

AGREEMENT NUMBER <b>09-0834</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 SANTA BARBARA**

2. The term of this

Agreement is: July 1, 2009 Through June 30, 2010

3. The maximum amount \$13,801.73

of this Agreement is: Thirteen Thousand Eight Hundred One Dollars and Seventy-three Cents

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

Exhibit A – Scope of Work	1 Page(s)
Attachment 1	3 Page(s)
Attachment 2	2 Page(s)
Attachment 3	1 Page(s)

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

Exhibit C – General Terms and Conditions - GTC 307	3 Pages
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Check mark one item below as Exhibit D:

Exhibit D-Special Terms and Conditions (Attached hereto as part of this Agreement) 1 Page(s)

Exhibit D\*-Special Terms and Conditions

Exhibit E – Additional Provisions 2 Page(s)

5. Name of Program: Light Brown Apple Moth - Regulatory Services

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

**CONTRACTOR**

*California Department of General Services Use Only*

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

**COUNTY OF SANTA BARBARA**

BY (Authorized Signature)

DATE SIGNED)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

263 Camino Del Remedio, Santa Barbara, CA 93110-1335

**STATE OF CALIFORNIA**

AGENCY NAME

**DEPARTMENT OF FOOD AND AGRICULTURE**

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

JANICE L. PRICE, CONTRACTS MANAGER

ADDRESS

1220 N STREET, ROOM 115, SACRAMENTO, CA 95814

Exempt per: DGS Ltr 28.6

EXHIBIT A  
(County Agreement)

SCOPE OF WORK

1. Contractor agrees to provide the services described herein:

The County will provide labor and materials necessary to perform regulatory activities as defined in the Light Brown Apple Moth Regulatory Procedures Manual. Services shall include quarantine implementation in accordance with the Federal Domestic Quarantine Order and California State Interior Quarantine, California Code of Regulations 3434, as needed.

2. The program contract managers for this Agreement are:

FOR CDFA, THE PROGRAM CONTRACT MANAGER IS:	FOR CONTRACTOR:
Name: Larry Bezark/Nick Condos	Name: Guy Tingos, Deputy
Section/Unit: Light Brown Apple Moth Branch	Section/Unit: Agricultural Commissioner
Address: 1220 N Street, Room 211	Address: 263 Camino Del Remedio
City/Zip: Sacramento, CA 95814	City/Zip: Santa Barbara, CA 93110-1335
Phone: 916-654-0768 916-653-1440	Phone: 805-681-5600
Email: <a href="mailto:lbezark@cdfa.ca.gov">lbezark@cdfa.ca.gov</a> <a href="mailto:ncondos@cdfa.ca.gov">ncondos@cdfa.ca.gov</a>	Email: <a href="mailto:agcommissioner@co.santa-barbara.ca.us">agcommissioner@co.santa-barbara.ca.us</a>

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

The Light Brown Apple Moth Regulatory Procedures Manual is hereby incorporated by reference as if attached hereto. A copy of the manual may be obtained by contacting the CDFA Program Contract Manager or going to the website <http://phpps.cdfa.ca.gov/lbam/LBAMTOC.pdf>.

## Scope of Work

### Light Brown Apple Moth Cooperative Agreement July 1, 2009 – June 30, 2010 FY 2009/2010

Contractor agrees to provide the services described herein:

The County agrees to perform the listed activities in order to:

- Implement Federal Domestic Quarantine Order *Epiphyas postvittana* (Light Brown Apple Moth) DA-2007-42; including implementation of regulations for parallel California State Interior Quarantine, CCR 3434.
- Conduct emergency response activities as a result of detections of light brown apple moth in regulated establishments.

**For each county the scope of work will include, as appropriate, the activities described below:**

1. Quarantine Enforcement
2. Trace Forward/Trace Back Investigation and Survey
3. Other

#### **1. Quarantine Enforcement**

Detailed in the Light Brown Apple Moth Regulatory Procedures Manual (**Appendix A or most current version**)

**A. Nurseries** (includes production and retail nurseries, wholesale distributors, brokers and producers of cut flowers, retail/wholesale florists, garlands, wreaths or greenery and cut Christmas trees)

- **Initial Inspection/Sampling/Hold Notice**  
Initial inspection of facility, submitting samples, issuing hold notices, performing hold actions and data in-put into ISIS data system.
- **Follow-Up Inspection/Sampling/Hold Notice**  
Biweekly, monthly or more often as determined necessary, oversight of nursery IPM program if applicable, submitting samples, issuing hold notices and performing hold actions.
- **Per Shipment Inspection/Sampling/Hold Notice**  
Per shipment inspection, submitting samples, issuing hold notices and performing hold actions.
- **Treatment/Reinspection**  
Overseeing treatment or disposal at LBAM-positive nurseries, discussing treatment options, and reinspecting treated material to determine freedom from LBAM.
- **Compliance Agreements**  
Issuing and explaining terms of compliance agreements, inputting compliance agreement information into LBAM database, compliance agreement monitoring.

- **Outreach**  
Distributing quarantine maps and flyers to retail nurseries, general industry outreach.
- **Nursery Trapping**  
Deploying, servicing, submitting samples, inputting data and notifying of all positive moth finds.

