

ELECTRIC VEHICLE CHARGING STATION PROGRAM

GRANT AGREEMENT

between

The Santa Barbara County Air Pollution Control District

and

City of Goleta [EVCS-005]

This Grant Agreement, is made this 21st day of August 2014, between the Santa Barbara County Air Pollution Control District, hereinafter referred to as "DISTRICT," and the City of Goleta, hereinafter referred to as "GRANTEE", collectively referred to as "the PARTIES."

RECITALS

WHEREAS, the 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 ("PM₁₀"); and

WHEREAS, oxides of nitrogen ("NO_x") and reactive organic gases ("ROG") are precursors to the formation of ozone, and the internal combustion engines used in motor vehicles is one of the main sources of these air pollutants in Santa Barbara County; and

WHEREAS, electric vehicles have no tailpipe emissions and Santa Barbara County is one of the top early adopter markets for electric vehicles in Southern California; and

WHEREAS, the DISTRICT has mitigation funds and wishes to utilize a portion of these funds for an Electric Vehicle Charging Station Infrastructure Program approved by the Board; and

WHEREAS, the DISTRICT is interested in encouraging the purchase and installation of electric vehicle charging stations under grant agreements with public entities; and

WHEREAS, GRANTEE has submitted a proposal which meet the requirements of the DISTRICT'S Electric Vehicle Charging Station Program and therefore, becomes eligible to receive funds from the DISTRICT; and

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

WHEREAS, the DISTRICT has reviewed and decided to fund GRANTEE's proposal at an amount determined by the Air Pollution Control Officer; and

WHEREAS, the District Board of Directors has delegated authority to the Control Officer to execute certain grant agreements and this Grant Agreement falls within that delegation authority.

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

GRANT TERMS AND CONDITIONS

1. Obligations to be Performed Under this Grant Agreement.

Within the time specified in paragraph 2 (Time of Performance), GRANTEE shall perform all of the obligations described in this Grant Agreement and set forth in the SCOPE OF WORK, 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 Grant Agreement shall commence on the date of signing by the GRANTEE and the DISTRICT (either the Board of Directors or the Control Officer). GRANTEE shall have completed the tasks described in ATTACHMENT A (SCOPE OF WORK), within 120 days of the effective date of this Grant Agreement. This time for completion may be extended, in writing, by the Control Officer for good cause. Operation shall commence upon completion of installation and shall continue for three (3) years.

3. Grant Funding.

DISTRICT hereby agrees to provide funds to GRANTEE in the amount not to exceed \$17,283 toward the cost of completing the tasks described in ATTACHMENT A. GRANTEE shall invoice the DISTRICT in accordance ATTACHMENT B (GRANT INVOICE PAYMENT). 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 (SCOPE OF WORK), as a condition of receiving this grant from the DISTRICT. Failure to provide such funds shall be, at the discretion of the Control Officer, grounds for termination of this Grant Agreement. Upon such termination, GRANTEE shall within 14 days of termination, return any grant funds received from the DISTRICT under this Grant Agreement. The Control Officer may waive the requirement for matching funds.

5. Non-Partnership.

This Grant 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 Grant 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 invoices and published price lists on which this Grant Agreement was based) necessary to enable DISTRICT to review GRANTEE's performance of this Grant Agreement. These records shall demonstrate the grant funding has been used for the completion of the tasks described in ATTACHMENT A (SCOPE OF WORK). GRANTEE shall maintain all such records for at least three years after the termination of this Grant 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). Should GRANTEE fail to submit these reports to the DISTRICT, GRANTEE shall make the Electric Vehicle Charging station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement available for on-site monitoring by the DISTRICT for the term of the Grant Agreement. Such onsite monitoring shall not relieve GRANTEE of its obligation to submit all required reports.

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 Grant Agreement to the extent necessary to verify the grant has been used in accordance with the terms of this Grant 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.

a) THE PARTIES agree to procure and maintain liability insurance in an amount sufficient to protect against claims that may be filed against THE PARTIES for the services they provide, or THE PARTIES may elect to self-insure against such claims as provided by their respective government policies.

b) In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead THE PARTIES agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code

Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Grant Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Grant Agreement.

c) Contractor Insurance. GRANTEE shall require GRANTEE'S Contractor to comply with the indemnity and insurance requirements specified in ATTACHMENT E (INDEMNIFICATION AND INSURANCE) and provide all parties with copies of the Certificates of Insurance, including the endorsement(s) naming the DISTRICT as an additional insured.

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 D (COUNTY OF SANTA BARBARA UNLAWFUL DISCRIMINATION ORDINANCE) and incorporated herein by this reference.

