equal Employment Opportunities Commission, or both, and to any other concerned state or federal agencies or officers.

If and when it has been finally determined by the affirmative action officer, county counsel, or state or federal regulatory agencies that such unlawful discriminatory employment practice has in fact so occurred or are being carried on, then the affirmative action officer shall forthwith present the entire matter to the board of supervisors of the county, together with all damages, costs and expense related thereto and incurred by county, for appropriate action by the board of supervisors in accord with the intent and purposes of this article and of the affirmative action program of the County of Santa Barbara (Ord. No. 2946, § 1).