

AGREEMENT NUMBER 04-0542
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 Mateo

2. The term of this Agreement is: July 1, 2004 Through June 30, 2005

3. The maximum amount of this Agreement is: \$80,000.00
 Eighty Thousand 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 | 3 Page(s) |
| SOD Regulatory Work Plan - Attachment 1 - 1 page | |
| Sample Invoice - Attachment 2 - 1 page | |
| Daily/Monthly Report - Attachment 3 - 1 page | |
| Exhibit B - Budget Detail and Payment Provision | 1 Page(s) |
| Exhibit C - General Terms and Conditions | 3 Pages |
| Check mark one item below as Exhibit D: | |
| ~ Exhibit D-Special Terms and Conditions
(Attached hereto as part of this Agreement) | 1 Page(s) |
| <input checked="" type="radio"/> Exhibit D*-Special Terms and Conditions | |

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 Mateo

BY (Authorized Signature) DATE SIGNED)

PRINTED NAME AND TITLE OF PERSON SIGNING

Mark Church, President, Board of Supervisors

ADDRESS
 P.O. Box 999
 Redwood City, CA 94064-0999

STATE OF CALIFORNIA

AGENCY NAME
DEPARTMENT OF FOOD AND AGRICULTURE

BY (Authorized Signature) DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

PAULA LEWIS, ACQUISITIONS MANAGER
 ADDRESS
 1220 N STREET, ROOM 100, SACRAMENTO, CA 95814

California Department of General
 Services Use Only

Exempt per:

EXHIBIT A
SCOPE OF WORK

1. Contractor agrees to provide the services described herein:

The County Agricultural Commissioner will perform enforcement activities such as inspecting nursery stock, green waste, tree farms, and fire wood dealers; issuing quarantine certificates to qualifying entities; maintaining oversight of entities operating under compliance agreement; and, performing surveys for the disease as appropriate.

2. The contract managers for this Agreement are:

FOR CDFA:	FOR CONTRACTOR:
Name: Donnie M. Ereveillo	Name: Gail M. Raabe
Section/Unit: Pest Exclusion Branch	Section/Unit: County Agricultural Commissioner
Address: 1220 N Street, 3rd Floor	Address: 728 Heller Street
City/Zip: Sacramento, CA 95814	City/Zip: Redwood City, CA 94064-0999
Phone: 916/653-1440	Phone: 650/363-4700

3. Scope of Work to be performed.

The County of San Mateo agrees to perform regulatory enforcement activities in support of the state Oak Mortality Disease Control regulation (California Code of Regulations, Division 4, Chapter 4, Subchapter 6, Section 3700) and the federal Phytophthora ramorum regulation (Code of Federal Regulations, Section 301.92).

For each county, the scope of work associated with the enforcement of the state and federal regulations will include, as appropriate, the activities described below:

Federal Quarantine Enforcement Activities

Wholesale Nurseries with Host Material

Activities:

- 1) Annual inspection of host plants including mandatory testing of at least 40 symptomatic or non symptomatic samples
- 2) Per-shipment or 30-day visual inspection of host plants and testing of symptomatic material
- 3) Monitor compliance with soil regulation
- 4) Annual visual inspection of "associated host" plants

Wholesale Nurseries without Host Material

Activities:

- 1) Annual inspection of "associated hosts", if applicable
- 2) Monitor compliance with soil regulation

Wood Products (Logs, Lumber, Firewood)

Activities:

- 1) Perform inspections and issue certificates upon request or,
- 2) Monitor compliance of regulated entities under compliance agreement

Soil

Activity:

- 1) Perform inspections and issue certificates upon request or,
- 2) Monitor compliance of regulated entities under compliance agreement

Wreathes, Garlands, and Greenery

Activity:

- 1) Monitor treatment and issue certificate or,
- 2) Monitor compliance of regulated entities under compliance agreement

Christmas Trees

Activities:

- 1) Annual inspection of host plants including mandatory testing of at least 40 symptomatic or non-symptomatic samples
- 2) Per-shipment or 30-day inspection of host plants and testing of symptomatic material

State Quarantine Enforcement ActivitiesWholesale Nurseries Shipping Exclusively within the Quarantine Area

Activities:

- 1) Annual visual inspection of host and associated host plants
- 2) Monitor compliance of infested nurseries under departmental permit if applicable

Wholesale Nurseries with Host Plants

Activities:

- 1) Annual inspection of host plants including mandatory testing of at least 40 symptomatic samples
- 2) Per-shipment or 30-day inspection of host plants and testing of symptomatic material
- 3) Annual visual inspection of "associated host" plants

Wood Products

Activity:

- 1) Monitor compliance

Wreathes, Garland, and Greenery

Activity:

- 1) Monitor treatment option outlined in the federal regulation or monitor compliance with transshipping compliance agreement

Green Waste Origin Facility and Transporters

Activity:

- 1) Monitor compliance of facility and transporters

Compost

Activity:

- 1) Monitor compliance with treatment protocol

Christmas Trees

Activity:

- 1) Annual inspection of host plants and testing of at least 40 symptomatic samples

Additional Non-Mandatory Activities

When time and resources allow, the following non-mandatory activities may be performed. Enforcement related activities must take precedence over the following activities:

Public Outreach/Education

Activity:

- 1) Educate the public and regulated entities about regulations and best management practices
- 2) Respond to public inquiries

Survey/Monitoring

Activity:

- 1) Monitor and/or survey for disease in retail nurseries, urban and wild land areas to support delimitation activities

Staff Training

Activity:

