

File No. 101451

Committee Item No. \_\_\_\_\_  
Board Item No. 30

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Board of Supervisors Meeting  
Cmte Board

Date: November 23, 2010

- |                          |                                     |  |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Budget Analyst Report                        |
| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/> | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input type="checkbox"/> | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Public Correspondence                        |

OTHER

(Use back side if additional space is needed)

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Annette Lonich Date: November 17, 2010  
Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document is in the file.

**INTRODUCTION FORM**  
By a member of the Board of Supervisors or the Mayor

Time Stamp or  
Meeting Date

I hereby submit the following item for introduction:

- 1. For reference to Committee:  
    An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee
- 3. Request for Committee hearing on a subject matter.
- 4. Request for letter beginning "Supervisor \_\_\_\_\_ inquires..."
- 5. City Attorney request.
- 6. Call file from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File Nos.
- 9. Request for Closed Session
- 10. Board to Sit as A Committee of the Whole

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- |   |  |
|---|--|
| <input type="checkbox"/> Small Business Commission      | <input type="checkbox"/> Youth Commission    |
| <input type="checkbox"/> Ethics Commission              | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Building Inspection Commission |  |

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.]**

**Sponsor(s):** Supervisor Alioto-Pier

**SUBJECT:** Accept and Expend Grant  
Two State Grants to fund Agricultural Projects- \$47,796

The text is listed below or attached:

Signature of Sponsoring Supervisor: \_\_\_\_\_

**For Clerk's Use Only:**

1 [Accept and Expend Grant - High Risk Program and Pest Exclusion/Nursery Inspection -  
2 \$47,796]

3 Resolution authorizing the San Francisco Department of Public Health to accept and  
4 expend retroactively two grants (Agreements #10-0539 and #10-0404) totaling \$47,796  
5 from the California Department of Food and Agriculture (CDFA) to fund the High Risk  
6 Program and the Pest Exclusion/Nursery Inspection, both for the period of July 1, 2010  
7 through June 30, 2011.

8  
9 WHEREAS, DPH was awarded two grants from the CDFA, including High Risk  
10 Program grant, Agreement #10-0539 (\$47,296) for the period of July 1, 2010 through June  
11 30, 2011, and Pest Exclusion/Nursery grant, Agreement #10-0404 (\$500) for the period of  
12 July 1, 2010 through June 30, 2011; and,

13 WHEREAS, As a condition of receiving the grant funds, the CDFA requires the City to  
14 comply with the terms of two separate agreements (the "Agreements"), copies of which are on  
15 file with the Clerk of Board of Supervisors in File No. 101451; which is hereby declared to be a  
16 part of this resolution as if set forth fully herein; and,

17 WHEREAS, An ASO amendment is not required as the grant partially reimburses DPH  
18 for three existing positions, one Agricultural Inspector (Job Class #3450) at .37 FTE, one  
19 Manager I (Job Class #0922) at .05 FTE, and one Jr. Administrative Analyst (Job Class  
20 #1820) at 0.02 FTE for the High Risk Program grant; and one Agricultural Inspector (Job  
21 Class #3450) at .005 FTE for the Pest Exclusion/Nursery Inspection grant; and,

22 WHEREAS, The Pest Exclusion/Nursery Inspection grant does not contain indirect  
23 costs because the CDFA prohibits including indirect costs in the budget, but the High Risk  
24 Program grant allows for \$7,047.31 in indirect costs; now, therefore, be it  
25

FILE NO.

RESOLUTION NO.

1 RESOLVED, That DPH is hereby authorized to retroactively accept and expend two  
2 grants in the total amount of \$47,796 from the CDFA because DPH did not receive the  
3 agreements until well after the start date on October 21, 2010; and, be it

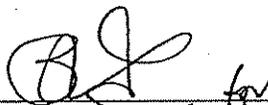
4 FURTHER RESOLVED, That the Board of Supervisors hereby waives inclusion of  
5 indirect costs in the grant budget for the Pest Exclusion/Nursery Inspection grant; and, be it

6 FURTHER RESOLVED, That DPH is hereby authorized to retroactively accept and  
7 expend the grant funds pursuant to San Francisco Administrative Code section 10.170-1; and,  
8 be it

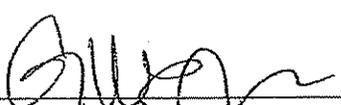
9 FURTHER RESOLVED, That the Controller is directed to designate the positions  
10 funded under this agreement as a "G" or grant-funded position which would terminate when  
11 the agreement expires; and, be it

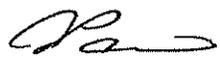
12 FURTHER RESOLVED, That the Director of Health is authorized to enter into these  
13 agreements on behalf of the City.

14  
15 RECOMMENDED:

16   
17 \_\_\_\_\_  
18 Mitchell Katz, M.D.  
19 Director of Health

APPROVED:

20   
21 \_\_\_\_\_  
22 Office of the Mayor

23   
24 \_\_\_\_\_  
25 Office of the Controller

File Number: \_\_\_\_\_  
(Provided by Clerk of Board of Supervisors)

**Grant Information Form**  
(Effective January 2000)

Purpose: Accompanies proposed Board of Supervisors resolutions authorizing a Department to accept and expend grant funds.

The following describes the grant referred to in the accompanying resolution:

1. Grant Title: **A. High Risk Program (Agreement # 10-0539)**  
**B. Pest Exclusion/Nursery Inspection (Agreement # 10-0404)**
2. Department: **Department of Public Health, Environmental Health Section, Agriculture Program**  
**1390 Market Street, Suite 822, San Francisco, CA 94102**
3. Contact Person: **Miguel Monroy** Telephone: **415-252-3939**
4. Grant Approval Status (check one):  
 Approved by funding agency                       Not yet approved
5. Amount of Grant Funding Approved or Applied for: **A. \$47,296.00**  
**B. \$500.00**
- 6a. Matching Funds Required: **\$0**  
b. Source(s) of matching funds (if applicable): **N/A**
- 7a. Grant Source Agency: **California Department of Food and Agriculture (CDFA)**  
b. Grant Pass-Through Agency (if applicable): **N/A**
8. Proposed Grant Project Summary:

**A. The mission of the High Risk Program is to prevent infestation of pests from incoming high-risk shipments of plant material from Hawaii, Florida and other southern states. High-risk shipments are those with a high degree of likelihood that one or more plant pests determined to have potential for causing severe damage to the State's agriculture industry, natural resources, or environment, will be introduced into or spread within the State by movement or entry of the shipment.**  
**The 2010-2011 San Francisco County workplan places a focus on Nursery Stock Inspections. As such, Agriculture Inspectors will perform high-risk pest exclusion activities at nurseries or nursery holding facilities.**

**B. Nursery Program- The mission of the Nursery Program is to prevent the introduction and spread of agricultural pests through nursery stock and protect agriculture and the consumer against economic losses resulting from the sale of inferior, defective, or pest-infested nursery stock. The Nursery Program fulfills two separate roles. The first is to coordinate the nursery regulatory and inspection activities performed by the county agricultural commissioners. The second is to provide the agricultural industry with registration and certification services for plant materials. Regulatory activities conducted by the county agricultural commissioners and their staff are an integral part of the State's agricultural pest prevention system.**

9. Grant Project Schedule, as allowed in approval documents, or as proposed:

A&B Start-Date: 07/01/2010

End-Date: 06/30/2011

10. Number of new positions created and funded: None.

11. If new positions are created, explain the disposition of employees once the grant ends? : N/A

12a. Amount budgeted for contractual services: \$0

b. Will contractual services be put out to bid? : N/A

c. If so, will contract services help to further the goals of the department's MBE/WBE requirements? : N/A

d. Is this likely to be a one-time or ongoing request for contracting out? : N/A

13a. Does the budget include indirect costs?

