



**COUNTY OF SANTA BARBARA  
DEPARTMENT OF COMMUNITY SERVICES**

**DRAFT  
CONTRACT**

FOR

**ROAD REPAIR FOR  
ROAD RESTORATION**

**IN THE COUNTY OF SANTA BARBARA**

**COUNTY PROJECT NO. 8638**

**DEPARTMENT OF COMMUNITY SERVICES**

**HERMAN PARKER  
DIRECTOR OF COMMUNITY SERVICES**

**COUNTY OF SANTA BARBARA AGREEMENT FOR:**



**County Project No. 8638**

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 SOUZA CONSTRUCION, 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 includes and incorporates by reference all Contract Documents.

The Contract is comprised of all documents distributed to bidders as part of the Bid Package, including, but not limited to:

- 1) Special Provisions
- 2) Project Plans
- 3) State of California, Department of Transportation Standard Specifications dated May 2006
- 4) State of California, Department of Transportation Standard Plans dated May 2006
- 5) County of Santa Barbara, Department of Community Services, Standard Details dated April 1, 1987
- 6) Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished
- 7) The Proposal executed and submitted by the Contractor
- 8) Notice to Bidders
- 9) The Bid Bond
- 10) The Faithful Performance and Payment Bonds, and
- 11) Any Addenda

The Contractor acknowledges receipt of all such documents as were not already in the Contractor's possession. Said incorporated documents are referred to herein as the "Contract" or "Contract Documents"

Copies of all said documents are on file in the Department of Community Services 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 BIDDERS AND SPECIAL PROVISIONS FOR GUADALUPE DUNES ROAD RESTORATION 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 COMMUNITY SERVICES; PLANS FOR THE CONSTRUCTION OF GUADALUPE DUNES ROAD RESTORATION 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 Community Services of said COUNTY, all in strict accordance with the Plans and the Contract Documents provided.

### **3. EXTRA WORK**

Section 4-1.03D, "Extra Work," of the Standard Specifications is amended by adding the following between the second and third paragraphs:

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 percent of the original base agreement amount or \$25,000, or \$25,000 + 5 percent of the amount of the bid in excess of \$250,000, the total of changes 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.

If, in the opinion of the Engineer, such work cannot reasonably be performed concurrently with other items of work, and if a controlling item of work is delayed thereby, an adjustment of contract time will be made. 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 Community Services 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 Community Services, 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 Community Services, County Engineering Building, 123 East Anapamu Street, Santa Barbara, California, and is available for inspection.

Attention is directed to Section 7-1.01A(2), "Prevailing Wage," of the Standard Specifications.

The general prevailing wage rates determined by the Director of Industrial Relations, for the county or counties in which the work is to be done, are on file at the office of the Department of Community Services Engineering Division, 123 East Anapamu Street, Santa Barbara, CA 93101. Copies of these general prevailing wage rates shall be made available to any interested party on request. These wage rates are not included in the Proposal and Contract (Example) for the project. Changes, if any to the general prevailing wage rates will be available at the same location.

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.

The prevailing wage rates are also available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/dlsr/pwd>.

## **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 FEBRUARY 24, 2012. 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 FEBRUARY 1, 2012. 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 FIFTEEN (15) working days.

## **12. GUARANTEE PAYMENT AND PERFORMANCE 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, the Payment Bond and the "Faithful Performance Bond" shall be in the form specified and supplied by the County as part of the Bid Package. 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.

### **13. 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.

### **14. 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.

### **15. RIGHT TO AUDIT**

Contractor shall maintain and make available all books, papers, job descriptions, records, detail costs, estimates, claims, and accounts, including payment, property, payroll, personnel, subcontractors, sub-subcontractors and financial records related to or which arise out of the Work or under the terms or conditions of the Contract. The form of record keeping shall be subject to approval by County. These books, papers, records, claims, and accounts shall be made available for examination during normal business hours by County or County's representative and shall be retained at Contractor's principal place of business in California for audit during normal business hours at such place for four (4) years after recording of the Notice of Completion of Project. Contractor shall provide an office to enable County and County's representative to conduct such audit.

### **16. 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 \$12,000.00 shall be set aside and designated for this use in accordance with the Notice to Bidders, Special Provisions, and Proposal, and Specifications of this project.

### **17. 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 HUNDRED FIFTEEN THOUSAND, THIRTEEN DOLLARS AND TWENTY CENTS (\$215,013.20), to be paid as provided in the Contract Documents dated JANUARY 5, 2012, 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:

### **18 INDEMNIFICATION**

CONTRACTOR shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgements 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 CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages,

costs, expenses (including attorney's fees), judgements or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

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

## 19 INSURANCE REQUIREMENTS

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

1. **Workers' Compensation Insurance.** Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work 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 the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by Department of Industrial Relations for State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY 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 CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the Contractor in the indemnity and hold harmless provisions of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS 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. COUNTY, its officers, employees, and agents 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 the COUNTY.

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 non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR 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 the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective.

COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the contractor may be held responsible for payment of damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder

In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

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

**CONTRACTOR'S UNIT BASED PRICES 8638**

<b>I tem</b>	<b>Item Code</b>	<b>Description</b>	<b>Unit of Mea sure</b>	<b>Estimate d Quantity</b>	<b>Unit Price (In Figures)</b>	<b>Item Total (In Figures)</b>
1	066014	SURVEY CONTROL AND STAKING	LS	LUMP SUM	\$11,580.00	\$11,580.00
2	074016	CONSTRUCTION SITE MANANGEMENT	LS	LUMP SUM	\$12,527.00	\$12,527.00
3	074019	PREPARE STORM WATER POLLUTION PREVENTION PLAN."	LS	LUMP SUM	\$3,540.00	\$3,540.00
4	190101	ROADWAY EXCAVATION	CY	1700	LUMP SUM	\$19,567.00
5	270005	SOIL CEMENT (NATIVE SAND)	CY	3400	LUMP SUM	\$81,668.00
6	390130	HOT MIX ASPHALT (3/4 INCH)	TON	715	\$103.68	\$74,131.20
<b>CONTRACTOR'S BID ITEMS (SUBTOTAL)</b>						<b>\$203,013.20</b>
		SUPPLEMENTAL ITEMS OF WORK				
7	066595	SUPPLEMENTAL WORK (WATER POLLUTION CONTROL MAINTENANCE SHARING).	LS	LUMP SUM	\$2,000.00	\$2,000.00
8	066596	SUPPLEMENTAL WORK (ADDITIONAL WATER POLLUTION CONTROL)	LS	LUMP SUM	\$2,000.00	\$2,000.00
9	066597	SUPPLEMENTAL WORK (STORM WATER SAMPLING AND ANALYSIS)	LS	LUMP SUM	\$2,000.00	\$2,000.00
10	966024	SUPPLEMENTAL WORK (ENVIRONMENTAL OBLIGATIONS)	LS	LUMP SUM	\$2,000.00	\$2,000.00
11	966070	SUPPLEMENTAL WORK (PUBLIC CONVE-NIENCE AND SAFETY, COUNTY PORTION)	LS	LUMP SUM	\$2,000.00	\$2,000.00
12	966080	SUPPLEMENTAL FUNDS (ASPHALT PRICE INDEX)	LS	LUMP SUM	\$2,000.00	\$2,000.00
<b>SUPPLEMENTAL BID ITEMS (SUBTOTAL)</b>						<b>\$12,000.00</b>
<b>BID ITEMS AND SUPPLEMENTAL ITEMS TOTAL</b>						<b>\$215,013.20</b>



**20. 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.

DO NOT EXECUTE THIS DRAFT COPY

BY: \_\_\_\_\_  
 Chairperson, Board of Supervisors  
 of the County of Santa Barbara  
 State of California

**CONTRACTOR**

SOUZA CONSTRUCION, INC.

4027 SANTA FE ROAD

SAN LUIS OBISPO, CA 93401

BY: \_\_\_\_\_

License No. 479476 A

**ATTEST:**

Chandra L. Wallar  
 Clerk of the Board

BY: \_\_\_\_\_  
 Deputy

Business Type Check Only One:

Corporation \_\_\_\_\_

Partnership \_\_\_\_\_

Sole Proprietorship \_\_\_\_\_

**APPROVED AS TO FORM:**

Dennis Marshall  
 County Counsel

BY: \_\_\_\_\_

**APPROVED AS TO FORM:**

Ray Aromatorio  
 Risk Manager

BY: \_\_\_\_\_

By: \_\_\_\_\_

Fiscal Responsibility \_\_\_\_\_

Dept.	Division	Subdivision	Program	Org Unit	Fund	Account	Area
BDGT	DVSN9	SUBD8	P#RGM	ORGU#X1	FND	ACNTX1	4001

**DEBARMENT AND SUSPENSION CERTIFICATION**  
**TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29**

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, manager:

Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency:

Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years:

Does not have a proposed debarment pending; and

Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years

If there are any exceptions to this certification, insert the exception, in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate to whom it applies, initiating agency, and dates of action.

Company: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Note:** Providing false information may result in criminal prosecution or administrative sanctions.  
(Please return this completed form with your Agreement, Bonds and Certificates of Insurance)

**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 Community Services 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.)

**NONCOLLUSION DECLARATION**

**Per § 7106 of the Public Contract Code**

**ROAD REPAIR FOR  
ROAD RESTORATION  
IN THE COUNTY OF SANTA BARBARA**

**COUNTY PROJECT NO. 8638**

**BID OPENING DATE: JANUARY 5, 2012**

The bid, contract or other submittal of the contractor identified below in connection with the forgoing project is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; the bid is genuine and not collusive or sham; the bidder has not directly induced or solicited any other bidder to put in a false or sham bid and has not directly, colluded, conspired, connived or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; the bidder has not, in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the bidder or to fix any overhead, profit or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract; all statements contained in the bid are true; and, further the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the elements thereof, or divulged information or data relative thereto, or paid, and will not pay any fee to any corporation, partnership, company association, organization, bid depository or to any member or agent thereof to effectuate a collusive or sham bid.

