

Contract summary Form:

BC- _____ -07- _____ - _____

Complete the information below, print this form, obtain the signature of the authorized department representative and submit this form to the Clerk of the Board with the contract package.

D1. Fiscal Year..... : 2006/2007 and 2007/2008
 D2. Budget Unit Number..... : 054
 D3. Requisition Number..... :
 D4. Department Name..... : Public Works (Resource Recovery and Waste Management)
 D5. Contact Person..... : Imelda Cragin
 D6. Phone Number..... : 882-3613


K1. Contract Type..... : Construction
 K2. Brief Summary of Contract Description or (Title)..... : FOXEN CANYON LANDFILL FINAL CLOSURE IN THE COUNTY OF SANTA BARBARA
 K3. Original Contract Amount (Gross Amount)..... : \$ 2,708,044.78
 K4. Contract Begin Date (First Working Day)..... : MARCH 26, 2007
 K5. Notwithstanding the provisions in Sections 8-1.05 and 8-1.06 of the Standard Specifications the Original Contract End Date will be (Last Working Day)..... : SEPTEMBER 11, 2007
 K6. This Amendment Number..... :
 K7. Total Previous Amendments..... :
 K8. This Amendment Amount..... :
 K9. Revised Total Amount..... :
 K10. Revised End Date (Last Working Day)..... :
 K11. Departmental Project Number..... : 170011

B1. Is this a Board Contract (Yes/No)..... : YES
 B2. Number of Workers Displaced..... : None
 B3. Number of Competitive Bids..... : 7
 B4. Lowest Responsible Bid Amount..... : \$ 2,567,185.50
 B5. If Board waived bids, show agenda date..... :
 B6. If Board waived bids, show agenda item number..... :
 B7. Boilerplate Contract Text Unchanged..... : Approved Public Works Engineering Section Construction Contract

F1. Encumbrance Transaction Code..... :
 F2a. Current Year Encumbrance Amount..... :
 F2b. Current Year Encumbrance Amount..... : N/A
 F3. Department Number..... : 054
 F4. Division Number (If Applicable)..... : N/A
 F5. Subdivision Number (If Applicable)..... : N/A
 F6a. Program..... : 1700
 F6b. Program..... : N/A
 F7. Org. Unit (If Applicable)..... : N/A
 F8. Fund Number..... : 1930
 F9a. Account Number..... : 7460
 F9b. Account Number..... : N/A
 F10. Area..... : N/A
 F11. Cost Center number (If Applicable)..... :
 F12. Payment Terms..... : Net 30

V1. Auditor Vender Number..... :
 V2. Payee/Contractors Name..... : WHITAKER CONTRACTORS, INC.
 V3. Mailing Address..... : 2752 CONCRETE COURT
 V4. City..... : PASO ROBLES
 V5. State..... : CA
 V6. Zip (include +4 if known)..... : 93446
 V7. Company Telephone Number..... : (805) 226-4020
 V8. Federal Tax ID (EIN or SSN)..... : 77-0204026
 V9. Contact Person..... : DONNA ADAMS
 V10. Contact Person's Telephone Number..... : (805) 226-4020
 V11. Workers Comp Insurance Expiration Date..... :
 V12. General liability Insurance Expiration Date..... :
 V13. Contractor's License Number and Type..... : 556738 A & B
 V14. Professional License Number and Type..... :
 V15. Verified By..... :
 V16. Company Type..... : CORPORATION
 V17. Accounting Contact Person and Phone..... : Colleen Hankins (805) 882-3610

This information has been reviewed and is complete and accurate as presented. Concurrences as required by signature on the contract signature page.

