

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

181A



FROM: Agricultural Commissioner's Office

SUBMITTAL DATE:
December 14, 2010

SUBJECT: Standard Agreement No. 10-0472 Providing for Glassy-Winged Sharpshooter Treatments.

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve Standard Agreement No. 10-0472 in the amount of \$50,000.00; and
- 2) Authorize the chairman to sign the agreement.

BACKGROUND: Agricultural production in Riverside County contributes an estimated \$1.3 billion to the local and regional economy. Among the rich and varied assortment of agricultural commodities produced in Riverside County, nursery stock production alone represents approximately 20% of the county's total value.

Due to the periodic presence of Glassy-Winged Sharpshooter (GWSS) populations in local nursery operations that ship plants to un-infested areas of the state, the California Department of Food and Agriculture has approved this specific treatment funding.

This agreement provides \$50,000.00 to reimburse participating pest control operator costs associated with the treatment of nursery stock to control GWSS populations. The Agricultural Commissioner will administer the reimbursements via a "pass through" account established with the assistance of the Auditor Controller's Office. This agreement was approved as to form by County Council.

**John Snyder, Agricultural Commissioner/
Sealer of Weights and Measures**

FINANCIAL DATA	Current F.Y. Total Cost:	\$0	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$0	Budget Adjustment:	No
	Annual Net County Cost:	\$0	For Fiscal Year:	2010/2011

SOURCE OF FUNDS: California Department of Food and Agriculture	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: **Denise C. Harden**

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: January 11, 2011
xc: Agric. Comm.

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref.: 10/20/2009 Item 3.14 **District:** ALL **Agenda Number:**

3.14

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL
BY:
NEAL R. KIPNIS DATE: 12/14/2010

Policy Policy

Consent Consent

Dep't Recomm.:
Per Exec. Ofc.:

CLERK'S COPY
 REVISED 12/7/10

to Riverside County Clerk of the Board, Stop 1010
 Post Office Box 1147, Riverside, Ca 92502-1147
 Thank you.

AGREEMENT NUMBER 10-0472
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 RIVERSIDE
- The term of this Agreement is: August 15, 2010 through June 30, 2011
- The maximum amount of this Agreement is: \$50,000.00
 Fifty Thousand 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	1 Page(s)
Attachment - Workplan	7 Page(s)
Exhibit B – Budget Detail and Payment Provision	1 Page(s)
Attachment - Budget	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	8 Page(s)

ATTEST:
 KECIA HARPER-IHEM, Clerk
 BY *[Signature]*
 DEPUTY

5. Name of Program: Pierce's Disease

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 RIVERSIDE	
BY (Authorized Signature) - <i>[Signature]</i>	DATE SIGNED 1/11/11
PRINTED NAME AND TITLE OF PERSON SIGNING BOB BUSTER CHAIRMAN, BOARD OF SUPERVISORS	
ADDRESS Post Office Box 1089, Riverside, CA 92502-1089	
STATE OF CALIFORNIA	
AGENCY NAME DEPARTMENT OF FOOD AND AGRICULTURE	
BY (Authorized Signature) - <i>[Signature]</i>	DATE SIGNED 1/31/2011
PRINTED NAME AND TITLE OF PERSON SIGNING JANICE L. PRICE, CONTRACTS MANAGER	
ADDRESS 1220 N STREET, ROOM 115, SACRAMENTO, CA 95814	

FORM APPROVED COUNTY COURSE 1/11/11
 BY: NEAL R. KIPNIS

California Department of General Services Use Only

APPROVED

FEB 23 2011

DEPT OF GENERAL SERVICES

[Signature]
 Exempt per.

**Scope of Work
Nursery Treatment Contract with Riverside County**

Summary

Agreement between the California Department of Food and Agriculture ("CDFA") and the County of Riverside ("County") to reimburse qualified nurseries participating in the Nursery Treatment Program ("Program") for costs incurred for multiple nursery treatments to control the glassy-winged sharpshooter (GWSS), a major vector of Pierce's disease.

Participating qualified nurseries in the Program hire licensed pesticide applicators to treat the nursery inventory for the purpose of controlling the GWSS population. The individual nursery submits an invoice to the County for reimbursement of the treatment costs, and CDFA reimburses the County.