A.  Yes

No

B.  No

No

b1. If yes, how much? A. \$7,047.31 B. No indirect costs. (See 13 C below for reason.)

b2. How was the amount calculated?

The indirect cost figure was calculated by multiplying the indirect cost rate (24.01%) x the total salaries. The indirect cost rate was provided by DPH Fiscal Office.

c. If no, why are indirect costs not included?

B.  Not allowed by granting agency  To maximize use of grant funds on direct services

Other (please explain):

14. Any other significant grant requirements or comments:

DPH respectfully request approval from Board of Supervisors to retroactively accept and expend grant funds because the Department received the final agreement on October 21, 2010.

All grant revenues collected from the State into index code/subject object code:

HCHPBINSPECT - 48999.

\*\*Disability Access Checklist\*\*

15. This Grant is intended for activities at (check all that apply):

Existing Site(s)

Existing Structure(s)

Existing Program(s) or Service(s)

Rehabilitated Site(s)

Rehabilitated Structure(s)

New Program(s) or Service(s)

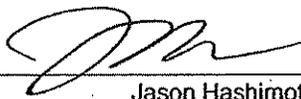
New Site(s)

New Structure(s)

16. The Departmental ADA Coordinator and/or the Mayor's Office on Disability have reviewed the proposal and concluded that the project as proposed will be in compliance with the Americans with Disabilities Act and all other Federal, State and local access laws and regulations and will allow the full inclusion of persons with disabilities, or will require unreasonable hardship exceptions, as described in the comments section:

Comments:

Departmental or Mayor's Office of Disability Reviewer:

  
Jason Hashimoto

Date Reviewed: 11/8/10

Department Approval:

  
Mitchell Katz, M.D.

Director of Public Health



# Hourly Rate Worksheet/Line Item Budget

Date: 10/21/2010

Title	Hourly Wage	Hourly Benefit	Total hourly Rate	Estimated Hours to be Worked	Total Cost	Cost/hour
Ag Inspector	\$28.95	8.685	\$37.635	756	\$28,452.06	\$37.635

## Overhead cost

Operating Expenses						
Agricultural Commissioner	\$58.43	17.529	\$75.959	105	\$7,975.70	
Jr. Admin Analyst	\$26.95	8.085	\$35.035	48	\$1,681.68	
Vehicle Expenses						
County Vehicle	2124.76 miles	x 0.50			\$1,062.38	
Parking					\$1,080.00	
(2 trucks @ \$150/mth x 12 mths/vehicle x 30% program use)					\$7,047.31	

Indirect Cost = 24.04% of salaries

Overhead Sub-total: \$18,847.07

Total cost

\$62,565

## Budget Justification:

Task	Cost per hour	Total Cost	Grant
Federal Express	\$62.565	\$6,201	\$6,201
UPS	\$62.565	\$4,067	\$4,067
Air Freight	\$62.565	\$17,090	\$17,090
Truck Referral Inspections	\$62.565	\$11,393	\$11,393
Sea Freight Inspections	\$62.565	\$8,545	\$8,545
Total:		\$47,296	\$47,296



**City and County of San Francisco**

**DEPARTMENT OF PUBLIC HEALTH  
ENVIRONMENTAL HEALTH SECTION**  
Agriculture Program

Gavin Newsom, Mayor  
Mitchell H. Katz, M.D., *Director of Health*  
Rajiv Bhatia, M.D., M.P.H.  
*Director of EHS & OSH*

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Miguel Monroy  
*Agricultural Commissioner*

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
PEST EXCLUSION BRANCH  
NURSERY STOCK INSPECTION  
Contract #10-0404  
2010-2011 BUDGET

Date: 10/21/2000

	Rate	Quantity	Total
<b>Licensing</b>			
New License	\$ 50.00	4	\$ 200.00
Renewed forfeited license	\$ 50.00	2	\$ 100.00
<b>Personnel Services</b>	<b>Hourly rate</b>	<b>Number of Hrs</b>	
Hourly Staff Rate	\$ 35.00	5.7	\$ 200.00
for nursery investigative work			
			<b>TOTAL \$ 500.00</b>

**CONTRACT ALLOTMENT: \$500.00**

**Budget Justification:**

The above figures represent the CDFA payments for the Nursery Stock Inspection program. For each new nursery licenses and renewed forfeited licenses issued this year, the CDFA will pay the county \$50. In addition, the CDFA will also provide an hourly payment of \$35 for the investigative hours contributed to this program. The amount allotted for this program is not to exceed \$500.00.

AGREEMENT NUMBER <b>10-0539</b>
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

**DEPARTMENT OF FOOD AND AGRICULTURE**

CONTRACTOR'S NAME

**COUNTY OF SAN FRANCISCO**

2. The term of this Agreement is: July 1, 2010 through June 30, 2011

3. The maximum amount of this Agreement is: \$47,296.00  
 Forty Seven Thousand Two Hundred Ninety Six Dollars and No Cents

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work 1 Page(s)  
 Attachments: 1, 1A, 2, 3, 4, 5, and 6 12 Page(s)

Exhibit B – Budget Detail and Payment Provision 1 Page(s)  
 Attachment 1 1 Page(s)

Exhibit C – General Terms and Conditions - GTC 610 3 Pages

Exhibit D - Special Terms and Conditions 1 Page(s)

Exhibit E - Additional Provisions 2 Page(s)

5. Name of Program: High-risk Pest Exclusion

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

**CONTRACTOR**

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

**COUNTY OF SAN FRANCISCO**

BY (Authorized Signature)  DATE SIGNED) 10/21/2010

PRINTED NAME AND TITLE OF PERSON SIGNING  
 Miguel A. Monroy, Agricultural Commissioner

ADDRESS  
 San Francisco Department of Public Health, 1390 Market Street, Suite 822  
 San Francisco, CA 94102

**STATE OF CALIFORNIA**

AGENCY NAME  
**DEPARTMENT OF FOOD AND AGRICULTURE**

BY (Authorized Signature) DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING  
 JANICE L. PRICE, CONTRACTS MANAGER

ADDRESS  
 1220 N STREET, ROOM 115, SACRAMENTO, CA 95814

California Department of General Services Use Only

Exempt per: DGS Letter 28.6

**EXHIBIT A  
(County Agreement)**

**SCOPE OF WORK**

1. Contractor agrees to provide the services described herein:  
County to perform high-risk parcel inspections at terminals or other facilities per Food and Agricultural Code.
2. The program contract managers for this Agreement are:

<b>FOR CDFA, THE PROGRAM CONTRACT MANAGER IS:</b>	<b>FOR CONTRACTOR:</b>
Name: Donnie M. Ereveillo	Name: Miguel Monroy
Section/Unit: PHPPS/Pest Exclusion	Section/Unit: County of San Francisco
Address: 1220 N Street, Room 325	Address: San Francisco Department of Public Health, 1390 Market Street, Suite 822
City/Zip: Sacramento, CA 95814	City/Zip: San Francisco, CA 94102
Phone: 916-651-2841	Phone: (415) 252-3830
Email: derveilo@cdfa.ca.gov	Email: miguel.monroy@sfdph.org