Date: 12/19/08 Authorized Signature: 



DRAFT COPY

Do Not Execute

COUNTY OF SANTA BARBARA
DEPARTMENT OF PUBLIC WORKS

CONTRACT

FOR

**FOXEN CANYON LANDFILL
FINAL CLOSURE
IN THE COUNTY OF SANTA BARBARA**

COUNTY PROJECT NO. 170011

DEPARTMENT OF PUBLIC WORKS

**PHILLIP M. DEMERY
DIRECTOR OF PUBLIC WORKS**



COUNTY OF SANTA BARBARA AGREEMENT FOR:

County Project No. 170011

Auditor – Controller Contract No. _____

THIS AGREEMENT is made by and between the County of Santa Barbara a political subdivision of the State of California, hereinafter called **COUNTY**, and WHITAKER CONTRACTORS, INC. hereinafter referred to as **CONTRACTOR**, for the completion of the work identified herein, on the following terms, conditions and provisions:

1. CONTRACT. This agreement incorporates by reference all of the Special Provisions and the Project Plans described below, including any addenda thereto, and also in accordance with the State of California, Department of Transportation Standard Specifications for Construction of Local Streets and Roads dated July 2002, the State of California, Department of Transportation Standard Plans for Construction of Local Streets and Roads dated July 2002, and the County of Santa Barbara, Department of Public Works, Standard Details dated April 1, 1987 insofar as the same may apply, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished, as provided by COUNTY for the work identified below; and where consistent with this document, the proposal executed and submitted by the CONTRACTOR. CONTRACTOR acknowledges receipt of all such documents as were not already in Contractor's possession. Said incorporated documents, this agreement, any Notice to Contractors, the Bid Bond, the Faithful Performance Bond, and Payment Bond are referred to herein as the "Contract" or "Contract Documents". Copies of all said documents are on file in the Department of Public Works Office of the COUNTY and have been and will be made available to the CONTRACTOR during the term of this Agreement.

The Special Provisions for the work to be done are entitled:

COUNTY OF SANTA BARBARA; NOTICE TO CONTRACTORS AND SPECIAL PROVISIONS FOR FOXEN CANYON LANDFILL FINAL CLOSURE IN THE COUNTY OF SANTA BARBARA

The project plans for the work to be done are entitled:

COUNTY OF SANTA BARBARA; STATE OF CALIFORNIA; DEPARTMENT OF PUBLIC WORKS; PLANS FOR THE CONSTRUCTION OF FOXEN CANYON LANDFILL FINAL CLOSURE IN THE COUNTY OF SANTA BARBARA

2. WORK. CONTRACTOR agrees, at his own proper cost and expense, to do all the work and furnish all equipment and materials, except such as mentioned in the specifications to be furnished by the County, necessary to perform and complete the work described in the documents referred to above, in a good and workmanlike manner to the satisfaction of the Director of Public Works of said COUNTY, all in strict accordance with the Plans and the Contract Documents provided.

3. EXTRA WORK. Extra work, materials, resolution of disputes, corrections, and/or changes to the specifications as are required for the proper completion of the work or the improvement contemplated may be authorized and agreement made for compensation at the same rate per unit (or at a corresponding rate for work that is different from that provided for in the Contract Documents) by the Engineer, if compensation is not in excess of 10% of the original base agreement amount or \$25,000, or \$25,000 + 5% of the amount of the bid in excess of \$250,000, the total of changes are not to exceed \$150,000, in accordance with Section 20142(a) and (b), and Section 20395(d) of the Public Contract Code. Extra work or changes in excess of these limits may be authorized by

resolution or minute order of the Santa Barbara County Board of Supervisors. The Engineer shall determine, if necessary, appropriate additional time to be allowed for such extra work.

In no event shall County be liable for the cost of any extra work not approved in advance and in writing by the Engineer.