Statutory and Regulatory Authority

Food and Agricultural Code (FAC) § 6045(a) states "The Legislature hereby finds and declares that the plant killing bacterium, *Xylella Fastidiosa* and the resulting pathogen, Pierce's disease, and its vectors present a clear and present danger to California's fifty billion dollar grape industry, as well as to many other commodities and plant life."

FAC § 6047.1(a) further states that the Legislature declares that the "state's agricultural business economy could be seriously damaged if measures are not taken to prevent the transmittal of the plant killing bacterium that causes Pierce's disease and to contain its vectors, particularly the glassy-winged sharpshooter, and if measures are not taken to prevent or inhibit infestations by other designated pests and diseases."

FAC §§ 6046(c)(2) and (d) state that funds in the Pierce's Disease Management Account shall be made available for expenditure for the purpose of combating Pierce's disease or its vectors.

FAC § 6046(g)(4) and Title 3 CCR § 3651(c)(1)(E) provide workplan elements may include treatment programs to prevent the establishment and spread of Pierce's disease and its vectors.

Background

The GWSS is a serious pest in California because of its ability to spread *Xylella fastidiosa*, the bacterium that causes Pierce's disease which kills grapevines, and there is no cure or effective treatment at this time for Pierce's disease. In addition, various strains of *X. fastidiosa* cause scorch disease of almond, oleander, mulberry, olive and liquidamber, and alfalfa dwarf and citrus variegated chlorosis. These diseases are of particular concern to landscape professionals and agricultural producers in California. The GWSS ranges over many habitats, including agricultural crops, urban landscapes, native woodlands, and riparian vegetation. [University of California, Agriculture and Natural Resources, Pierce's Disease Research and Emergency Response Task Force brochure]. The list of host plants includes about 300 genera, encompassing hundreds of plant species, and citrus is a primary feeding host for GWSS.

There are two generations of GWSS per year, early spring and summer/fall. The spring generation has a life span of approximately two to three months, while the summer/fall generation has a life span of four to six months. In the spring, the adult GWSS lay egg masses and the nymphs that emerge from those egg masses become the adults that lay egg masses in summer/fall. The nymphs that emerge from those egg masses become the adults that lay egg masses the following spring.

Citrus has been identified not only as a primary feeding host for the glassy-winged sharpshooter, but also as an area for populations of GWSS to reside. The insect uses citrus areas as a staging point for

movement in search of not only food sources but also as ovipositional (egg-laying) sites. As a result, there is a high pest population in citrus areas. Adult GWSS overwintering in the citrus areas will leave those areas in search of food sources – the various host plants in the nearby nurseries.

Riverside County is a generally infested county, and shipping nurseries exist in close proximity of commercial citrus orchards, most of which do not treat for GWSS. Because of this, there is an extremely high pest population of GWSS in and around the nurseries.

In addition, some of the nurseries are located near riparian areas that contain numerous host plants for GWSS and due to environmental prohibitions; these riparian areas cannot be treated. The presence of these host plants contributes to high pest population in these areas.

Shipping nurseries located in generally infested areas ship plant material to non-infested areas, increasing the likelihood of artificial spread of the GWSS. These nursery treatments are critical to the control and suppression of the GWSS in that the treatments kill the GWSS in shipped plant material, thereby reducing the artificial spread of GWSS via nursery shipments. In addition, the treatments provide added protection against the artificial spread of GWSS by decreasing the GWSS pest population – less GWSS in the vicinity reduces the possibility of GWSS flying into a truck in a nursery loading area. Lastly, and of great importance, the treatments decrease the pest population by preventing egg laying when treatments take place at the appropriate time – before the GWSS emerge from the egg masses and while the GWSS are still in the nymphal stage, before they become egg-laying adults.

As an added benefit to California's economy, these treatments allow the nurseries to continue shipping their product, particularly during the peak shipping seasons. The California nursery industry has an economic value of over \$3 billion [California Agricultural Resource Directory 2008-2009] and 75% of this economic activity is generated during the peak shipping seasons.

The most common reason for rejection of a shipment at the destination nursery is the presence of egg masses on the nursery stock. As mentioned above, these treatments decrease the pest population and resultant egg-laying, helping to eliminate the primary reason for rejection at destination.