3. See Attachment 1 to this Scope of Work for a detailed description of work to be performed and duties of all parties.

**PARCEL TERMINALS  
SCOPE OF WORK  
Criteria for Work Plan**

The County of San Francisco agrees to perform high-risk inspection and enforcement activities for the California Department of Food and Agriculture (CDFA) in compliance with the requirements imposed by Chapter 573 (AB 1771), Statutes of 2000, Food and Agricultural Code Section 2282.5, identified as Exhibit A, Attachment 2, and County High-Risk Pest Exclusion Program Guidelines, identified as Exhibit A, Attachment 3, incorporated in this Scope of Work, identified as Exhibit A, Attachment 1. This agreement is inclusive of the county agreeing to inspect incoming high-risk shipments of plant material at terminals or other facilities as imposed by Division 4, Part 2, Chapter 1, Article 1, Section 6303 and Chapter 2, Article 1, Sections 6401 and 6403 of the Food and Agricultural Code incorporated in this Scope of Work, identified as Exhibit A, Attachment 4. The county will perform activities approved by the CDFA as described in the attached Estimate of High-Risk Pest Exclusion Activities, herein titled as Work Plan, Parcel Terminals, identified as Exhibit B, Attachment 1, and by this reference made a part hereof. High-risk pest exclusion activities targeted at parcel terminal facilities can be defined as follows:

Inspection work at Federal Express facilities, United Parcel Service facilities, US Postal Distribution Centers, and other parcel terminal facilities can include, but is not limited to:

1. County biologist(s) reviewing invoices for content origin/destination, checking packages for quarantine compliance, rejecting parcels that do not adhere to quarantine compliance, inspecting for high-risk pests (i.e., Imported Fire Ant, Diaprepes root weevil, and other arthropods, gastropods, and weeds).
2. Maintaining records of inspections and pest finds, issuing notices of rejection if necessary, notifying the Interior Pest Exclusion Program of the presence of any significant pest finds, etc.
3. Reviewing Pest Exclusion Advisories and relevant reports maintained on the CDFA Interior Pest Exclusion Extranet website.

Inspecting shipments of fruits, vegetables, and propagative plant material is the highest priority. Inspecting shipments of cut flowers and greenery is a lower priority. As quarantine areas and commercial channels change, county biologist(s) shall prioritize high-risk inspection activities as appropriate to meet the changing needs.

The county's biologist(s) shall determine the time of day and week the inspections are to occur. If a county finds it necessary to deviate from its approved Work Plan, said county will notify the Interior Pest Exclusion Program of any changes.

Exhibit A  
Attachment I

The county shall submit monthly no more than 30-days in arrears, after the end of the reporting period, an itemized invoice on county letterhead to the CDFA Program Contract Manager in accordance with the sample provided herein and identified as Exhibit A, Attachment 5 unless Bee Hive/Imported Fire Ant Inspection is part of contract package, then it will be identified as Attachment 6, and the completed monthly Report 4a for purposes of this contract, will be identified as Exhibit A, Attachment 7 instead of Exhibit A, Attachment 6.

The Report 4a's must be completed monthly and input electronically on-line on Form #66-092 by county staff no more than 30-days in arrears of the reporting period (The login for this site is the same as for the PHPPS site. When you create a PHPPS login, your County Monthly Reporting (CMR) login is created for you. There is no need for any PHPPS staff to create a new login for the CMR site). This site can be accessed through the following link:

<https://secure.cdfa.ca.gov/egov/crs/login.aspx>

Send itemized invoices to:

The Department of Food and Agriculture  
Donnie M. Ereveillo, Program Contract Manager  
Pest Exclusion Branch  
County High Risk Pest Exclusion Program  
1220 N Street, Room 325, Sacramento, CA 95814

**AIRFREIGHT/AND OR NURSERY  
SCOPE OF WORK  
Criteria for Work Plan**

The County of San Francisco agrees to perform high-risk inspection and enforcement activities for the California Department of Food and Agriculture (CDFA) in compliance with the requirements imposed by Chapter 573 (AB 1771), Statutes of 2000, Food and Agricultural Code Section 2282.5, identified as Exhibit A, Attachment 2, and County High-Risk Pest Exclusion Program Guidelines, identified as Exhibit A, Attachment 3, incorporated in this Scope of Work (SOW), identified as Exhibit A, Attachment 1A. This agreement is inclusive of the county agreeing to inspect incoming high-risk shipments of plant material from Hawaii, Florida and other southern states as imposed by Division 4, Part 2, Chapter 1, Article 1, Section 6303 and Chapter 2, Article 1, Sections 6401 and 6403 of the Food and Agricultural Code, identified as Exhibit A, Attachment 4.

The county will perform activities approved by the CDFA as described in the attached Estimate of High-Risk Pest Exclusion Activities, herein titled as Work Plan, Airfreight and Nursery, identified as Exhibit B, Attachment 1, and by this reference made a part hereof. High-risk pest exclusion activities at airfreight facilities and nurseries or nursery holding facilities can be defined as follows:

Inspection work at Air Freight Facilities can include, but is not limited to:

1. County biologist(s) reviewing invoices for content origin/destination, checking packages for quarantine compliance, rejecting parcels that do not adhere to quarantine compliance, inspecting for high-risk pests (i.e., Imported Fire Ant, Diaprepes root weevil, and other arthropods, gastropods, and weeds).
2. Daily record keeping of inspections in regard to pest finds, writing reports referencing Report 4 and Report 4a to reflect daily record keeping entries, notifying the Interior Pest Exclusion Program of the presence of any significant pest finds, etc.

Inspecting shipments of fruits, vegetables, and propagative plant material is the highest priority. Inspecting shipments of cut flowers and greenery is a lower priority. As quarantine areas and commercial channels change, county biologist(s) shall prioritize high-risk inspection activities as appropriate to meet the changing needs.

1. Reviewing Form 66-008, shipping documents, and quarantine certificates for high-risk plant shipments from Hawaii, Florida, and other southern states. "Other southern states" is defined as Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.
2. Inspecting incoming plant material for all pests (i.e., Imported Fire Ant, Diaprepes root weevil, and other arthropods, gastropods, and weeds). Less than 100% of all shipments may be sampled for nematodes. The decision to conduct nematode sampling on individual shipments should be based upon nematode detection history of the shipper and pest risk associated with the type(s) of plant material in the shipment.

Exhibit A  
Attachment 1A

3. Up to 1% of all shipments may be sent under seal to the receiver with the concurrence of the county. Inspectors shall be present to break the seal and monitor the unloading of all sealed shipments.
4. Maintaining records of inspections and pest finds, issuing notices of rejection if necessary, notifying the Interior Pest Exclusion Program of the presence of any significant pest finds, etc.
5. Reviewing Pest Exclusion Advisories and relevant reports maintained on the CDFA Interior Pest Exclusion Extranet website.

The county's biologist(s) shall determine the time of day and week the inspections are to occur. If a county finds it necessary to deviate from its approved Work Plan, said county will notify the Interior Pest Exclusion Program of any changes.

The county shall submit monthly no more than 30-days in arrears after the end of the reporting period, an itemized invoice on county letterhead to the CDFA Program Contract Manager in accordance with the sample provided herein and identified as Exhibit A, Attachment 6 when combined with the SOW for Bee Hive/Imported Fire Ant Inspection and by this reference made a part hereof of contract package (see SOW for Bee Hives/Imported Fire Ant Inspection for Exhibit A, Attachment 5, which is included with this contract package) and the completed monthly Report 4a, for purposes of this contract only, will be identified as Exhibit A, Attachment 7 when combined with the SOW for Bee Hive/Imported Fire Ant Inspection and by this reference made a part hereof of contract package or as Exhibit A, Attachment 6 when not combined with the SOW for Bee Hive/Imported Fire Ant Inspection.