4. PAYMENTS NOT ACCEPTANCE. No certificate given or payments made under this Contract shall be evidence of the performance of this Contract, either wholly or in part, against any claim upon CONTRACTOR. Final payment for the work performed under this Contract shall not be made until the lapse of thirty (30) days after the Notice of Completion of said work has been filed for record and no payment shall be construed to be acceptance of any defective work or improper materials. CONTRACTOR agrees that the payment for final quantities due under this Contract, and the payment of amounts due for any work in accordance with any amendments of this Contract, shall release the County of Santa Barbara from any and all claims or liabilities on account of work performed under this Contract or any amendments thereof. In addition to guarantees required elsewhere, CONTRACTOR shall and does hereby guarantee all workmanship and material to be free of defects and fit for the purposes intended for a period of one year from and after both the date of acceptance of the work and the recordation of the Notice of Completion by the COUNTY, and CONTRACTOR shall repair or replace any or all work and material, together with any other portions of the work which may be displaced in so doing, that in the opinion of the Engineer, is or becomes defective during the period of said guarantee without expense whatsoever to the COUNTY.

5. PROGRESS PAYMENT NO WAIVER FOR DELAY. Any progress payment made after the scheduled completion date will not constitute a waiver of any liquidated damages heretofore agreed upon as part of this Contract.

6. EXCAVATIONS. Before any pavement resurfacing, displacement or excavation of the ground that may be required by any performance under this Agreement, the CONTRACTOR shall obtain an inquiry identification number by calling Underground Service Alert (USA) 1 (800) 422-4133 or 1 (800) 227-2600 or by such other means as may be required; shall conform to all requirements of Government Code Sections 4215 through 4217 regarding any such pavement resurfacing, displacement or excavation, including the payment of any fees required; and shall facilitate performance by the COUNTY of any obligation required of the COUNTY under said Sections. There shall be no performance under this Agreement by either party unless and until the provisions of such Sections are complied with and the Engineer is notified regarding the compliance.

7. ENGINEER. The Engineer referred to in the Contract Documents is the Santa Barbara County Director of Public Works or the Director's authorized representative.

8. COMPLIANCE WITH LAW, AMENDMENTS. CONTRACTOR shall keep fully informed of all laws, ordinances and regulations which do or may affect the conduct of the work, the materials used therein or persons engaged or employed thereon and all such orders of bodies and tribunals having any jurisdiction over same. If it be found that the Special Provisions or Standard Specifications for the work conflict with any such law, ordinance or regulation, the CONTRACTOR shall immediately report same to the Engineer in writing. CONTRACTOR shall at all times observe and comply with and shall cause all agents and employees to observe and comply with all such laws, ordinances, regulations or decrees as the same now exists or may be hereafter amended and all superseding provisions thereof. CONTRACTOR acknowledges, particularly, the provisions of Sections 3196 and Sections 3247 and 3252, inclusive, of the Civil Code of California. CONTRACTOR shall protect and indemnify the County of Santa Barbara, the Board of Supervisors, the Director of Public Works, and/or any officer, agent or employee of the COUNTY against any claims or liability arising from or based on the violation of any such law, ordinance, regulation or decree whether by CONTRACTOR, or a subcontractor, agent or employee.

9. PREVAILING WAGE RATES. Rates of wages, including overtime, holiday and Sunday rates provided for the work are subject to the effect of Executive Orders of the President of the United States No. 9240, dated September 9, 1942, and No. 9250, dated October 3, 1942, and to any modifications thereof and to any and all lawful orders of the President or any authorized Federal Officer or agency, insofar as the same may be applicable to this Contract.

In accordance with the requirements of Labor Code Section 1770, the Director of the Department of Industrial Relations has determined the general prevailing rate of per diem or hourly wages for workers required to perform the subject work. A copy of the prevailing wage rate is on file with the Director of Public Works, County Engineering Building, 123 East Anapamu Street, Santa Barbara, California, and is available for inspection.

Contractor, and any subcontractor under his or her direction, shall pay not less than the said prevailing rates to all, laborers, workers and mechanics employed by them in the execution of the contract.

10. CONTRACT DOCUMENTS ACKNOWLEDGED. CONTRACTOR hereby declares that he has read the "Contract Documents" pertaining to the work to be accomplished hereunder, has carefully examined the plans and detail drawings of the work to be performed and fully understands the intent and meaning of the same.