#### **B. Green Waste**

- **Compliance Agreements**  
Issuing and explaining terms of compliance agreements, inputting compliance agreement information into LBAM database, compliance agreement monitoring.

#### **C. Community Gardens**

- **Inspection/Sampling/Hold Notice**  
Biweekly, monthly or per shipment inspections, submitting samples, issuing hold notices, performing hold actions and data input into ISIS data system.
- **Compliance Agreements**  
Issuing and explaining terms of compliance agreements, inputting compliance agreement information into LBAM database, compliance agreement monitoring.
- **Outreach/Education**  
Distributing educational material.

#### **D. Harvested Commodities (Including Farmers Markets)**

- **Inspection/Sampling/Hold Notice**  
Initial, monthly or pre-shipment inspections, submitting samples, issuing hold notices, performing hold actions and ISIS data input.
- **Treatment/Reinspection**  
Conducting or overseeing treatment at LBAM-positive location, discussing treatment options, and reinspecting location to determine freedom from LBAM.
- **Compliance Agreements**  
Issuing and explaining terms of compliance agreements, inputting compliance agreement information into LBAM database, compliance agreement monitoring.

## 2. Trace Forward/Trace Back

### All Related Trace Forward/Trace Back Activities

Inspecting, submitting samples, issuing hold notices and performing hold actions.

## 3. Other

### A. Conference Calls

Conference calls with CDFA, USDA, industry or community regarding LBAM regulatory updates.

### B. Meetings

Public, industry or regulatory meetings regarding LBAM regulatory activities.

### C. Administrative Support

Monthly invoicing for LBAM regulatory activities.

### D. Public Outreach/Education

Phone calls, walk-ins.

### E. Reporting

Monthly reporting (**Appendix B**) and invoicing (**Appendix C**) for LBAM regulatory activities.

Submit monthly report and invoice to:  
The Department of Food and Agriculture  
Attn: County Contract Analyst  
1220 N Street, Room 211  
Sacramento, CA 95814

**Light Brown Apple Moth  
Regulatory Work Plan Instructions  
FY 09/10**

Agreement No. 09-0834  
Exhibit A  
Attachment 2  
Page 1 of 2

**1. Line Item Descriptions**

Quarantine Enforcement Activities

- **Nurseries (includes production and retail nurseries, and producers of cut flowers, retail/wholesale florists, garlands, wreaths or greenery and cut Christmas trees)**
  - Initial Inspection/Sampling/Hold Notice- Initial inspection of facility, submitting samples, issuing hold notices and performing hold actions.
  - Follow-Up Inspection/Sampling/Hold Notice- Biweekly, monthly or more often as determined necessary, oversight of nursery IPM program if applicable, submitting samples, issuing hold notices and performing hold actions.
  - Per Shipment Inspection/Sampling/Hold Notice- Per shipment inspection, submitting samples, issuing hold notices and performing hold actions.
  - Treatment/Reinspection- Overseeing treatment or disposal at LBAM positive nurseries, discussing treatment options, and reinspecting treated material to determine freedom from LBAM.
  - Compliance Agreements- Issuing and explaining terms of compliance agreements, inputting compliance agreement information into LBAM database, compliance agreement monitoring.
  - Outreach- Distributing quarantine maps and flyers to retail nurseries, general industry outreach.
  
- **Green Waste**
  - Compliance Agreements- Issuing and explaining terms of compliance agreements, inputting compliance agreement information into LBAM database, compliance agreement monitoring.
  
- **Community Gardens**
  - Inspection/Sampling/Hold Notice- Biweekly, monthly or per shipment inspections, submitting samples, issuing hold notices and performing hold actions.
  - Compliance Agreements- Issuing and explaining terms of compliance agreements, inputting compliance agreement information into LBAM database, compliance agreement monitoring.
  - Outreach/Education- Distributing educational material.
  
- **Harvested Commodities (Including Farmers Markets)**
  - Inspection/Sampling/Hold Notice- Initial, monthly or pre-shipment inspections, submitting samples, issuing hold notices and performing hold actions.
  - Treatment/Reinspection- Conducting or overseeing treatment at LBAM positive location, discussing treatment options, and reinspecting location to determine freedom from LBAM.
  - Compliance Agreements- Issuing and explaining terms of compliance agreements, inputting compliance agreement information into LBAM database, compliance agreement monitoring.

Trace Forward/Trace Back Activities

- **All Related Trace Forward/Trace Back Activities**- Inspecting, submitting samples, issuing hold notices and performing hold actions.

Other Activities

- **Conference Calls**- Conference calls with CDFA, USDA, industry or community regarding LBAM regulatory updates.
- **Meetings**- Public, industry or regulatory meetings regarding LBAM regulatory activities.
- **Administrative Support**- Monthly invoicing for LBAM regulatory activities.
- **Reporting**- Monthly and weekly reporting and submitting for LBAM regulatory activities.
- **Public Outreach/Education**- Phone calls, walk-ins

**Light Brown Apple Moth  
Regulatory Work Plan Instructions**

Agreement No. 09-0834  
Exhibit H  
Attachment 2  
Page 2 of 2

**2. Projecting Numbers**

# of Facilities Requiring Activity Column

- Use current numbers of regulated entities, plus estimate that an additional 2% more of total entities in county (in that category) may be affected by LBAM. For example:  
Current number of nurseries under compliance=40  
Total number of nurseries in county =100  
Estimate:  $40 + (100 \times 2\%) = 42$
- Trace Forward/Trace Back facility estimates should be 2% of total nurseries in county. This projection will cover all types of entities where TF/TB activities are conducted.