The Report 4a's must be completed monthly and input electronically on-line on Form #66-092 by county staff no more than 30-days in arrears of the reporting period (The login for this site is the same as for the PHPPS site. When you create a PHPPS login, your County Monthly Reporting (CMR) login is created for you. There is no need for any PHPPS staff to create a new login for the CMR site). This site can be accessed through the following link:

<https://secure.cdfa.ca.gov/egov/crs/login.aspx>

Send itemized invoices to:

The Department of Food and Agriculture  
Donnie M. Ereveillo, Program Contract Manager  
Pest Exclusion Branch  
County High Risk Pest Exclusion Program  
1220 N Street, Room 325, Sacramento, CA 95814

Chapter 573, Statutes of 2000.

Food and Agricultural Code of California

2282.5. (a) The development of work plans for allocation of the funding appropriated in the Budget Act to the department for local assistance for agricultural plant and animal pest and disease prevention shall be the responsibility of the department. The department shall establish criteria for the development of the work plans and for allocating the appropriated funds.

(b) Of the amount appropriated in the Budget Act to the department for local assistance for agricultural plant and animal pest and disease prevention, five million five hundred thousand dollars (\$5,500,000) shall be utilized solely for high-risk pest exclusion activities. The work plans for the exclusion of high-risk pests shall be developed by the department with the county agricultural commissioners and in consultation with affected industry representatives. In order to determine the effectiveness of high-risk pest exclusion programs in each county, the criteria established by the department for the work plan shall include, but need not be limited to, the following:

- (1) The number of high-risk plant shipments entering each county.
- (2) The number of high-risk entry points in each county.
- (3) The number of state action quarantine pests intercepted or detected annually in each county.
- (4) The work hours expended by each county in conducting exclusion of high-risk pests.
- (5) The rate of interceptions and rejections per inspection activity.

(c) To remain eligible for funding under this section, a county shall maintain its support of ongoing operational costs of the county agricultural commissioner programs listed in subdivision (b) of Section 2282, at 1997-98 fiscal year levels.

(d) Funds allocated for high-risk pest exclusion activities pursuant to subdivision (b) may not be expended for any purpose other than the exclusion or detection of high-risk pests consistent with the work plans prescribed in subdivision (a) or scientific evaluation. Funds allocated by each county on or after September 28, 1998, shall not be allocated to other programs listed in subdivision (b) of Section 2282 until the county work plan is approved by the department consistent with the funding appropriated in the Budget Act to the department for local assistance for agricultural plant and animal pest and disease prevention for this purpose.

EXHIBIT A  
ATTACHMENT 3COUNTY HIGH RISK PEST EXCLUSION PROGRAM  
ESTIMATED WORK PLAN GUIDELINESPROGRAM DEFINITIONS

**High-Risk Shipments:** are those where there exists a high degree of likelihood that one or more "A" or "Q" rated plant pests will be introduced into or spread within the State by movement or entry of the shipment. "A" and "Q" rated plant pests have been determined to have potential for causing severe damage to the State's agricultural industry, natural resources, or environment, and as such any shipment likely to harbor such pests is considered high-risk. All high-risk shipments are to be inspected. Non-high-risk parcels ("Flower of the Month Club" bulbs, bare-root nursery stock from areas which do not represent a serious quarantine risk, plant materials from California origin with nursery certification, etc.) moving through a "high-risk" facility may be monitored via profiling and inspected as time allows during the premise visit. These shipments will not be included as "high-risk" shipments inspected. High-risk shipments which should be inspected include such items as cut flowers and nursery stock from quarantine areas, any plant materials in unmarked parcels, and other plant material shipments which have a historical record of "A" and "Q" rated pest interceptions.

**High-Risk Pathways:** those facilities where high-risk shipments are regularly or frequently intercepted. The known high-risk pathways have been listed on the Estimate of High-Risk Pest Exclusion Activities, including U.S. Postal Distribution Centers, UPS (except local), Federal Express, Air Freight, Air Freight Forwarded, Truck Referrals (008a-Gypsy Moth, 008-Plants & 008-Other), Specialty Markets, Swap Meets, Post Entry Quarantine, and "Other" pathways identified in your work plans and approved by the Department.

**Shipments Inspected:** Shipments physically opened and examined. This is not packages or pots inspected. A shipment is one lot of plant material sent from one shipper to one receiver via one mode of transport.

**Rejections:** Number of state level rejection notices written. This does not include rejections of materials for failing to meet nursery standards of cleanliness, or materials rejected for B or C rated pests. Any time a live A or Q rated pest is found in a shipment a rejection notice should be issued.

**Pest Interceptions:** Number of "A" and "Q" pest interceptions. When more than one pest species is found in a single shipment, each different species is to be counted as an interception. Finding more than one pest of the same species does not equate to multiple interceptions.

**U.S. Post Office:** Postal distribution centers formerly known as sectional centers that sort mail sealed against inspection (first-class, priority, and express mail parcels).

**United Parcel Service (except local service):** Facilities which process parcels shipped via overnight or expedited service versus facilities that process only parcels moving locally.

**Air Freight:** Air cargo shipments inspected at the airport facility or at destination (see next item).

**Air Freight/Forwarded:** Shipments allowed to proceed to destination or another location for inspection within the same county or to another county and under a warning hold notice (blue tag) or by compliance agreement authorization.

**EXHIBIT A  
ATTACHMENT 3**

**Truck (008a):** Shipments of historically high-risk household articles from historically high-risk areas that require inspection for gypsy moth.

**Truck (008-Plants & 008-Other):** High-risk shipments moving to destination under quarantine hold notice. This does not include blue-tagged intrastate shipments of nursery stock inspected for glassy winged sharpshooters.

**Post-Entry Quarantine Inspections:** These inspections include both site and plant inspections. A shipment should be recorded when plant material is inspected.

**Other:** This column is to be used to estimate the workload for any high-risk pathway not already listed on the form; these may include: pet stores or aquariums, express parcel carriers, sea freight forwarded or other special focus activities approved by the Department. Special focus activities are then to be described under "Special Focus Description".

**ACCOUNTING GUIDELINES**

Program cost estimates for high-risk exclusion activities conducted at optimal levels are to be estimated based upon the guidelines and definitions contained within the County Agricultural Commissioners' Annual Financial Statement Procedures Manual. This cost/hour figure is to be estimated from an average of the costs/hour for Fiscal Years 1999/2000, 2000/2001 and 2001/2002. A county may choose to use their established County Auditor approved hourly rate in lieu of the three-year average. This would be the rate charged an applicant for phytosanitary or other type of certification if such a rate is established.

**PROGRAM GUIDELINES**

1. All inspections of high-risk terminal points are to be conducted as close to optimal service levels as is fiscally possible.
2. Optimal service level inspections are those conducted during the sort time(s) or before the last critical dispatch(s) of the facility monitored.
3. All high-risk shipments are to be inspected. Shipments not presenting a high risk that are moving through a high-risk facility may be monitored and inspected as time permits, but should not be included as a program cost or counted as a measure under this work plan.
4. A shipment is any amount of agriculturally regulated product/packages/potted plants from one specific shipper, in one shipment, sent to one specific consignee.