11. TIMES FOR COMMENCEMENT, COMPLETION. Notwithstanding the provisions found in Section 8-1.05, "Temporary Suspension of Work," and Section 8-1.06, "Time of Completion," of the Standard Specifications, the work to be done under this Agreement shall be completed by SEPTEMBER 11, 2007. The CONTRACTOR shall begin work as soon as practicable after execution of this Agreement by both the CONTRACTOR and the COUNTY, and in no event shall work begin later than MARCH 26, 2007. CONTRACTOR acknowledges the provision of this Agreement regarding liability for liquidated damages in the event CONTRACTOR fails to perform the work before the completion date in this paragraph. The above beginning and ending dates equate to ONE HUNDRED TWENTY (120) working days.

12. WORKERS' COMPENSATION INSURANCE. CONTRACTOR certifies as to knowledge of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that Code. Contractor will comply with such provisions before commencing the performance of the work of this Contract.

13. GUARANTEE BONDS. Before any performance under this Agreement, the CONTRACTOR shall provide the security required by statute for the payment of all workers and suppliers, and security for faithful performance of all terms and conditions of this Agreement, in an amount and form approved by the COUNTY. Both securities shall contain provisions which automatically increase amounts thereof and/or time of completion or both for all change orders, extensions and additions to the work provided pursuant to this Agreement.

14. NON DISCRIMINATION. The CONTRACTOR acknowledges that this Agreement is subject to the provisions of Article XIII of Chapter 2 of the Santa Barbara County Code, providing against discrimination in employment. The CONTRACTOR agrees to perform all requirements of a contractor under the provisions of said Article and to pay all costs occasioned to the COUNTY by any noncompliance by the CONTRACTOR.

15. DISPUTES. Should any disputes arise which the parties are unable to resolve by negotiation respecting the interpretation, construction or meaning of any of the plans or specifications or provisions affecting the work or respecting the true value of any extra work or work omitted, the dispute shall be submitted to arbitration if required by the provisions of the Public Contract Code or if the parties mutually agree to arbitration in lieu of adjudication by a court of competent jurisdiction. Any arbitration shall be carried out in accordance with the Public Contract Code, applicable provisions of the Santa Barbara County Code and other regulations or standards and in accordance with standards of the American Arbitration Association. Any arbitration ruling or decision shall be binding on the parties, unless the parties mutually agree in writing not to be so bound.

16. RIGHT TO AUDIT. The COUNTY will have the right to audit of Contractor's project records. Records must be made available in a form satisfactory to the Santa Barbara County Auditor-Controller.

17. SUPPLEMENTAL WORK. Supplemental work necessary for traffic control, public safety and convenience and as required for the proper completion of the work in the amount of \$\$10,000.00 shall be set aside and designated for this use in accordance with the Notice to Contractors, Special Provisions, and Proposal, and Specifications of this project.

18. PAYMENT. As full compensation for furnishing all labor, supervision, overhead, materials and equipment and for doing all the work completed and embraced in this Agreement and subject to adjustments and liquidated

damages, if any, as provided in the Contract Documents, the base amount to be paid to the CONTRACTOR for satisfactory completion of all requirements of the Contractor under this Agreement including Section 17 Supplemental Work of this agreement is and shall be; TWO MILLION, FIVE HUNDRED SIXTY SEVEN THOUSAND, ONE HUNDRED EIGHTY FIVE DOLLARS AND FIFTY CENTS (\$ 2,567,185.50), to be paid as provided in the Contract Documents dated DECEMBER 11, 2006, and as shown on the Engineer's Estimate below. The CONTRACTOR assumes and will provide against any and all loss or damage arising out of the nature of the work undertaken, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the COUNTY, and assumes any and all expenses incurred by or in consequence of suspension or discontinuance of the work, for well and faithfully completing the work and the whole thereof, in the manner and according to the plans, specifications and Contract, and the requirements of the Engineer under them, to wit:

