

# GRANT AGREEMENT

between

**The Santa Barbara County Air Pollution Control District**

and

**Environmental Engineering Studies, Inc.**

This Grant Agreement, hereinafter referred to as "Agreement", is made this 16<sup>th</sup> day of March 2006, between the Santa Barbara County Air Pollution Control District, hereinafter referred to as "DISTRICT," and Environmental Engineering Studies, Inc., 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 and Federal Clean Air Act;

WHEREAS, Santa Barbara County does not meet state health-based air quality standards for ozone and particulate matter ("PM<sub>10</sub>");

WHEREAS, oxides of nitrogen ("NO<sub>x</sub>") and reactive organic gases ("ROG") are precursors to the formation of ozone, and PM<sub>10</sub> from diesel-fueled engines has been classified as a Toxic Air Contaminant, and the generation of NO<sub>x</sub>, ROG, and PM<sub>10</sub> from internal combustion engines used in light-duty motor vehicles are a significant contributor to the county's total emissions of these pollutants;

WHEREAS, DISTRICT has funds provided by the California Air Resources Board (Carl Moyer Program), and the California Department of Motor Vehicles (DMV) surcharge fee program, and wishes to utilize a portion of these funds for an Old Car Buyback program;

WHEREAS, the California Air Resources Board is an intended third party beneficiary for the purposes of this Agreement; as such the Board reserves the right to enforce the terms of this Agreement;

WHEREAS, DISTRICT is interested in encouraging the demonstration and implementation of low-emissions programs under cooperative agreements with government, industry, and local businesses;

WHEREAS, GRANTEE has submitted a proposal to reduce emissions from light-duty, on-road motor vehicles which meets the requirements of the Carl Moyer Program Guidelines, and therefore, becomes eligible to receive funds from DISTRICT;

WHEREAS, GRANTEE represents it is highly qualified and experienced in its professional field, is able to perform the activities described in the STATEMENT OF GRANT OBLIGATIONS attached to this Agreement as Attachment A, and will not commence these activities until this Agreement is fully executed;

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

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 GRANTEE and DISTRICT (Board of Directors). Program operation shall continue until the grant funding has been expended.

3. Grant Funding.

DISTRICT hereby agrees to provide funds to GRANTEE in the amount not to exceed \$150,000 for the purchase and permanent retirement of old motor vehicles. The Air Pollution Control Officer may at his discretion and with the concurrence of the GRANTEE, increase the amount of grant funding to \$250,000 by providing written notice to GRANTEE. GRANTEE shall invoice DISTRICT on a monthly basis as described in Attachment B, GRANT INVOICE PAYMENT SCHEDULE. GRANTEE shall provide DISTRICT any information necessary to verify the accuracy of the invoice. 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. 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.

5. 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.

6. Records.

GRANTEE shall keep, and provide to DISTRICT or its agents, upon request, accurate financial records (including invoices and published price lists on which this Agreement was based) necessary to enable DISTRICT to review GRANTEE's performance of this Agreement. These records shall demonstrate the grant funding has been used for the purchase of the low emissions equipment described in the Grant Proposal. GRANTEE shall maintain all such records for at least three years after the termination of this Agreement.

7. 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).

8. Audit and Review.

DISTRICT or its agents shall have the right to audit and review the records identified in Paragraph 6 (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.

9. 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) attached hereto and incorporated herein by reference.

10. 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.

11. Rights to Emission Reductions.

GRANTEE affirmatively certifies to DISTRICT that the project described in Attachment A (Statement of Grant Obligations) is not be required by any local, state and/or federal rule, regulation or Memorandum of Understanding currently in effect. GRANTEE transfers and conveys to DISTRICT all rights and claim to ownership of the emission reductions achieved through the installation and operation of the low emissions equipment funded by the Agreement. GRANTEE shall not use or attempt to use the emission reductions achieved by the low emissions equipment as emission reduction credits. GRANTEE hereby fully and completely relinquishes such rights for the useful life of the low emissions equipment.

12. Termination.

a) 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.

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 may terminate its obligation to purchase and retire old motor vehicles funded under this Agreement for good cause. 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.

13. 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 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) 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 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) or more in value provided or promised to a public official within 12 months prior to GRANTEE's submission of an application to 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.

#### 14. Taxes.

GRANTEE shall be responsible for payment of all taxes due as a result of the Agreement. GRANTEE's Federal Tax Identification Number is 33-0984679.

#### 15. Public Education.

GRANTEE, upon request of DISTRICT, will participate in and assist with a one day

public education and demonstration concerning GRANTEE's project. GRANTEE will allow reasonable access by DISTRICT and the public to project facilities and equipment during this demonstration.

16. 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.

17. 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.

Information, data, documents, or 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 document 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.

18. 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, ordinance of law.

19. Amendment.

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

20. 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.

21. 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 low emissions equipment, 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. California Air Resources Board as Third Party Beneficiary.

GRANTEE acknowledges that Carl Moyer Program Funds have been provided for this Agreement by the State of California through the administration and oversight of the California Air Resources Board. The Air Resources Board shall be a third party beneficiary for the purposes of this Agreement and, as such, the Board shall have the right to enforce the terms of this Agreement, including seeking whatever legal, equitable and other remedies are available under State law for GRANTEE's failure to fully perform under this Agreement.