**OPTIMAL SERVICE LEVELS FOR PEST EXCLUSION TERMINAL INSPECTION FREQUENCY**

FACILITY	OPTIMUM INSPECTION FREQUENCY
U.S. Postal Distribution Center, United Parcel Service & Federal Express	Daily during sort
Air Freight	Daily when appropriate after offloading
Truck Referrals (008) & (008a)	100 % of Referrals after offloading
Specialty Markets & Swap Meets	Monthly during normal county office hours
Post-Entry Quarantine	All Referrals – Four visits/year normal office hours

## FOOD AND AGRICULTURAL CODE SECTION 6301-6306

6301. If any article is found to have been transported into this state from any other country or state, or territory or district of the United States, in violation of any provision of a quarantine that is established by the Secretary of Agriculture of the United States, the article is subject to seizure, destruction, or other disposition to the same extent and in the same manner as if the article had originated in this state and was in violation of a provision of this division.

6301.1. (a) The secretary shall adopt, by reference, by regulation, those federal quarantine regulations and any subsequent amendments in Parts 301 to 369, inclusive, of Title 7 of the Code of Federal Regulations. Civil and criminal penalties applicable to a violation of those federal quarantine regulations may be imposed by the secretary and other duly authorized plant quarantine officers in conformity with that other law.

(b) Any funds recovered by the commissioner pursuant to this section shall be deposited in the county general fund in the county in which the action is brought and shall be allocated to the commissioner to cover costs related to the enforcement of this division. Any funds recovered by the secretary pursuant to this section shall be deposited in the Department of Food and Agriculture Fund to cover costs related to the enforcement of this division.

6302. If any shipment of plants or things which is passing through any portion of the state is, or is liable to be, infested or infected with any pest, and there exists danger of dissemination of the pest while the shipment is in transit in this state, the shipment shall be placed within sealed containers which are composed of metal or other material so constructed that they are not liable to be broken or opened while in transit so as to permit the pest to escape. The containers shall not be opened while within the state.

6303. (a) It is unlawful for any person, except under written permission from a plant quarantine officer or under his specific direction, to move any lot or shipment of plants or other things to which a warning tag or notice has been affixed pursuant to this division, or to remove, alter, destroy, deface, or mutilate any such warning tag or notice.

(b) If any shipment of plants or things is allowed to transit the state or transit to a given destination county under a quarantine warning-hold notice, the shipment of plants or things shall not be diverted to another destination without the written permission of the director or the commissioner of the destination county.

(c) Diversion of a shipment as described in subdivision (b) is unlawful.

(d) If a shipment of plants or things requires a state or county plant quarantine officer to be present at the destination to supervise the unloading, inspection, or treatment of a quarantine shipment, the director or commissioner, as the case may be, may charge the shipper or receiver a service fee for the cost of the services. Service fees shall be determined based on the director or commissioner's costs for the services rendered.

6304. It is unlawful for any person to import into the state any English or Australian wild rabbit, flying fox, mongoose, or any other form of animal life which is detrimental to agriculture. Any such animal shall be refused entry and shall be immediately destroyed or shipped out of the state within 48 hours at the option and expense of the owner or bailee of the animal.

6305. It is unlawful for any person to willfully import into, or ship or transport within, the state any live insect or any pest as such, unless the shipment or transportation and subsequent use and handling is authorized prior to shipment under written permit and the regulations of the director or the United States Department of Agriculture, except the following:

(a) Honey bees of the species of *Apis mellifera*.

(b) Weeds for the purpose of identification.

(c) Beneficial or useful insects of common occurrence in the state.

(d) Insects or other organisms of public health or animal health interest, which are not plant pests, when imported, shipped, or transported by any governmental public health agency.

Any shipment which is not authorized by this section shall be immediately destroyed unless it is determined by the inspecting officer that the nature of the contents of the shipment is such that no damage can be caused to agriculture in this state through its shipment out of the state or return of the shipment to the point of origin. In such case, the shipment out of the state or the return of the shipment to point of origin shall be allowed at the expense of the owner or bailee of the shipment within the time which is specified by the inspecting officer.

6306. Unless otherwise permitted by law, any person who willfully and knowingly imports into, or who willfully and knowingly transports or ships within, this state, a Mediterranean fruit fly is guilty of a felony.

## FOOD AND AGRICULTURAL CODE SECTION 6401-6405

6401. It is unlawful for any person to transport, receive, or import into the state any plant or any thing against which a quarantine has been established, or any plant, unless he does both of the following:

(a) Notifies the director or the commissioner of the county in which the plant or thing is received, of the arrival of the plant or thing immediately after its arrival.

(b) Holds the plant, or thing for immediate inspection by the director or commissioner, without unnecessarily moving it, or placing it where it may be harmful.

6402. If there is no commissioner in the county where the plant or thing is received, the person that transports, receives, or imports the plant or thing into the state shall notify the director, who shall make immediate arrangements for its inspection.

6403. The officer who makes the inspection may enter at any time into any conveyance or place within the state where the plant or thing is located to ascertain whether it is, or is liable to be, infested or infected with any pest.

6404. The secretary may enter into agreements with regulatory officials of other states and the United States Department of Agriculture to provide for the use of various pest risk mitigation measures at the place of origin of the shipment of the plants. The agreement may designate the plants or varieties of plants to which those measures are applied as being commodities that may be released upon arrival at ports of entry or terminals in this state without being held and inspected for compliance with standards and quarantine requirements.

6405. (a) Any certificate that has been altered, defaced, or improperly completed or changed is void.

(b) It shall be unlawful for any person to do any of the following:

(1) Alter, deface, or otherwise falsify or change, a certificate that is attached to any plant shipment or other thing entering the state.

(2) Use, or have in his or her possession, any certificate that has been altered, defaced, or otherwise falsified or changed.

(3) Transport, receive, or possess any plant material represented by a certificate.

(c) For purposes of this section, "certificate" means a certificate issued pursuant to a quarantine regulation.

**Exhibit A**  
**Attachment 5**

**SAMPLE INVOICE**

**(PLEASE SUBMIT ON YOUR COUNTY'S LETTERHEAD)**

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE**  
**ATTN: DONNIE M. EREVEILLO, PROGRAM CONTRACT MANAGER**  
**HIGH RISK PEST EXCLUSION PROGRAM**  
**1220 N STREET, ROOM 325**  
**SACRAMENTO, CA 95814**

2010/2011 HIGH RISK PEST EXCLUSION ACTIVITIES  
CONTRACT # \_\_\_\_\_

INVOICE FOR THE PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

**NEW ACTIVITY**

ACTIVITY	HIGH-RISK/BEE HIVE INSPECTION
TOTAL HOURS	
COST PER HOUR	
HIGH RISK PARCEL TERMINALS, ETC.	
BEE HIVE INPSECTION HOURS	
TOTAL COST	

\_\_\_\_\_  
**SIGNATURE OF COUNTY AGRICULTURAL COMMISSIONER**

State of California  
Department of Food & Agriculture  
Plant Health and Pest Prevention Services  
Form # 86-092a (Rev. 9/2006)

REPORT NUMBER  
4a  
Monthly Report of County  
High Risk Pest Exclusion Activities

County:  
Date:

Exhibit A  
Attachment 6

Type	Premise Visits	Shipments Inspected	NOR's	A/Q Pest Interceptions	Hours
OnTrac/CA Overnight					
DHL					
Federal Express					
Federal Express Ground					
US Post Office					
UPS					
Air Freight					
Air Freight - forwarded					
Gypsy Moth (008a)					
Florida/Southern States (008 )					
Hawaii (008)					
Truck (008 Plants)					
Beehives (008)					
Specialty Markets					
Swap Meets					
Post Entry					
Other					
Other					
Comments					

**EXHIBIT B  
(County Agreement)**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. Invoicing and Payment**

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. Unless mutually agreed, monthly invoices must be submitted within 60 days from the end of each month in which services were rendered. Invoices must include the Agreement number and submitted in triplicate to the Program Contract Manager listed in this contract.
- C. Any travel and subsistence payments authorized under this agreement shall be paid as needed to execute the work. The maximum travel rates allowable are those established in Title 2, Division 1, Chapter 3, Subchapter 1, Article 2 of the California Code of Regulations 599.619.