CONTRACTOR'S UNIT BASED PRICES 170011

Item	Item Code	Description	Unit of Measure	Estimated Quantity	Unit Price (In Figures)	Item Total (In Figures)
101		WATER POLLUTION CONTROL	LS	LUMP SUM	\$12,000.00	\$12,000.00
102		MOBILIZATION	LS	LUMP SUM	\$135,000.00	\$135,000.00
103		TRAFFIC CONTROL SYSTEM	LS	LUMP SUM	\$1,550.00	\$1,550.00
104		FIELD OFFICE	LS	LUMP SUM	\$6,500.00	\$6,500.00
105		CLEARING AND GRUBBING	LS	LUMP SUM	\$50,000.00	\$50,000.00
106		DEVELOP WATER SUPPLY	LS	LUMP SUM	\$50,000.00	\$50,000.00
201		REMOVALS	LS	LUMP SUM	\$18,520.00	\$18,520.00
202		REMOVE AND STOCKPILE BORROW SITE VEGETATION	LS	LUMP SUM	\$53,218.00	\$53,218.00
203		SOUTH SLOPE EMBANKMENT EXCAVATION	CY	6,000	\$6.80	\$40,800.00
204		PLACE MONOLITHIC COVER AND INCIDENTAL EMBANKMENT FILLS	CY	160,000	\$3.20	\$512,000.00
205		CONSTRUCT DECK BERMS	LF	925	\$5.00	\$4,625.00
206		SURFACE FINISH GRADING	SF	956,000	\$0.10	\$95,600.00
301		ASPHALT CONCRETE ROADWAY PAVEMENT	TON	2,210	\$94.00	\$207,740.00
302		MISCELLANEOUS ASPHALT CONCRETE	TON	250	\$124.00	\$31,000.00
303		AC DIKE TYPE A	LF	4,040	\$3.60	\$14,544.00
304		AC DIKE TYPE E	LF	1,875	\$4.00	\$7,500.00
305		AGGREGATE BASE	TON	4,320	\$26.20	\$113,184.00
306		PCC SPILLWAY	SF	790	\$13.30	\$10,507.00
307		PCC BASIN FLOOR AND TOP FLATWORK	SF	8,830	\$10.10	\$89,183.00
308		PCC BASIN WALLS	SF	10,730	\$9.40	\$100,862.00
309		PCC CHANNEL, TYPE A	LF	630	\$105.40	\$66,402.00
310		PCC CHANNEL, TYPE B, INCLUDING TRANSITIONS	LF	535	\$78.80	\$42,158.00
311		PCC BROW DITCH	LF	500	\$60.50	\$30,250.00
312		PCC CROSS GUTTER	SF	320	\$13.20	\$4,224.00
313		MINOR CONCRETE (MINOR STRUCTURE, JUNCTION STRUCTURE)	EA	1	\$7,006.00	\$7,006.00
314		MINOR CONCRETE (MINOR STRUCTURE, PIPE COLLAR)	EA	3	\$1,311.00	\$3,933.00
315		PRECAST CONCRETE MANHOLE STRUCTURE	EA	1	\$11,566.00	\$11,566.00