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:

**DISTRICT**

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

**GRANTEE**

Environmental Engineering Studies, Inc.  
7981 Paseo Membrillo  
Carlsbad, CA 92009  
Attn: Antoine Assioun

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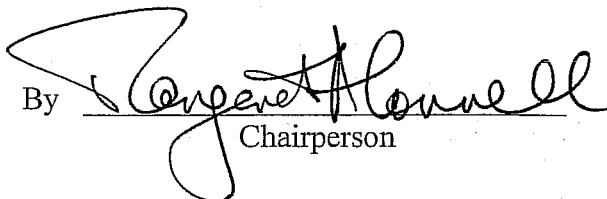
This Grant Agreement between Santa Barbara County Air Pollution Control District and Environmental Engineering Studies, Inc. was executed at Santa Maria, California on the day and year first above written

ATTEST:

TERRY DRESSLER  
Clerk of the Board

By   
Deputy

Santa Barbara County Air Pollution Control  
District, State of California

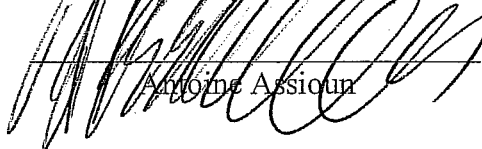
By   
Chairperson

APPROVED AS TO INSURANCE FORM:

RAY AROMATORIO  
Risk Program Administrator

By 

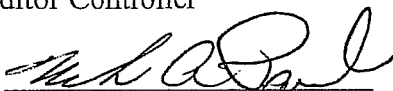
Environmental Engineering Studies, Inc.

By   
Risk Program Administrator

Date: 2-16-06

APPROVED AS TO FORM:

ROBERT W. GEIS  
Auditor Controller

By 

APPROVED AS TO FORM:

STEPHEN SHANE STARK  
County Counsel

By 

ATTACHMENT A  
STATEMENT OF GRANT OBLIGATIONS

PROJECT DESCRIPTION:

The following list summarizes the major responsibilities of GRANTEE. In addition GRANTEE is responsible for meeting the requirements of the "Light-Duty Vehicle" chapter of the California Air Resources Board's 2005 Carl Moyer Program Guidelines.

1. **Recordkeeping** – Provide to DISTRICT copies of all paperwork for each vehicle as proof of eligibility, purchase, and permanent dismantling.
2. **Program operation** – As necessary, offer technical training to all program subcontractors covering the scope of work, including proper procedures and contract requirements. GRANTEE will also ascertain that all subcontractors comply with all program requirements, including but not limited to performing the required eligibility verifications and vehicle dismantling. GRANTEE will be responsible for payment to the vehicle dismantlers, buy-back facilities and the scrapped vehicle owners.
3. **Vehicle disposal** – GRANTEE will subcontract with a state-licensed auto dismantler who will permanently dismantle vehicles purchased in compliance with all program terms and conditions and all federal, state and local rules and regulations. The dismantler will permanently destroy the vehicle within ninety (90) days of purchase by the buyback facility.
4. **Audit** – GRANTEE will perform independent unannounced audits of the buy-back facilities to ensure only eligible vehicles are qualified for the program. A minimum of 15% of the vehicles deemed eligible by the buy-back facilities will be audited.
5. **Reporting Requirements** – GRANTEE shall submit quarterly narrative reports to DISTRICT. The reports shall include information for each vehicle qualified and purchased by the program.

ATTACHMENT B  
GRANT INVOICE PAYMENT SCHEDULE

GRANTEE shall invoice DISTRICT as follows:

1. GRANTEE shall invoice the DISTRICT on a monthly basis
2. Invoice shall include all of the information necessary for the DISTRICT to verify the eligibility of the retired vehicles
3. Invoice eligible costs include:
  - a. Initial program start up administrative costs
  - b. Vehicle inspection and dismantling fees
  - c. Vehicle purchase fee determined by the DISTRICT
  - d. Contractor administration fees
4. GRANTEE shall provide a cost breakdown for all of the eligible costs when requesting payment from the DISTRICT
5. DISTRICT will pay the GRANTEE within 30 day of receiving a complete invoice

ATTACHMENT C  
GRANT NARRATIVE REPORTS

GRANTEE shall submit quarterly narrative reports to DISTRICT. The reports shall include the following items:

1. Name and address of GRANTEE.
2. For each vehicle qualified and purchased by the program, provide
  - a. Vehicle Identification Number (VIN)
  - b. License plate number
  - c. Odometer reading
  - d. Vehicle make, model and model year
  - e. Contact information for legal vehicle seller:
    - i. Name
    - ii. Address
    - iii. Phone Number
  - f. Contact information for inspector assessing the vehicle's eligibility:
    - i. Name
    - ii. Business address
    - iii. Phone number
  - g. Date of purchase of vehicle
  - h. Date vehicle is permanently scrapped by the dismantler
3. For those vehicles disqualified from participating in the program, the Vehicle Identification Number, license plate number, make, model year and model and the reason for the disqualification.
4. Results of any QA/QC audits performed by GRANTEE.
5. Discussion of any problems with implementing the program.

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 agent 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).