**2. Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

**3. Funding Sources for County Contracts (If no Federal Funds, this Section is not applicable)**

An annual report of expenditures, where county payments are supported by Federal funds, will be issued by CDFA Administrative Services, Financial Services Branch. This report will be issued by September 30<sup>th</sup> for invoices submitted prior to July 31st for services rendered in the prior State Fiscal Year.

Federal and State Regulations - The County will comply with all Federal and State regulations and requirements. The County must ensure they have an adequate accounting system in place and appropriate internal controls to ensure expenditures are tracked and maintained.

All sub-recipients of Federal awards shall comply with the Code of Federal Regulations (CFR) Title 2, Part 225 - Cost Principles for State and Local Governments and Title 7, Part 3016 - Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments.

Federal 2 CFR 225 (OMB Circular A-87) can be found at the following website:  
<http://training.fws.gov/fedaid/toolkit/2cfr225.pdf>

Federal 7 CFR 3016 can be found at the following website:  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_01/7cfr3016\\_01.html](http://www.access.gpo.gov/nara/cfr/waisidx_01/7cfr3016_01.html)

The State's accounting standards and procedures for counties provided by the State Controller's Office are located at the following website: <http://www.sco.ca.gov/ard/manual/cntyman.pdf>

ESTIMATE OF HIGH-RISK PEST EXCLUSION ACTIVITIES  
WORK PLAN FISCAL YEAR 2010/2011

Final Work Plan

County: San Francisco

Cost per Hour Date: 6/28/2010 \$62,565

Facility	No. of High-Risk Facilities 2010/2011	Estimated Visits/Year 2010/2011	Estimated Hours/Visit 2010/2011	Estimated Hours/Year 2010/2011	Estimated Annual Cost 2010/2011
CA Overnight/On Trac					
Federal Express Ground					
US Post Office					
USPS					
Air Freight	3	91.05	1.00	273.152	\$17,080.00
Air Freight - Forwarded					
Gypsy Moth (008A)					
Florida/Southern States (008)	2	60.70	1.50	182.106	\$11,393.00
Hawaii (008)	2	66.285	1.00	136.570	\$8,545.00
Truck Plants (008)					
Truck (008 Other)					
Beehives (009)					
Specialty Markets					
Swap Meets					
Other					
Other					
Totals	9		5	755.933	47,295.00
Raw. 5/2009					
Will fund at 100%					

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**EXHIBIT C  
(County Agreement)**

**GENERAL TERMS AND CONDITIONS GTC 610**

1. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. **ASSIGNMENT:** This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.

6. **DISPUTES:** Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. **TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. **INDEPENDENT CONTRACTOR:** Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital

status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. **TIMELINESS:** Time is of the essence in this Agreement.

13. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the

violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

**EXHIBIT D**  
**(County Agreement)**

**SPECIAL TERMS AND CONDITIONS**

**1. Excise Tax**

The State of California is exempt from federal excise taxes and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

**2. Settlement of Disputes**

In the event of a dispute, Contractor shall file a "Notice of Dispute" with the CDFA within ten (10) days of discovery of the problem. Such Notice of Dispute shall contain the Agreement number. Within ten (10) days of receipt of such Notice of Dispute, the Agency Secretary, or Designee, shall meet with the Contractor and the CDFA project manager for the purpose of resolving the dispute. The decision of the Agency Secretary or Designee shall be final. In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.

**3. Agency Liability**

The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**4. Potential Subcontractors**

If Contractor subcontracts out a portion of the work required by this Agreement, nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**5. Right To Terminate**

The State reserves the right to terminate this agreement subject to 30 days written notice to the Contractor. Contractor may submit a written request to terminate this agreement only if the State should substantially fail to perform its responsibilities as provided herein.

However, the agreement can be immediately terminated for cause. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of the contract. In this instance, the contract termination shall be effective as of the date indicated on the State's notification to the Contractor.

This agreement may be suspended or cancelled without notice, at the option of the Contractor, if the Contractor or State's premises or equipment are destroyed by fire or other catastrophe, or so substantial damaged that it is impractical to continue service, or in the event the Contractor is unable to render service as a result of any action by a state agency directly impacting the Contractors ability to perform.

**EXHIBIT E****ADDITIONAL PROVISIONS****SUBCONTRACTORS**

Contractor shall obtain prior approval from CDFA before hiring subcontractors, consultants or both. The total amount of all subcontracts shall not exceed \$50,000 or 25% of the total amount of the contract, whichever is less, unless the Contractor can provide certified documents that award was made through a competitive bidding process requiring at least three bids from responsible bidders.

All subcontractors identified shall be experts in their respective disciplines and capable of performing the tasks for which they were hired. Subcontractors shall have extensive experience in their area of expertise, with particular emphasis on prior experience on similar programs or projects that clearly illustrate their expertise in areas essential to the Contractor and to CDFA.

**INSURANCE REQUIREMENTS** – Contractor shall comply with all requirements outlined in the (1) General Provisions section and (2) Contract Insurance Requirements outlined in this section. No payments will be made under this contract until contractor fully complies with all requirements.

**I. General Provisions Applying to All Policies**

- a. **Coverage Term** – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must comply with the original contract terms.
- b. **Policy Cancellation or Termination & Notice of Non-Renewal** – Insurance policies shall contain a provision stating coverage will not be cancelled without 30 days prior written notice to the State. New certificates of insurance are subject to the approval of the Department of General Services and the Contractor agrees no work or services will be performed prior to obtaining such approval. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- c. **Premiums, Assessments and Deductibles** – Contractor is responsible for any premiums, policy assessments, deductibles or self-insured retentions contained within their insurance program.
- d. **Primary Clause** – Any required insurance contained in this contract shall be primary, and not excess or contributory, to any other insurance carried by the State.
- e. **Insurance Carrier Required Rating** – All insurance companies must carry an AM Best rating of at least "A-" with a financial category rating of no lower than VI. If the Contractor is self insured for a portion or all of its insurance, documentation of self-insurance must be submitted and approved by the Department of General Services, Office of Risk and Insurance Management.
- f. **Endorsements** – Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- g. **Inadequate Insurance** – Inadequate or lack of insurance does not negate the contractor's obligations under the contract.
- h. **Use of Subcontractors** – In the case of Contractor's utilization of subcontractors to complete the contracted scope of work, contractor shall include all subcontractors as insured's under Contractor's insurance or supply evidence of subcontractor's insurance to The State equal to policies, coverages, and limits required of Contractor.