316		REINFORCED MASONRY SPLASH WALL	LF	43	\$173.00	\$7,439.00
317		REINFORCED MASONRY SLOUGH WALL	SF	240	\$46.50	\$11,160.00
318		60" CSP RISER	EA	1	\$6,367.00	\$6,367.00
319		48" CSP RISER	EA	1	\$4,915.00	\$4,195.00
320		36" CSP INLET	EA	1	\$4,128.00	\$4,128.00
321		CORRUGATED STEEL FLUME INLETS 24"	EA	5	\$1,148.00	\$5,740.00
322		CORRUGATED STEEL FLUME INLETS 36"	EA	2	\$1,869.00	\$3,738.00
323		CORRUGATED STEEL FLUME 24"	LF	340	\$71.35	\$24,259.00
324		CORRUGATED STEEL FLUME 36"	LF	190	\$78.00	\$14,820.00
325		36" CORRUGATED HDPE PIPE	LF	170	\$147.50	\$25,075.00
326		REDWOOD HEADER	LF	600	\$4.50	\$2,700.00
401		T-WALL RETAINING STRUCTURE AND METAL BEAM GUARD RAIL STRUCTURE	LS	LUMP SUM	\$145,470.00	\$145,470.00
402		SURVEY CONTROL MONUMENT	EA	2	\$2,940.00	\$5,880.00
403		STRIPING AND SIGNING	LS	LUMP SUM	\$4,114.00	\$4,114.00
404		REMOVE EXISTING FENCE	LS	LUMP SUM	\$7,500.00	\$7,500.00
405		PERMANENT PERIMETER FENCING	LF	2,430	\$6.00	\$14,580.00
406		DOUBLE GATE STRUCTURE WITH TWO 16' GATES	LS	LUMP SUM	\$1,000.00	\$1,000.00
407		SINGLE GATE STRUCTURE WITH ONE 12' GATE	LS	LUMP SUM	\$650.00	\$650.00
408		TRAFFIC PLATES	EA	4	\$1440.00	\$5,760.00
409		PROTECT GROUNDWATER MONITORING WELL	EA	1	\$2,225.00	\$2,225.00
501		REMOVE AND DISPOSE EXISTING HEADERS AND WELL HEADS	LS	LUMP SUM	\$6,721.00	\$6,721.00
502		TEMPORARY CAP AND EXTEND LANDFILL GAS WELLS	EA	9	\$2,844.00	\$25,596.00
503		NEW LANDFILL GAS WELLS COMPLETE IN PLACE	LF	175	\$181.00	\$31,675.00
504		LANDFILL GAS WELL HEAD AND APPURTENANCES	EA	3	\$3,965.00	\$11,895.00
505		4" HDPE HEADER	LF	490	\$17.50	\$8,575.00
506		6" HDPE HEADER	LF	645	\$19.50	\$12,577.50
507		8" HDPE HEADER	LF	660	\$23.50	\$15,510.00
508		ROAD CROSSING	LF	28	\$174.00	\$4,872.00
509		RELOCATE CONDENSATE TANK AND CONTAINMENT STRUCTURE	LS	LUMP SUM	\$3,665.00	\$3,665.00
601		HYDROSEED	AC	30	\$4,950.00	\$148,500.00

602		LIGHTWEIGHT TURF REINFORCEMENT MAT	SY	12,360	\$9.20	\$113,712.00
603		COCONUT/SYNTHETIC NETTING MAT	SY	27,460	\$3.00	\$82,380.00
604		HEAVYWEIGHT TURF REINFORCEMENT MAT IN FLOW LINE	SY	4,410	\$14.50	\$63,945.00
605		FURNISH AND INSTALL UV GRAVEL-FILLED BAG	EA	3,000	\$2.12	\$6,360.00
606		CONSTRUCT 9" FIBER ROLL ON SLOPE	LF	1,500	\$2.54	\$3,810.00
CONTRACTOR'S BID ITEMS (SUBTOTAL)						\$2,557,185.50
SUPPLEMENTAL BID ITEMS						
701		SUPPLEMENTAL FUNDS (ASPHALT PRICE INDEX)	LS	LUMP SUM		\$10,000.00
SUPPLEMENTAL BID ITEMS (SUBTOTAL)						
						\$10,000.00
BID ITEMS AND SUPPLEMENTAL ITEMS TOTAL						\$2,567,185.50

19. SUBSTITUTION OF MATERIALS, SUBSTITUTION OF CONTRACTORS. The Engineer is authorized to act on behalf of the awarding authority in any matters requiring consent, notice or hearing in order to substitute materials or equipment specified or to substitute subcontractors.

Date: _____

BY: DO NOT EXECUTE THIS DRAFT COPY
Chair, Board of Supervisors
of the County of Santa Barbara,
State of California

CONTRACTOR

WHITAKER CONTRACTORS, INC.