I declare under the penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Principal Officer of

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Contractor)

## 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 of 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)

**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS:

That the County of Santa Barbara of the State of California (hereinafter referred to as the County) and SOUZA CONSTRUCCION, INC. (hereinafter referred to as Principal) have by written agreement dated JANUARY 10, 2012, entered into a contract identified as:

Project Title: GUADALUPE DUNES ROAD RESTORATION IN THE COUNTY OF SANTA BARBARA  
County Project No. 8638  
(Hereinafter referred to as the Contract) and

That, pursuant to law and to said Contract, and before entering upon the performance of said Contract, the principal is required to file with the County a good and sufficient bond to secure the payment of labor and materials claims.

NOW, THEREFORE, said Principal and \_\_\_\_\_

\_\_\_\_\_ as corporate surety (hereinafter referred to as Surety), are held firmly bound unto the County in the amount of \$215,013.20, for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally. Surety shall be and hereby warrants that it is listed in the Insurance Organizations Authorized By The Insurance Commissioner To Transact Business Of Insurance In The State Of California During 1995 (including changes effective January 1, 1996) published by the Department of Insurance, State of California or successor publications.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named or referred to in Section 3181 of the California Civil Code, or amounts due under Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor as required by Division 3, Part 4, Title XV, Chapter 7 (commencing at Section 3247) of the California Civil Code, or this bond, then said Surety will pay for the same, in an amount not to exceed the amount hereinafter set forth.

This bond shall insure to the benefit of any and all persons, entities, companies and corporations named or referred to in Section 3181 of the California Civil Code, so as to give a right of action to them or their assign in any suit brought upon this bond.

And the said Surety, for value received, hereby agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Specifications.

In the event suit is brought upon this Bond by County and judgment is recovered, Surety shall pay all costs incurred by the County in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By \_\_\_\_\_

\_\_\_\_\_  
Signature of Attorney-in-fact

DATED: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Address

Surety's Agent for Service of Process (located within the State of California):

\_\_\_\_\_  
Name of Agent

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip

\_\_\_\_\_  
Telephone Number

(805) 546-8287  
\_\_\_\_\_

FAX Number

NOTE: Signature of those executing for Surety must be properly acknowledged.



**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That the County of Santa Barbara of the State of California (hereinafter referred to as the County) and SOUZA CONSTRUCCION, INC. (hereinafter referred to as Principal) have by written agreement dated JANUARY 10, 2012, entered into a contract identified as:

Project Title: GUADALUPE DUNES ROAD RESTORATION IN THE COUNTY OF SANTA BARBARA  
County Project No. 8638  
(Hereinafter referred to as the Contract) and

That the Principal is required under the terms and conditions of said Contract to furnish a bond for the faithful performance of Contract.

NOW, THEREFORE, said Principal and \_\_\_\_\_

\_\_\_\_\_ as corporate surety (hereinafter referred to as Surety), are held firmly bound unto the County in the amount of \$215,013.20, for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally. Surety shall be and hereby warrants that it is listed in the Insurance Organizations Authorized By The Insurance Commissioner To Transact Business Of Insurance In The State Of California During 1995 (including changes effective January 1, 1996) published by the Department of Insurance, State of California or successor publications.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his heirs, executors, administrators, successors, or assigns, shall perform all of the covenants, conditions and agreements in said Contract and any alteration thereof made as herein provided, in his or their part, to be kept and performed at the time, and in the manner therein specified, and shall indemnify and save harmless County, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force, virtue and effect.

And the said Surety, for value received, hereby agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or additions to the terms of the Contract or to the work or to the specifications.

In the event suit is brought upon this Bond by County and judgment is recovered, Surety shall pay all costs incurred by the County in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By \_\_\_\_\_

\_\_\_\_\_  
Signature of Attorney-in-fact

DATED: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Address

Surety's Agent for Service of Process (located within the State of California):

\_\_\_\_\_  
Name of Agent

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
FAX Number

NOTE: Signature of those executing for Surety must be properly acknowledged.



**CERTIFICATE OF INSURANCE  
TRANSMITTAL FORM**

FOR THE FOLLOWING DESCRIBED PROJECT:

GUADALUPE DUNES ROAD RESTORATION IN THE COUNTY OF SANTA BARBARA

COUNTY PROJECT NO. 8638

CONTRACTOR:

SOUZA CONSTRUCCION, INC.  
4027 SANTA FE ROAD  
SAN LUIS OBISPO, CA 93401

**The County of Santa Barbara must be named as an additional insured on all certificates. A copy of the endorsement evidencing that the County has been added to the policy must be attached to the certificate of insurance.**

The following must also be listed as additional insured:

\_\_\_\_\_  
\_\_\_\_\_

In addition to the above, the following information must appear on the certificates:

COUNTY PROJECT NO. 8638

This form must be attached to all insurance forms and returned to: The County of Santa Barbara, Department of Community Services, Transportation-Engineering, 123 E. Anapamu St., Att: P. Santomauro Santa Barbara, CA 93101

\_\_\_\_\_  
Authorized Insurance Company Representative's Signature

*This form may be reproduced as required.*