12. Title to Electric Vehicle Charging Station and Installation Supplies.

Title to, and risk of loss, of any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement shall at all times vest in and with GRANTEE. GRANTEE acknowledges that DISTRICT did not supply, design or manufacture any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement. The Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies are commercially manufactured and sold by a manufacturer determined by GRANTEE. DISTRICT specifically disclaims all warranties, express and implied, including the implied warranties of merchantability and fitness for the intended purpose, as to the low emissions equipment, any test equipment, or the field tests. In no event shall DISTRICT be liable to GRANTEE or any third party for any direct, indirect, consequential, special, incidental, or punitive damages for the design, manufacture, operation, maintenance, performance, or demonstration of the low emissions equipment under any theory, including but not limited to, tort, contract, breach of warranty, or strict liability.

13. Rights to Emission Reductions.

GRANTEE affirmatively certifies to the DISTRICT that the project described in ATTACHMENT A (SCOPE OF WORK) is not 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 any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement. GRANTEE shall not use or attempt to use the emission reductions achieved by the project as emission reduction credits. GRANTEE hereby fully and completely relinquishes such rights for the useful life of the project .

14. Termination.

a) DISTRICT. DISTRICT may, in its sole discretion, terminate this Grant 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 Grant Agreement during this period except those absolutely necessary to close out all activities related to the Grant 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 also terminate this Grant Agreement for cause should GRANTEE default in the performance of this Grant Agreement or materially breach any of its provisions. Such termination shall be by written notice and shall be effective upon receipt by GRANTEE. The DISTRICT may seek whatever legal, equitable, and other remedies available under State law for the GRANTEE's failure to comply and fully perform under the Grant Agreement.

b) GRANTEE. GRANTEE may terminate its obligation funded under this Grant Agreement for good cause as determined in the sole discretion of GRANTEE, provided that, if requested by the Control Officer, GRANTEE shall reimburse the DISTRICT for the Grant funding specified in Paragraph 3 (Grant Funding), as follows:

<u>Termination Date</u>	<u>Reimbursement Due to District</u>
Prior to Operation	100 percent of Grant Funding
Year 1 of Operation	100 percent of Grant Funding
Year 2 of Operation	60 percent of Grant Funding
Year 3 of Operation	20 percent of Grant Funding
After year 3 of Operation	0 percent of Grant Funding

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 Grant Agreement) and 2 (Time of Performance) of this Grant Agreement.

15. Taxes.

GRANTEE shall be responsible for payment of all taxes due as a result of the Grant Agreement. GRANTEE's Federal Tax Identification Number or Social Security Number shall be on file with DISTRICT prior to payment of grant funds.

16. 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.

17. 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.

18. 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.

19. 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.

20. Waivers.

The waiver by either party to this Grant Agreement of any term, covenant, or condition of this Grant 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.

21. 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.

22. California Law to Apply.

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

23. Assignment.

This Grant 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 any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement, GRANTEE shall promptly notify DISTRICT and shall provide the potential buyer or other transferee with a copy of this Grant Agreement. The buyer or other transferee must agree in writing to abide by the terms of this Grant Agreement prior to GRANTEE closing any such sale, lease or other transfer.

24. Grant Agreement Integrated.

This Grant Agreement represents the entire and integrated Grant 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 Grant Agreement which is not contained herein shall be valid or binding.

25. 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 Grant Agreement by reference, conflict with any provision contained in this Grant Agreement, the provision of this Grant Agreement shall take precedence and govern.

26. 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.

27. 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.

28. Point of Contact.

All notices referenced in this Grant 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
City of Goleta
Planning & Environmental Review
130 Cremona Drive, Suite B
Goleta, CA 93117
Attn: Cindy Moore

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

29. Equipment Maintenance.

GRANTEE will maintain and operate any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement according to manufacturer's recommendations.

30. Equipment Operating Area.

GRANTEE shall operate any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement within Santa Barbara County.

31. On-Site Inspections and Audits.

GRANTEE shall allow the DISTRICT or designee to inspect any Electric Vehicle Charging Station or any Electric Vehicle Charging Station installation supplies funded by this Grant Agreement and associated records during the contract term. GRANTEE shall maintain and retain the project records for at least two years after contract expiration or three years after final project payment, whichever is later.