2752 CONCRETE COURT

PASO ROBLES, CA 93446

BY: _____

License No. 556738 A & B

IRS No. 77-0204026

ATTEST:
Michael F. Brown
Clerk of the Board

BY: _____
Deputy

Business Type Check Only One:

Corporation _____

Partnership _____

Sole Proprietorship _____

APPROVED AS TO FORM:
Stephen Shane Stark
County Counsel

BY: _____

APPROVED AS TO ACCOUNTING FORM:
Robert W. Geis, C.P.A.
Auditor-Controller

APPROVED AS TO FORM:
Ray Aromatorio
Risk Program Administrator

BY: _____

By: _____

Fiscal Responsibility _____

Dept.	Division	Subdivision	Program	Org Unit	Fund	Account	Area
054	N/A	N/A	1700	N/A	1930	7460	N/A

CERTIFICATE OF COMPLIANCE

This is to certify that all requirements for insurance of subcontractors as specified for this project have been met.

Firm

By

Title

Date

CALIFORNIA LABOR CODE SECTION 1860 AND 1861 CERTIFICATION

In accordance with the provisions of Section 1860 and 1861 of the California Labor Code, every Contractor will be required to secure the payment of compensation of his employees. Each Contractor to whom a public works contract is awarded shall sign the following certification prior to performing the work of the contract:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Firm

By

Title

Date

(Please return this completed form with your Agreement, Bonds and Certificates of Insurance.)

UNLAWFUL DISCRIMINATION

The Board of Supervisors of the County of Santa Barbara do ordain as follows:

SECTION 1.

A new article is hereby added to Chapter 2 of the Santa Barbara Code reading as follows:

ARTICLE XIII. UNLAWFUL DISCRIMINATION, COUNTY CONTRACTS

Sec.2-94. Exceptions

The provisions of this article shall not apply to contracts or agreements for the acquisition, exchange or disposition of real property or interests therein, nor to contracts or agreements with the State of California, or its political subdivisions, or with the United States of America. (Ord. 2946, § 1)

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 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 hereinafter specifically prohibit such discrimination on grounds as race, religion, sex, national origin, physical handicap when otherwise qualified, Vietnam era veteran/disabled, or age.

Such findings 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 contract or agreement if any of the above procedures are not afforded the contractor. If Contractor is not found to have engaged in unlawful discriminatory practices, County shall pay all costs and expenses of such hearing, including reasonable attorneys' fees to Contractor in accordance with current Santa Barbara 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 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 the 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 to 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 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 times 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 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 at the hearing.

Failure to fully comply with any of the forgoing 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 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, § 1; Ord. No. 2993, § 1; Ord. No. 3018, § 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 twelve (12) 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 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 so 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 expenses 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)



COUNTY OF SANTA BARBARA

ANTI-HARASSMENT POLICY

I. PURPOSES

The purposes of this policy are to re-affirm the County's commitment to keeping its workplaces free of unlawful harassment, to define and provide examples of the conduct that is prohibited, to summarize the respective responsibilities for preventing, reporting, investigating, and responding to violations, and to give clear warning of the serious consequences that violators will face.

A copy of this policy shall be provided to all persons who are subject to it, and shall be posted in County workplaces.

II. POLICY

All of the following are prohibited by this policy, and by state and federal laws:

- harassment in any aspect of County employment, based on any legally protected characteristic or status, including sex, sexual orientation, race, color, national origin, ancestry, religion, age, marital status, physical disability, mental disability, or medical condition;
- retaliation for opposing, filing a complaint about, or participating in an investigation of, any such harassment;
- aiding, abetting, inciting, compelling, or coercing any such harassment or retaliation, or attempting to do so.

The County will take all reasonable steps necessary to prevent such misconduct from occurring, and to remedy and punish any occurrences. Any County employee found to have engaged in such misconduct will be subject to disciplinary action, up to and including termination, and will be deemed to have acted outside the course and scope of his or her County employment.

This policy applies to all County employees, volunteers, interns, vendors, and contractors, as well as to all applicants for such positions.