- The policy must name **The County and State of California, its officers, agents, employees and servants as additional insureds, but only with respect to work performed under the contract.**

2. Contract Insurance Requirements

Contractor shall display evidence of the following on an Acord certificate of insurance or documentation of self insurance on county letterhead evidencing the following coverages:

- a. Commercial General Liability – Contractor shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000 annual policy aggregate. A “per project aggregate” endorsement is required. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor’s limit of liability.
  - The policy must name **The State of California, its officers, agents, employees and servants as additional insureds, but only with respect to work performed under the contract.**
- b. Automobile Liability – Contractor shall maintain business automobile liability insurance for limits not less than \$1,000,000 combined single limit. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. Should the scope of the Contract involve transportation of hazardous materials, evidence of an MCS-90 endorsement is required.
- c. Workers Compensation and Employers Liability – Contractor shall maintain statutory worker’s compensation and employer’s liability coverage for all its employees who will be engaged in the performance of the Contract. In addition, employer’s liability limits of \$1,000,000 are required.
- d. Environmental/Pollution Liability - If hazardous materials work is required, then the contractor shall maintain Environmental/Pollution Liability for limits not less than \$1,000,000 per claim covering the contractor’s liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred arising out of the work or services to be performed under this contract. The policy must include:
  - The State of California, its officers, agents, employees and servants as additional insured, but only with respect to work performed under this contract. This **endorsement** must be supplied under form acceptable to the Office of Risk and Insurance Management of the California Department of General Services.

Coverage shall be provided for both work performed on site and during transportation of as well as proper disposal of hazardous materials. Proof of pollution during transportation shall be provided on an MCS-90 form or equivalent.

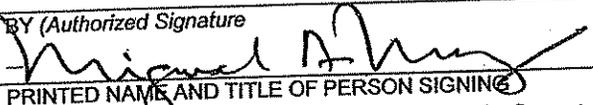
AGREEMENT NUMBER <b>10-0404</b>
REGISTRATION NUMBER

- This Agreement is entered into between the State Agency and the Contractor named below:  
 STATE AGENCY'S NAME  
**DEPARTMENT OF FOOD AND AGRICULTURE**  
 CONTRACTOR'S NAME  
**COUNTY OF SAN FRANCISCO**
- The term of this Agreement is: July 1, 2010 through June 30, 2011
- The maximum amount of this Agreement is: \$500.00  
 FIVE HUNDRED DOLLARS AND NO CENTS
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work Attachment 1	1 Page(s) 2 Page(s)
Exhibit B – Budget Detail and Payment Provision Attachment 1	1 Page(s) 1 Page(s)
Exhibit C – General Terms and Conditions - GTC 610	3 Pages
Exhibit D - Special Terms and Conditions	1 Page(s)
Exhibit E - Additional Provisions	2 Page(s)

5. Name of Program: Pest Exclusion/Nursery Inspections

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

<b>CONTRACTOR</b>		California Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)		
<b>COUNTY OF SAN FRANCISCO</b>		
BY (Authorized Signature) 	DATE SIGNED 10/21/2010	
PRINTED NAME AND TITLE OF PERSON SIGNING Monroy A. Monroy, Agricultural Commissioner		
ADDRESS 1390 Market Street, Suite 822, San Francisco, CA 94102-5303		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>DEPARTMENT OF FOOD AND AGRICULTURE</b>		
BY (Authorized Signature) -	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING JANICE L. PRICE, CONTRACTS MANAGER		
ADDRESS 1220 N STREET, ROOM 115, SACRAMENTO, CA 95814		

Exempt per: DGS LTR 28.6

**EXHIBIT A  
(County Agreement)**

**SCOPE OF WORK**

1. Contractor agrees to provide the services described herein:

The Contractor shall provide all labor and equipment necessary to perform nursery inspection and enforcement activities within the County.

2. The program contract managers for this Agreement are:

FOR CDFA, THE PROGRAM CONTRACT MANAGER IS:	FOR CONTRACTOR:
Name: Sean Dayyani	Name: Miguel Monroy
Section/Unit: Pest Exclusion	Section/Unit: Agricultural Commissioner's Office
Address: 1220 N Street, Room A-372	Address: 1390 Market St., Suite 822
City/Zip: Sacramento, CA 95814	City/Zip: San Francisco, CA 94102-5303
Phone: 916-654-0435	Phone: 415-252-3939
Email: sdayyani@cdfa.ca.gov	Email: miguel.monroy@sfdph.org

3. Detailed description of work to be performed and duties of all parties.

The Contractor shall:

- a) Inspect all nursery stock at all producer/wholesale nursery locations within County, excluding nursery stock in the first year of a two-year production cycle, plant materials in parent stock or propagative stock beds or blocks that are not to be inspected and nursery stock that is entered in one of the State's registration or certification programs and is inspected by State staff.
- b) Enforce all laws and regulations pertaining to nursery stock, including licensing requirements in accordance with the Memorandum of Understanding between the California Department of Food and Agriculture (CDFA) and the California Agricultural Commissioners and Sealers Association (CACASA) entitled "State-County Nursery Inspection Program;" and
- c) Respond to complaints against retail nursery establishments,
- d) Complete and submit Report 7 with quarterly invoice (see attached samples).

The CDFA shall make payment upon receipt of an approved invoice, not more often than quarterly in arrears.

# SAMPLE BILLING

THIS SUPPLEMENTAL SHEET TO REPORT 7 SHALL BE USED FOR  
**NURSERY INSPECTION REIMBURSEMENT BILLING**  
 BY THE COUNTIES

CDFA USE ONLY	
APPROVED BY:	
NURSERY REIMBURSEMENT:	
LICENSE REIMBURSEMENT:	
TOTAL REIMBURSEMENT:	0

COUNTY: <b>County Name</b>	CONTRACT NUMBER: <b>## ####</b>	MONTH/YEAR: <b>Month/Yr</b>
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PRODUCTION / WHOLE SALE INSPECTIONS					CDFA USE ONLY
NAME OF NURSERY	LICENSE NUMBER	DATE(S) INSPECTED	NO. OF ACRES		
			TYPE 1*	TYPE 2*	
A Generic Nursery	A1234	6/22/2010	50		
A Different Nursery	B1234	6/23/2010	50		
A Type 2 Nursery	C1234	6/29/2010		100	
4					
5					
6					
7					
8					
9					
10					

NUMBER OF LOCATIONS INSPECTED:		TOTAL ACRES:	<b>100.00</b>	<b>100.00</b>
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NURSERY LICENSE ACTIVITY				CDFA USE ONLY
NAME OF NURSERY LICENSED (Use firm name)	NEW (LICENSE NUMBER)	RENEWAL (LICENSE NUMBER)		
I Grow Stuff Nursery	c6789			
Roam Depot	b4567			
Orchard Supply		a9876		

SIGNATURE:	TITLE:	DATE:
SIGNATURE:	TITLE:	
		6/3/2010

\* Type 1 = Nursery production acreage consisting of nursery stock for farm and landscape planting, ornamentals in containers, and potted plants. Reimbursement rate is the number of acres inspected multiplied by the hourly rate as stated in the contract.