Also, by reducing the pest population, the nurseries are able to continue shipping their product, as the decreased pest population results in lower numbers of GWSS trapped in nurseries.

In a non-infested nursery, traps are placed at a minimum of one trap per one-half acre in the nursery growing areas and not less than two traps per one-half acre in the staging areas¹. If the staging area traps exceed three GWSS adults in the same one-half acre in a two-week period, the nursery must immediately suspend all shipments to non-infested areas, and treat the surrounding area.

In an infested nursery, traps are placed at a minimum of two traps per one-half acre in the staging areas. (Traps are not placed in the nursery growing area.) If the staging area traps exceed three GWSS adults in the same one-half acre in a two-week period, the nursery must immediately suspend all shipments to non-infested areas, and treat the surrounding area. In addition to placing traps, inspection and treatment of the nursery stock are required prior to shipping, and the shipment is again inspected upon arrival at destination.

In a nursery in the Approved Treatment Program (ATP), traps are placed at a minimum of two traps per one-half acre throughout the nursery growing areas and in the staging areas. If the traps exceed 10 GWSS in the same one-half acre in a two-week period, host material within a 300' radius around the

¹ Staging areas are the areas where nursery stock is gathered prior to loading into trucks for shipment. Treatments prior to shipment may also be conducted in the staging areas.

traps indicating greater than 10 GWSS may not be shipped and must receive treatment. Host material outside of the 300' radius may still be shipped.

When the number of GWSS trapped exceeds the minimum thresholds, shipments may not resume for a minimum of two weeks in non-infested and infested nurseries, a minimum of four weeks in ATP nurseries, and possibly longer in all types of nurseries depending on the number of GWSS subsequently found in the traps.

Nursery Treatment Program

The Nursery Treatment Program consists of treatments of nursery stock with approved pesticides, by helicopter and/or ground application, in participating nurseries. The nurseries are located in rural areas only; therefore, applications are not conducted on or over urban/residential areas, schools, or hospitals.

Nurseries submit applications to CDFA for participation in the Program. The application is in the form of an estimate for nursery treatment that includes the nursery name and location, total acreage proposed to be treated, map of the area(s) proposed for treatment, proposed treatment dates, estimated costs for labor, proposed chemical to be used, rate of application per acre, method of application, and chemical costs, and any other costs. CDFA reviews and approves or denies the application, in writing, based on the criteria for qualified shipping nurseries (see below), and the total funding available. CDFA forwards the approved application to the County when a nursery is approved for participation in the Nursery Treatment Program.

If approved, the individual nursery is responsible for arranging the treatments. The nursery contacts a licensed Pest Control Business (PCB) of its choosing, and a work order is generated by the company for the work to be performed. The licensed PCB provides the helicopters. Treatments comply with all applicable laws and regulations, and in an environmentally responsible manner.

Timing of the treatments is important. The treatments are scheduled to coincide with the emergence of the nymphs from the egg masses so that those emerging nymphs are killed upon contact with the chemical. Also, nymphs are not able to fly so are not as mobile as the flying adults; therefore, it is important that treatments take place in the nymphal stage, or the opportunity to kill the GWSS is lost at worst and severely decreased at best. Lastly, killing the GWSS before it reaches the adult stage eliminates the egg laying that produces the next generation of GWSS.

Upon completion of the treatment, the nursery submits a Pesticide Use Report (PUR) to the County. The PUR contains information such as the chemical applied, dilution of chemical, amount of chemical applied, date and time of application, rate of application per acre, method of application, location of application, number of acres to which chemical applied, permit number, re-entry interval.

The County reviews the PUR to ensure the nursery is using the appropriate chemical, method, and rate of application.

CDFA may also conduct "spot checking" of treatments by visually observing the treatment as it is applied.

Nurseries submit invoices for treatment costs to the County for reimbursement, and the County then invoices CDFA, Pierce's Disease Control Program (PDCP) for reimbursement of the County reimbursements to the nurseries.

PDCP monitors the pest population in the areas in and surrounding the participating nurseries, and compiles information regarding the number of shipments, plants, rejections.