This policy shall not be interpreted or applied in any manner that would be inconsistent with any applicable state or federal law or regulation, or increase the legal liability of the County.

III. DESCRIPTIONS AND EXAMPLES OF PROHIBITED HARASSMENT

Harassment on the basis of sex is unlawful, and is prohibited by this policy. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- an individual's submission to such conduct is made, either explicitly or implicitly, a term or condition of that individual's employment; or,
- an individual's submission to or rejection of such conduct is used as the basis for an employment decision affecting that individual; or

- the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, abusive, or offensive work environment.

Sexual harassment need not be motivated by sexual desire or gratification, and may include nonsexual conduct motivated by the violator's hostility toward the victim's gender, or toward the victim's nonconformity to gender stereotypes. Sexual harassment includes not only conduct motivated by gender, but also by pregnancy, childbirth, or a related condition. A harasser may be either male or female, and the victim may be either the same sex or the opposite sex. Even a person who is not the intended target of harassment may be harassed by it, if he or she witnesses it in their immediate work environment.

Sexual harassment may be verbal, visual, or physical. For example:

- Verbal harassment may consist of derogatory, offensive, threatening, or intimidating comments, epithets, slurs, or jokes; references to gender, physical appearance, attire, sexual prowess, marital status, or pregnancy; or sexual advances, propositions, or demands.
- Visual harassment may consist of displaying or circulating derogatory or offensive posters, cartoons, drawings, photographs, pin-ups, computer images, or electronic media transmissions.
- Physical harassment may consist of assault, battery, or unwelcome, unnecessary, and offensive touching (kissing, hugging, patting, rubbing, groping, pinching, brushing against), staring, leering, gesturing, whistling or making noises, impeding or blocking movement, or physically interfering with normal work or movement.

In addition to prohibiting unlawful harassment based on sex or gender, this policy also prohibits unlawful harassment based upon sexual orientation, or upon any other legally protected characteristic or status, such as race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age. Harassment on the basis of such factors is subject to the same principles applicable to sexual harassment, stated above.

IV. REPORTING HARASSMENT OR RETALIATION

Any County employee, volunteer, intern, vendor, contractor, or applicant who becomes aware of any harassment or retaliation prohibited by this policy shall report it immediately to their immediate supervisor, a higher ranking supervisor, the departmental affirmative action coordinator, or the County Equal Opportunity Manager. Under no circumstances shall such a report be required or expected to be made to a person who engaged in misconduct that is a subject of the report.

The responsibility to report conduct prohibited by this policy arises even if the conduct is directed toward someone else, and even if the person toward whom it is directed does not want it reported,

Reports may be made orally, or in writing, free of any requirements as to form.

Because reports of conduct prohibited by this policy will be treated as serious charges, the making of a deliberately false report, or a report made with reckless disregard for its truth or falsity, may subject the maker to disciplinary action.

V. INVESTIGATION AND RESOLUTION

The County of Santa Barbara will investigate all reported violations of this policy. All employees, volunteers, interns, vendors and contractors shall cooperate with any such investigation.

Any supervisor, manager, company, or departmental affirmative action coordinator who receives a report of, or who becomes aware of, conduct prohibited by this policy shall promptly report it to the County Equal Opportunity Manager. Upon receiving the report, the Equal Opportunity Manager shall conduct a prompt, full, and fair investigation, or delegate that responsibility to a qualified County employee or private investigator. The person performing the investigation shall:

- interview the complainant, the accused, and any other person the investigator believes to have knowledge relevant to the charges;

- gather and review any available documentary, electronic, or physical evidence relevant to the charges;
- consult with legal counsel as needed;
- determine whether the charges can or cannot be substantiated; and,
- develop recommendations for appropriate remedial and/or disciplinary action, if any.

Upon completion of the investigation, the Equal Opportunity Manager shall communicate the results of the investigation to the complainant, the accused, and, as appropriate, all others directly concerned.

To the extent permitted by law, confidentiality shall be maintained with respect to the complaint, the information gathered during the investigation, and the results of the investigation.