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

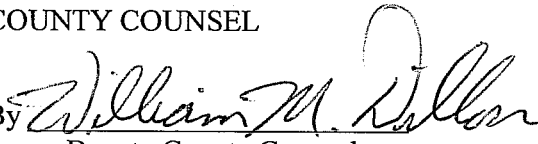
SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT,
STATE OF CALIFORNIA

ATTEST:

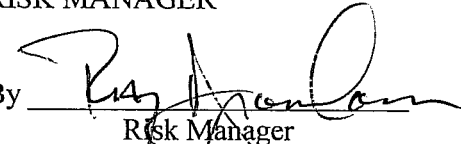
LOUIS D. VAN MULLEM, JR.
CLERK OF THE BOARD

By _____
Deputy

APPROVED AS TO FORM
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By 
Deputy County Counsel

APPROVED AS TO FORM:
RAY AROMATORIO, ARM, AIC
RISK MANAGER

By 
Risk Manager

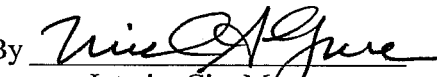
APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, CPA, CPFO
AUDITOR-CONTROLLER

By 
Division Chief
Advance/Speciality Accounting

By _____
Chair

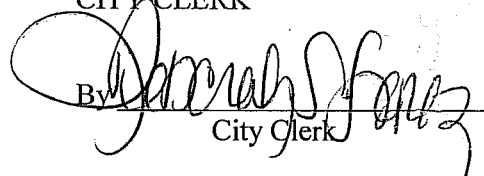
GRANTEE:

CITY OF GOLETA
MICHELLE GREENE
INTERIM CITY MANAGER

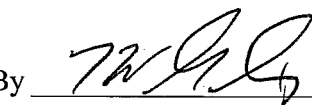
By 
Interim City Manager

ATTEST:

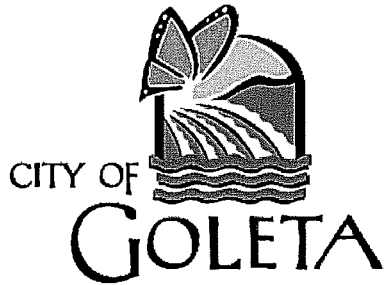
CITY OF GOLETA
DEBORAH S. LOPEZ
CITY CLERK

By 
City Clerk

APPROVED AS TO FORM
CITY OF GOLETA
TIM W. GILES
CITY ATTORNEY

By 
City Attorney

ATTACHMENT A
SCOPE OF WORK



July 3, 2014

Mr. Jim Fredrickson
Santa Barbara County Air Pollution Control District
301 E. Cook Street, Suite L
Santa Maria, CA 93454

CITY COUNCIL

Michael T. Bennett
Mayor

Paula Perotte
Mayor Pro Tempore

Roger S. Aceves
Councilmember

Jim Farr
Councilmember

Tony Vallejo
Councilmember

**INTERIM
CITY MANAGER**
Michelle Greene

RE: Electrical Vehicle Charging Station Infrastructure Program Grant

Dear Mr. Fredrickson:

The City, working with EV Connect and Nissan USA, proposes to install a DC Fast Charger unit for electric vehicles and plug-in hybrids at the Camino Real Marketplace, 7095 Marketplace Drive. The proposed location is within the City of Goleta in an area that experiences extensive public use, and would be easily accessible and available to the public.

Nissan USA has offered to donate the DC Fast Charger, valued at \$35,000. The City of Goleta would own and be responsible for the operation of the unit for the duration of the grant agreement and is requesting a total of \$17,283.32 to help defray the installation costs.

As shown below, the value of the donation of the DC Fast Charger and cost of the service and maintenance contracts and inspections for a three year period is over twice the amount of the installation request. Therefore, the City requests this contribution qualify as meeting the requirement in the Electric Vehicle Charging Station Program Grant Agreement, Section 4, Matching Funds.

	Installation		Estimated 3-Year Service & Maintenance Contracts & Inspections	Nissan USA Donation	Total	% Match
	Materials	Labor				
APCD Application	\$9,643.32	\$7,640.00	-	-	\$17,283.32	31%
City of Goleta	-	-	\$3,150.00	\$35,000.00	\$38,150.00	69%
Total	\$9,643.32	\$7,640.00	\$3,150.00	\$35,000.00	\$55,433.32	100%

The City is excited about the possibility of installing and making available for public use one of the first DC Fast Chargers for electric vehicles and plug-in hybrids in Santa Barbara County. Please contact me at (805) 961-7547 or cmoore@cityofgoleta.org if you have any questions.