Estimated Visits/Year/Facility Column

- Use LBAM procedural manual as a guide to determine how many visits per facility per year will be required for current and estimated increased number of entities that are affected by LBAM.

Estimated Hours/Visit Column

- Use LBAM procedural manual as a guide to determine how many hours each line item will require for current and estimated increased number of entities affected by LBAM.

\*\*The total hours on the "Work Plan" sheet will automatically be transferred to the " Cost Estimate" sheet.

**Cost Estimate**

**Personnel Costs:**

Individual salaries, rather than weighted averages, must be used to determine the work plan dollar amount.

**Overhead:**

Overhead for personnel costs may not exceed 25%.

**Supplies:**

Enter cost for estimated annual regulatory LBAM supply costs including flyer printing.

**Mileage:**

Mileage should be charged using the following guidelines:

- 55 cents per mile for County owned or personal vehicles July 09 – December 09
- 50 cents per mile for County owned or personal vehicles January 10 – June 10
- 28.5 cents per mile for State or Federal owned vehicles, and for rented or leased vehicles under the contract



CALIFORNIA DEPARTMENT OF  
FOOD AND AGRICULTURE

Work Plan  
Light Brown Apple Moth  
FY 2009/2010

County: Santa Barbara

Date: 11-Mar-10

	# of Facilities Requiring Activity	Estimated Visits/Year/Facility	Estimated Hours/Visit	Total Hours
<b>Quarantine Enforcement</b>				
<b>Nurseries</b>				
Inspection/Sampling/Hold Notices	40	1	1	40
Treatment/Reinspection				0
Compliance Agreement Issuance				0
Outreach	30	1	1	30
<b>Green Waste</b>				
Compliance Agreement Issuance				0
<b>Community Gardens</b>				
Inspection/Sampling/Hold Notices	5	1	1	5
Compliance Agreement Issuance				0
Outreach/Education	5	1	1	5
<b>Harvested Commodities</b>				
Inspection/Sampling/Hold Notices	25	1	1	25
Treatment/Reinspection				0
Compliance Agreement Issuance				0
<b>Trace Forward/ Trace Back</b>				
All Related TF/TB Regulatory Activities				0
<b>Other</b>				
Conference Calls	NA	NA	NA	40
Meetings	NA	NA	NA	50
Administrative Support	NA	NA	NA	12
<b>TOTAL</b>				<b>207</b>



**EXHIBIT B  
(County Agreement)**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. Invoicing and Payment**

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

**2. Budget Contingency Clause**

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

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

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

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

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

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

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

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

COST WORKSHEET

Title	Hourly Wage	Hourly Benefit Amount	Total Hourly Rate	Estimated Hours to be Worked	Total Cost
Entomologist/Pathologist	\$37.25	\$13.81	\$51.06	85	\$4,340.10
Deputy Commissioner	\$43.42	\$15.47	\$58.89	92	\$5,417.88
Agricultural Biologist III	\$30.51	\$12.27	\$42.78	30	\$1,283.40
			\$0.00		\$0.00
			\$0.00		\$0.00
			\$0.00		\$0.00
			\$0.00		\$0.00
			\$0.00		\$0.00
			\$0.00		\$0.00
			\$0.00		\$0.00
			\$0.00		\$0.00
			\$0.00		\$0.00
Total Est. Hours to be Worked:				207	
				Personnel Cost:	\$11,041.38

INITIAL  
HERE

Overhead (not to exceed 25%):

25.00%

2,170.35

Total Personnel Cost:

\$13,801.73

Supply Costs:

\$0.00

Mileage Cost:

\$0.00

Total Est. Miles:  Amount Per Mile:

TOTAL CONTRACT REQUEST:

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 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.

## 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) 09/10 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.

**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.

2. Contract Insurance Requirements

Contractor shall display evidence of the following on an Acord certificate of insurance evidencing the following coverages:

- a. Commercial General Liability – Contractor shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000 annual policy aggregate. A “per project aggregate” endorsement is required. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor’s limit of liability.

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

- b. Automobile Liability – Contractor shall maintain business automobile liability insurance for limits not less than \$1,000,000 combined single limit. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. Should the scope of the Contract involve transportation of hazardous materials, evidence of an MCS-90 endorsement is required.
- c. Workers Compensation and Employers Liability – Contractor shall maintain statutory worker’s compensation and employer’s liability coverage for all its employees who will be engaged in the performance of the Contract. In addition, employer’s liability limits of \$1,000,000 are required.
- d. Environmental/Pollution Liability – 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. Coverage shall be provided for both work performed on site as well as proper disposal of hazardous materials.