

AGREEMENT NUMBER <b>07-0766</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 MATEO**
2. The term of this Agreement is: July 1 2007 Through June 30, 2008 .
3. The maximum amount \$517,873.00 .  
 of this Agreement is: Five Hundred Seventeen Thousand Eight Hundred Seventy-three 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 Attachments 1A & 2 - 6	1 Page(s) 10 Page(s)
Exhibit B – Budget Detail and Payment Provision Attachment 1	1 Page(s) 1 Page(s)
Exhibit C – General Terms and Conditions - GTC 307	3 Pages
Check mark one item below as Exhibit D:	
<input checked="" type="checkbox"/> Exhibit D-Special Terms and Conditions (Attached hereto as part of this Agreement)	1 Page(s)
<input type="checkbox"/> Exhibit D*-Special Terms and Conditions	

5. Name of Program: Pest Exclusion: High-risk inspections

**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

ADDRESS

728 Heller Street, 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

JANICE L. PRICE, ACQUISITIONS MANAGER

ADDRESS

1220 N STREET, ROOM 115, SACRAMENTO, CA 95814

*California Department of General  
 Services Use Only*

Exempt per:

**EXHIBIT A  
(County Agreement)**

**SCOPE OF WORK**

1. Contractor agrees to provide the services described herein:

As required by Chapter 573 (AB 1771), Statutes of 2000, Food and Agricultural Code Section 2282.5, the County will inspect incoming high-risk shipments of plant material from Hawaii, Florida and other southern states at airfreight facilities and nurseries or nursery holding facilities, and will inspect incoming shipments of plant material at parcel terminals or other facilities.

2. The contract managers for this Agreement are:

<b>FOR CDFA:</b>	<b>FOR CONTRACTOR:</b>
Name: Donnie M. Ereveillo	Name: Gail Raabe
Section/Unit: Pest Exclusion Branch	Section/Unit: COUNTY OF SAN MATEO
Address: 1220 N Street, Room A-372	Address: 728 Heller Street, P.O. Box 999
City/Zip: Sacramento, CA 95814	City/Zip: Redwood City, CA 94064-0999
Phone: 916-654-0312	Phone: 650-363-4700

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



## **AIRFREIGHT AND NURSERY SCOPE OF WORK Criteria for Work Plan**

The County of San Mateo 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 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, 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.
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.
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 an itemized invoice, on county letterhead, identified as Exhibit A, Attachment 5 and a completed monthly Report 4a, identified as Exhibit A, Attachment 6. All Report 4a's shall be submitted on Form #66-092a to the CDFA Contract Manager. Send itemized invoices and monthly Report 4a's to:

The Department of Food and Agriculture  
Donnie M. Erevello, Contract Manager  
Pest Exclusion Branch  
High Risk Pest Exclusion Program  
1220 N Street, Room A-372, 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.



## COUNTY HIGH RISK PEST EXCLUSION PROGRAM ESTIMATED WORK PLAN GUIDELINES

### PROGRAM DEFINITIONS

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**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.



**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.

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## 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.

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**SAMPLE INVOICE**

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

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
ATTN: DONNIE M. EREVEILLO, CONTRACT MANAGER  
HIGH RISK PEST EXCLUSION PROGRAM  
1220 N STREET, ROOM A-372  
SACRAMENTO, CA 95814**

2007/2008 HIGH RISK PEST EXCLUSION ACTIVITIES  
CONTRACT # \_\_\_\_\_

INVOICE FOR THE PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_, 2007/2008

**NEW ACTIVITY**

ACTIVITY	HIGH-RISK
TOTAL HOURS	
COST PER HOUR	
TOTAL COST	

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

County:  
 Date:

Type	Premise Visits	Shipments Inspected	NOR's	A/Q Pest Interceptions	Hours
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. 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.

**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**

07-0766  
p. 1 of 1

**AIR FREIGHT AND NURSERY TERMINAL WORKPLAN 2007/2008**

Exhibit B  
Attachment 1  
**\$60.67**  
Date: \$39,350.00

County: **SAN MATEO**

Cost per hour:  
Date:

Facility	No. of High-risk Facilities 06/07	Estimated Visits/Year 06/07	Estimated Hours/Visit 06/07	Estimated Hours/Year 06/07	Estimated Annual Cost 06/07
U S Post Office					
United Parcel Service (except local)					
Federal Express					
Air Freight	10	6,240	1.0870	6782.00	\$411,463.94
Air Freight - Forwarded					
Gypsy Moth (008A)					
Florida/Southern States	1	156	11.2370	1753.90	\$106,409.11
Truck Referrals (008a)					
Specialty Markets					
Swap Meets					
Post Entry Quarantine					
Other - Trade Shows					
<b>Totals</b>	<b>11</b>	<b>6,396</b>	<b>12.3240</b>	<b>8535.90</b>	<b>\$517,873.00</b>
<b>Description of Other (Special) High Risk Facilities</b>					

Notes: Dollar amounts reflect rounding to the nearest cent/dollar.



EXHIBIT C  
(County Agreement)

GENERAL TERMS AND CONDITIONS GTC 307

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 (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.



**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 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.



CCC-307

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

**CONTRACTOR CERTIFICATION CLAUSES**

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,



or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

### **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

**RECEIVED**

MAR 26 2008

SAN MATEO COUNTY  
DEPT. OF AGRICULTURE  
WEIGHTS MEASURES