Sincerely,



Cindy Moore
Sustainability Coordinator

ATTACHMENT B
GRANT INVOICE PAYMENT

GRANTEE shall invoice the DISTRICT as follows:

- Not-to-exceed (NTE) total of **\$17,283** upon completion of all the grant obligations, as specified above in ATTACHMENT A (SCOPE OF WORK), and itemized as follows:
 - NTE **\$0** for specified Electric Vehicle Charging Station(s)
 - NTE **\$17,283** for specified installation of Electric Vehicle Charging Station(s).
- Attach a copy of vendors' invoice to GRANTEE for the Electric Vehicle Charging Station (include model number, model year) and/or itemized breakdown of all supplies used for the installation of Electric Vehicle Charging Station(s).

ATTACHMENT C
GRANT NARRATIVE REPORTS FORMAT

GRANTEE shall submit an annual narrative report to the District after the first year of operation of the Electric Vehicle Charging Station. . The purpose of these reports is to provide the DISTRICT with feedback as to GRANTEE's experience with the Electric Vehicle Charging Station Charging Station. The reports shall include the following items:

1. Name, address, and telephone of GRANTEE;
2. Make and model and location of equipment purchased;
3. Operating hours for the Electric Vehicle Charging Station for the most recent 12 months of operation;
4. Discussion of condition of equipment including any repairs, problems, or benefit with the Electric Vehicle Charging Station.
5. Any conditions (e.g., weather) that significantly affected the annual usage of the Electric Vehicle Charging Station from routine service.

ATTACHMENT D
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).

ATTACHMENT E
INDEMNIFICATION AND INSURANCE

CONTRACTOR shall comply with the following requirements. CONTRACTOR shall not subcontract any services provided under this Grant Agreement without the written consent of the GRANTEE and full compliance by any subcontractor with the requirements of this Grant Agreement.

1. INDEMNIFICATION.

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by THE PARTIES) and hold harmless THE PARTIES and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Grant Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by THE PARTIES on account of any claim except where such indemnification is caused by the active negligence, sole negligence, or willful misconduct of the THE PARTIES. CONTRACTOR shall notify **THE PARTIES** immediately in the event of any accident or injury arising out of or in connection with this Grant Agreement. This Indemnification provision shall survive any expiration or termination of this Grant Agreement.

2. INSURANCE.

Owner, at its own expense, shall provide and maintain insurance coverage during the complete term of the Grant Agreement that conforms in all material respects with the following requirements:

2.1 Workers' Compensation and Employer's Liability Insurance. Statutory Workers' Compensation coverage for all of its employees, including occupational disease coverage, as required by applicable law, and employer's liability with limits of at least \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease per employee, and \$1,000,000 bodily injury by disease in the aggregate.

2.2 Commercial General Liability Insurance. Commercial General Liability Insurance written on an "occurrence" basis with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including bodily injury, hazards of operation, broad form property damage liability coverage, products/completed operations coverage, independent contractor coverage and broad form contractual coverage for liability assumed under the Grant Agreement, to the extent insurable under the policy. Coverage shall include liability arising out of acts of agents or contractors of Owner.

2.3 Automobile Liability Insurance. Coverage for all motor vehicles operated by or for Owner, including protection for automobiles and trucks used by Owner either on or away from the sites at which work is being performed, with a combined single limit of at least \$1,000,000

per occurrence for bodily injury and property damage. The policy shall include coverage for all hired, owned and non-owned vehicles.

2.4 Insurance Requirements Applicable to Contractors. Owner shall require each of its contractors to maintain policies of insurance of the types described above with insurance limits as are customary for the industry in which each such contractor operates and coverage limits as are commercially reasonable given the nature of the work to be provided by such contractor.

2.5 Policy Provisions. Owner agrees that it will maintain insurance to cover any indemnity obligation that it has assumed under this Grant Agreement. All policies will be primary and at Owner's sole expense. Host will be included as an additional insured on all coverage listed above with the exception of Workers' Compensation, Employer's Liability, Property, and Professional Liability. All workers compensation, general liability, and auto liability insurance policies will include provisions that the insurers waive the rights of recovery or subrogation against Host. Insurance coverage will be in a form and carrier acceptable to Host with a minimum A.M. Best rating of A-/VII or higher. The insolvency, bankruptcy or failure of any insurance company shall not relieve Owner of any of its obligations herein. Within two (2) days of a request by Host, Owner shall provide certificates of insurance including additional insured endorsements.

2.6 Certificates. A certificate of insurance and additional insured endorsement evidencing the above must be presented and satisfactory to Host prior to commencement of the Power Efficiency Services. Owner must provide thirty (30) days notice to Host in the event of cancellation of such coverage and ten (10) days notice in the event of non-payment of premium; and, Owner shall notify Host in the event of material change or cancellation.