- 1) Participate in relevant training sessions

Administrative SupportReporting Requirements

The County shall submit monthly an itemized invoice, on County letterhead, identified as Exhibit A, Attachment 1, and a completed monthly Daily/Monthly Report, identified as Exhibit A, Attachment 2. Send itemized invoices and daily/monthly reports to:

The Department of Food and Agriculture

Donnie M. Erevello

Pest Exclusion Branch

Sudden Oak Death Program

1220 N Street, Room A-372, Sacramento, CA 95814

County: San Mateo
Date: 5/14/2004

SOD FY 04-05

Cost Per Hour:

Exhibit A
Attachment 1
\$54.41

Regulation/Stock	Frequency	Hours	Rate	Estimated Hours	Estimated Rate	Estimated Annual Cost
Annual inspection and mandatory testing of host material	3			4	120.00	\$6,529
30-day inspection of host material w/testing of symptomatic hosts	4	12		3	144.00	7,835
Random compliance monitoring of required records	3	2			120.00	6,529
Soil in association with Unregulated Nursery Stock	6	2		1	180.00	9,794
Compost treatment monitoring	0	0		0	0.00	0
Origin facility compliance monitoring	2	2			7.97	434
Transporter compliance monitoring	2	2			7.9	434
Ongoing compliance monitoring	11	2			21.00	1,189
Ongoing compliance monitoring	2	2		0.5	29.00	1,578
Ongoing compliance monitoring	8			1	80.00	4,353
Site Inspection	5	1		0	25.00	1,360
Annual inspection and mandatory testing of host material	7	1			35.00	1,904
Public outreach/Education	10	1		4	40.00	2,176
Survey/Monitoring	250			1.6	400.00	21,764
Staff Training					40.00	2,176
Program support					169.53	9,224

1420,33
\$77,280

Other:
Overhead - Included in cost per hour
Milage - at \$0.34 per mile 8,000.00 miles \$0.34 \$2,720.00 2,720

Note: Difference in dollar(s) amount may due to rounding-off. TOTAL \$80,000

SAMPLE INVOICE

(NOTE: **Tnis** IS A **SAMPLE** ONLY , ALL INVOICES MAY NOT APPEAR IN THE SAME FORMAT)

(PLEASE SUBMIT ON YOUR COUNTY'S LETTERLEAD WITH COMMISSIONER'S SIGNATURE)

California Department of Food and Agriculture
Pest Exclusion Branch
Sudden Oak Death Program
Attn: Donnie M. Ereveillo
1220 N Street, Room A-372
SACRAMENTO, CA 95814

200412005 SUDDEN OAK DEATH ACTIVITIES

CONTRACT # _____

INVOICE FOR THE MONTH OF _____ TO _____, 2004/05

NEW Activity

Activity	SUDDEN OAK DEATH
TOTAL Hours	0
COST PER Hour	
COST PER Hour	
TOTAL COST	

SIGNATURE OF COUNTY AGRICULTURAL COMMISSIONER

**SUDDEN OAK DEATH
DAILY/MONTHLY REPORT**

Exhibit A
Attachment 3

NAME:		DATE:	YEAR:
FACILITY	ACTIVITY	NUMBER	HOURS
Nursery	Annual inspection and mandatory testing of host material		
	30-day inspection of host material w/testing of symptomatic hosts		
	Random compliance monitoring of required records		
	High risk nursery inspections		
	Soil in association with Unregulated Nursery Stock		
Green Waste	Compost treatment monitoring		
	Origin facility compliance monitoring		
	Transporter compliance monitoring		
Wood Product	Ongoing compliance monitoring		
Wreathes, Garlands, and Greenery	Ongoing compliance monitoring		
Soil	longoing compliance monitoring Site Inspection		
Tree Farm	Annual inspection and mandatory testing of host material		
			SUM
OTHER		NUMBER OF ACTIVITIES	HOURS
	Public Outreach/Education		
	Survey/Monitoring		
	Samples based on public reports		
	Enforcement Activities		
	Staff Training		
	Program support		
			SUM
		MILES	TOTAL HOUR
LOCATIONS VISITED/COMMENTS:			

EXHIBIT B**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. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears. Invoices shall be submitted to the designated CDFA Contract Manager for this Agreement.

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.

EXHIBIT C
(Standard Agreement)

GENERAL TERMS AND CONDITIONS, GTC-304

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. (GC 8546.7, PCC 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 recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

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 (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 (Government Code Section 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 304 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, 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. **UNION ACTIVITIES** For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that:

By signing this agreement Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.

b) No state funds received under this agreement will be used to assist, promote or deter union organizing.

c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

EXHIBIT D
(Standard 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) day~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. Evaluation of Contractor

Performance of the Contractor under this Agreement shall be evaluated. The evaluation shall be prepared on Contract/Contractor Evaluation Sheet (STD 4) and maintained in the Agreement file. For consultant agreements, a copy of the evaluation will be sent to the Department of General Services, Office of Legal Services, if it is negative and the agreement amount is over \$5,000.

4. 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.

5. 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.

6. Right To Terminate

The State reserves the right to terminate this Agreement without cause subject to 30 days written notice to the Contractor. However, this Agreement can be immediately terminated by the State for cause.

Contractor may terminate this Agreement for cause and be relieved of any further obligations subject to a 60-day written notice to the State, only if contractor can no longer perform its responsibilities or if the State fails to perform its responsibilities as provided herein. Upon such termination, the State shall be relieved of any further payments and this Agreement shall be cancelled.