Qualifying Shipping Nursery

Criteria for qualified shipping nurseries:

1. Nursery must be a shipping nursery within ½ mile of treated commercial citrus.
2. Nursery must be under a current/valid compliance agreement.
3. Nursery must regularly ship to non-infested areas of California.
4. Nursery must submit an application for participation in treatment program.
5. Estimated costs for treatment must be reasonable.

Additional criteria that may be used:

1. Number and frequency of shipments by the nursery.
2. Whether the nursery has an active pest management plan.
3. Whether the nursery is under a quarantine/shipping hold.
4. Extent of pest population.

CDFA Responsibilities

CDFA will be responsible for the following:

1. Identify and approve qualified shipping nurseries that apply for participation in the Nursery Treatment Program in Riverside County and, if applicable, in San Diego County.
2. Conduct "spot checking" of treatments by visually observing treatments, if necessary.
3. Provide the approved nurseries with a detailed and uniform invoice template to be submitted to the County upon completion of treatment by the nurseries.
4. Process approved invoices for reimbursement to the County.
5. Monitor the pest population in the areas in and surrounding the participating nurseries.
6. Compile information regarding the number of shipments, plants, rejections for the nursery treatment program.

County Responsibilities

The County will be responsible for overseeing multiple treatments of qualified nurseries and for reimbursement to the nurseries for their costs incurred for such treatments. Riverside County may also be responsible for at least one qualified nursery in San Diego County as one nursery in San Diego County has expressed interested in participating in the Nursery Treatment Program while San Diego County has declined to participate in the Nursery Treatment Program. The interested nursery in San Diego County is in close proximity to the Riverside County boundary, and is owned by a qualified nursery that has its main location in Riverside County.

The county will also be responsible for the following:

1. Assist CDFA in identifying qualified nurseries upon request.
2. Review the PURs to ensure the nursery is using the appropriate treatment method (helicopter or ground application).
3. Review the PURs to ensure the nursery utilized an approved chemical that would give the best efficacy for this endeavor, and determine if the amount used is appropriate.
4. Certify that the PUR was reviewed and consistent with the treatment outlined on the invoice (in compliance with the label requirements as detailed by the Department of Pesticide Regulation, including host material and application rate).
5. Invoice the Pierce's Disease Control Program, providing supporting documentation for each nursery upon request. The county will retain the detailed supporting documentation for a minimum of five years.

6. Provide status reports to CDFA upon request.

Nursery Responsibilities

The nursery will submit an application for participation in the Nursery Treatment Program to CDFA with the following information:

1. Nursery name and location
2. Total acreage proposed to be treated
3. Map of the area(s) proposed for treatment
4. Proposed treatment dates
5. Method of application
6. Estimated costs for labor
7. Proposed chemical to be used
8. Rate of application per acre
9. Chemical costs
10. Any other costs

Upon approval for participation in Nursery Treatment Program, the nursery shall:

1. Consult with CDFA regarding the treatment plan, if necessary.
2. Conduct treatments in compliance with all applicable laws and regulations, and in an environmentally responsible manner.
3. Hire only applicators that possess valid required licenses for the method of application (helicopter and/or ground).
4. If these funds are being used in material hazardous work and with aircraft, proof of insurance is required and listed in Exhibit E, Additional Provisions, Additional Insurance Requirements.
5. Notify the County when treatment occurs.
6. Submit invoice to the County for approval and reimbursement, including a PUR for the treatments.

ESTIMATE



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE
A. G. Kawamura, Secretary

Agreement No. 10-0472
Exhibit A
Attachment 1
Page 6 of 7

ESTIMATE FOR NURSERY TREATMENT (Please complete separate estimates for individual yards.) **DUE**

Return to Greg Morris, Pierce's Disease Control Program, 2014 Capitol Avenue, Suite 203, Sacramento, CA 95811

Nursery Name: _____

Nursery Address: _____

Total Acreage To Be Treated: _____

Treatment Date: _____

Taxpayer ID # for Grower requesting the treatment: _____

Name & Taxpayer ID # for Pest Control Operator doing the treatment: _____

Name & Taxpayer ID # for Dealer supplying the chemical: _____

Treatment Information/Costs (please include sales tax):

Chemical Used/EPA No.: _____

Rate of Application: _____

Method of Treatment: _____
If application is by aircraft, please attach applicator's proof of liability insurance (\$5 million minimum). Reimbursement cannot be made without proof of insurance.