**County Letterhead**

Date \_\_\_\_\_

TO: Sean Dayyani  
 California Department of Food and Agriculture  
 Pest Exclusion Branch  
 1220 N Street, Room 344  
 Sacramento, CA 95814

**Sample Invoice**

Must be accompanied by Report 7  
 Supplement Page

County of \_\_\_\_\_  
 Contract Agreement Number 01-2345  
 Fiscal Year 10/11  
 Invoice for \_\_\_\_\_ Quarter  
 Invoice Number \_\_\_\_\_

Invoice Detail	Amount	Reimbursement Rate	Totals
Type 1 Acres =	100 X	14.72 =	\$1,472.00
Type 2 and 4 Acres =	100 (/4 = 25) X	14.72 =	\$368.00
Nursery License/Renewal	3 X	\$50.00 each license =	\$150.00
Invoice Total			\$1,990.00

Please remit payment to County of \_\_\_\_\_  
 Address line 1  
 Address Line 2  
 Address line 3

Signature Block

\_\_\_\_\_  
 (Original Signature)  
 (Title)

**EXHIBIT B  
(County Agreement)**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. Invoicing and Payment**

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. Unless mutually agreed, monthly invoices must be submitted within 60 days from the end of each month in which services were rendered. Invoices must include the Agreement number and submitted in triplicate to the Program Contract Manager listed in this contract.
- C. Any travel and subsistence payments authorized under this agreement shall be paid as needed to execute the work. The maximum travel rates allowable are those established in Title 2, Division 1, Chapter 3, Subchapter 1, Article 2 of the California Code of Regulations 599.619.

**2. Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

**3. Funding Sources for County Contracts (If no Federal Funds, this Section is not applicable)**

An annual report of expenditures, where county payments are supported by Federal funds, will be issued by CDFA Administrative Services, Financial Services Branch. This report will be issued by September 30<sup>th</sup> for invoices submitted prior to July 31st for services rendered in the prior State Fiscal Year.

Federal and State Regulations - The County will comply with all Federal and State regulations and requirements. The County must ensure they have an adequate accounting system in place and appropriate internal controls to ensure expenditures are tracked and maintained.

All sub-recipients of Federal awards shall comply with the Code of Federal Regulations (CFR) Title 2, Part 225 - Cost Principles for State and Local Governments and Title 7, Part 3016 - Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments.

Federal 2 CFR 225 (OMB Circular A-87) can be found at the following website:  
<http://training.fws.gov/fedaid/toolkit/2cfr225.pdf>

Federal 7 CFR 3016 can be found at the following website:  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_01/7cfr3016\\_01.html](http://www.access.gpo.gov/nara/cfr/waisidx_01/7cfr3016_01.html)

The State's accounting standards and procedures for counties provided by the State Controller's Office are located at the following website: <http://www.sco.ca.gov/ard/manual/cntyman.pdf>

San Francisco 10/11

The amount payable under this agreement shall not exceed **\$500.00**. In addition, Contractor shall be paid \$50.00 for each new license secured and verified by inspection by the Contractor, and \$50.00 for each renewed forfeited (delinquent) license secured by the Contractor. Contractor will be paid hourly staff rate, not to exceed \$35.00 per hour, for nursery investigative work, provided such investigative work is approved in advance by the CDFA Nursery Program.

Payment shall be made at the end of the agreement period upon submission and approval of an itemized invoice and report 7 Supplement Forms (see attached sample invoice). Contractor shall submit an itemized invoice in arrears, referencing the Contract and sent to:

California Department of Food and Agriculture  
Pest Exclusion Branch  
Nursery, Seed, and Cotton Program  
Attention: Sean Dayyani  
1220 N Street, Room 344  
Sacramento, California 95814

This agreement shall not be considered effective unless signed by both parties and approved by the Department of General Services, if required.

**EXHIBIT C  
(County Agreement)**

**GENERAL TERMS AND CONDITIONS GTC 610**

1. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT:** This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. **DISPUTES:** Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR:** Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital

status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. **TIMELINESS:** Time is of the essence in this Agreement.

13. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the

violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

**EXHIBIT D**  
**(County Agreement)**

**SPECIAL TERMS AND CONDITIONS**

**1. Excise Tax**

The State of California is exempt from federal excise taxes and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

**2. Settlement of Disputes**

In the event of a dispute, Contractor shall file a "Notice of Dispute" with the CDFA within ten (10) days of discovery of the problem. Such Notice of Dispute shall contain the Agreement number. Within ten (10) days of receipt of such Notice of Dispute, the Agency Secretary, or Designee, shall meet with the Contractor and the CDFA project manager for the purpose of resolving the dispute. The decision of the Agency Secretary or Designee shall be final. In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.

**3. Agency Liability**

The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**4. Potential Subcontractors**

If Contractor subcontracts out a portion of the work required by this Agreement, nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**5. Right To Terminate**

The State reserves the right to terminate this agreement subject to 30 days written notice to the Contractor. Contractor may submit a written request to terminate this agreement only if the State should substantially fail to perform its responsibilities as provided herein.

However, the agreement can be immediately terminated for cause. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of the contract. In this instance, the contract termination shall be effective as of the date indicated on the State's notification to the Contractor.

This agreement may be suspended or cancelled without notice, at the option of the Contractor, if the Contractor or State's premises or equipment are destroyed by fire or other catastrophe, or so substantial damaged that it is impractical to continue service, or in the event the Contractor is unable to render service as a result of any action by a state agency directly impacting the Contractors ability to perform.

## EXHIBIT E

## ADDITIONAL PROVISIONS

**INSURANCE REQUIREMENTS** – Contractor shall comply with all requirements outlined in the (1) General Provisions section and (2) Contract Insurance Requirements outlined in this section. No payments will be made under this contract until contractor fully complies with all requirements.

1. General Provisions Applying to All Policies

- a. Coverage Term – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must comply with the original contract terms.
- b. Policy Cancellation or Termination & Notice of Non-Renewal – Insurance policies shall contain a provision stating coverage will not be cancelled without 30 days prior written notice to the State. New certificates of insurance are subject to the approval of the Department of General Services and the Contractor agrees no work or services will be performed prior to obtaining such approval. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- c. Premiums, Assessments and Deductibles – Contractor is responsible for any premiums, policy assessments, deductibles or self-insured retentions contained within their insurance program.
- d. Primary Clause – Any required insurance contained in this contract shall be primary, and not excess or contributory, to any other insurance carried by the State.
- e. Insurance Carrier Required Rating – All insurance companies must carry an AM Best rating of at least "A-" with a financial category rating of no lower than VI. If the Contractor is self insured for a portion or all of its insurance, documentation of self-insurance must be submitted and approved by the Department of General Services, Office of Risk and Insurance Management.
- f. Endorsements – Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- g. Inadequate Insurance – Inadequate or lack of insurance does not negate the contractor's obligations under the contract.
- h. Use of Subcontractors - In the case of Contractor's utilization of subcontractors to complete the contracted scope of work, contractor shall include all subcontractors as insured's under Contractor's insurance or supply evidence of subcontractor's insurance to The State equal to policies, coverages, and limits required of Contractor.
  - The policy must name **The County and State of California, its officers, agents, employees and servants as additional insureds, but only with respect to work performed under the contract.**

2. Contract Insurance Requirements

Contractor shall display evidence of the following on an Acord certificate of insurance or documentation of self insurance on county letterhead evidencing the following coverages:

- a. Commercial General Liability – Contractor shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage

liability combined with a \$2,000,000 annual policy aggregate. A "per project aggregate" endorsement is required. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability.

- The policy must name **The State of California, its officers, agents, employees and servants as additional insureds, but only with respect to work performed under the contract.**
  
- b. Automobile Liability – Contractor shall maintain business automobile liability insurance for limits not less than \$1,000,000 combined single limit. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. Should the scope of the Contract involve transportation of hazardous materials, evidence of an MCS-90 endorsement is required.
  
- c. Workers Compensation and Employers Liability – Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract. In addition, employer's liability limits of \$1,000,000 are required.