Cost of Chemical: _____

Labor Costs: Helicopter Application: _____
No. of acres x rate per acre = Total

Ground Application: _____
No. of hours x hourly rate = Total

Other Costs (provide detail): _____

Total Estimated Costs: \$ _____

Print Name of Nursery Representative _____

Signature of Nursery Representative _____

Date: _____

- Approved for \$ _____
 Proof of insurance attached.

Denied

Date: _____

Greg Morris, Program Supervisor III
Pierce's Disease Control Program
California Department of Food and Agriculture

Contract No. _____

INVOICE

[Riverside County Letterhead]

Agreement No. 10-0472
Exhibit A
Attachment 1
Page 7 of 7

INVOICE FOR NURSERY TREATMENT

(Please complete for each yard treated.)

DUE _____

Return to Riverside County Agricultural Commissioner's Office, P.O. Box 1089, Riverside, CA 92502

Nursery Name: _____

Nursery Address (yard): _____

Total Acreage Treated: _____

Treatment Date: _____

Taxpayer ID # for Grower receiving/doing the treatment: _____

Name & Taxpayer ID # for Pest Control Operator doing the treatment: _____

Name & Taxpayer ID # for Dealer supplying the chemical: _____

Treatment Information/Costs (please include sales tax):

Chemical Used/EPA No.: _____

Rate of Application: _____

Method of Treatment: _____

Cost of Chemical: _____

Labor Costs: Helicopter Application: _____
No. of acres x rate per acre = Total

Ground Application: _____
No. of hours x hourly rate = Total

Other Costs (provide detail): _____

Total Invoice: \$ _____

Print Name of Nursery Representative

Signature of Nursery Representative

Date: _____

I certify that I reviewed the Pesticide Use Report (PUR) submitted by _____
Nursery and the PUR is consistent with the treatment outlined above.

[Riverside County Representative]
[Title]

Date: _____

Contract No. _____

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 30th 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

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>

**Riverside County
Nursery Treatment Program
Estimated Budget
2010/11**

Labor Costs

Helicopter Applications - 452 acres at \$45/acre \$ 20,340.00

Chemical Costs

Chemicals (including but not limited to Tristar 30 SG,
Discus, Admire Pro, Sevin SL) \$ 27,618.56

Administrative Costs

To oversee qualified nurseries participating
in the Nursery Treatment Program in
San Diego County \$ 2,041.44

Total Budget \$50,000.00

**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 may 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 substantially damaged it is impractical to continue service, or in the event the Contractor is unable to render service as a result of any action by any governmental entity.

EXHIBIT E

ADDITIONAL PROVISIONS

CONTRACTS FEDERALLY FUNDED

It is mutually understood between the parties that this contract may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the contract were executed after that determination was made.

This contract is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the Fiscal Year(s) 2010/11 and 2011/12 covered by this agreement for the purposes of this program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress, which may affect the provisions, terms, or funding of this contract in any manner.

It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.

The department has the option to void the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction of funds.

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.

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.
3. Additional Insurance Requirements – If hazardous materials work is required with aircraft:
Contractor shall display evidence of the following on an Acord certificate of insurance evidencing the following coverages: If these funds are being used in material hazardous work, the following insurance requirements require proof of insurance.
- 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. General Liability Insurance - Contractor shall furnish to State, upon award of an agreement, a certificate of insurance prior to commencement of work stating there is general liability insurance presently in effect for the Contractor of not less than \$2,000,000 per occurrence for bodily injury and property damage liability combined.
- In addition, the certificate evidencing general liability must include evidence of one of the following:
- 1) Pesticide/Herbicide Endorsement, **OR**
 - 2) An endorsement deleting the general liability pollution exclusion, **OR**
 - 3) A separate environmental/pollution liability policy covering bodily injury and property damage from pollution incidents in the rendering of professional services.
- c. Aircraft Liability Insurance Contractor shall furnish to State, upon award of an agreement, a certificate of insurance prior to commencement of work evidencing aircraft liability insurance presently in effect for the Contractor of not less than \$5,000,000 including passenger liability.
- d. Environmental/Pollution Liability - If hazardous materials work is required, then the contractor shall maintain 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.
- e. 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.
- f. 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.