



**Tulare County Agricultural
Commissioner/Sealer
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

EDDIE VALERO
District Four

DENNIS TOWNSEND
District Five

AGENDA DATE: September 01, 2020

Public Hearing Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>

CONTACT PERSON: Nicole Motley PHONE: 684-3377

SUBJECT: Agreement with the California Department of Food and Agriculture regarding Nematode Inspections.

REQUEST(S):
That the Board of Supervisors:

1. Approve an Agreement with the California Department of Food and Agriculture, to provide funding of \$1,125.00 to offset the costs of providing soil and commodities treatment supervision and/or nematode sampling for the California Department of Food and Agriculture retroactive from July 1, 2020 through June 30, 2021. *This Agreement is retroactive because the document was not received from the State until July 10, 2020.*
2. Find that the Board had authority to enter into the proposed Agreement as of July 1, 2020, and that it was in the County's best interest to enter into the Agreement on that date.
3. Authorize the Chairman to sign two copies of the Agreement.

SUMMARY:
This Agreement is intended to render financial aid to the County to provide soil and commodities treatment supervision and/or nematode sampling for the California Department of Food and Agriculture. These services will insure that nurseries within the County are free from the presence of harmful nematodes, protecting the marketplace and the nursery industry of Tulare County.

SUBJECT: Agreement with the California Department of Food and Agriculture regarding Nematode Inspections.

DATE: September 01, 2020

This agreement has been approved as to form by County Counsel. The following terms deviate substantively from the standard County boilerplate:

1) Neither party to the agreement will indemnify the other.

FISCAL IMPACT/FINANCING:

No additional net county cost to the General Fund. The County will receive funding up to \$1,125.00 for Fiscal Year 2020/2021 from the California Department of Food and Agriculture. Revenues and the associated expenditures for this program are included in the Agricultural Commissioner/Sealer's Fiscal Year 2020/2021 adopted budget.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five-year strategic plan includes the Economic Well-Being Initiative to promote economic development opportunities, effective growth management, and a quality standard of living. This request to authorize an Agreement with the California Department of Food and Agriculture for the purpose of providing soil and commodities treatment supervision and/or sampling will insure that nurseries within the County are free from the presence of harmful nematodes, protecting the marketplace and the nursery industry of Tulare County. This serves to protect the County's agriculture-based economy by providing a safeguard for the nursery industry.

ADMINISTRATIVE SIGN-OFF:



Nicole M. Motley
Deputy Agricultural Commissioner

cc: County Administrative Office

Attachment(s) California Department of Food and Agriculture Nematode Agreement
FY2020-2021

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF APPROVE AN)
AGREEMENT WITH THE CALIFORNIA) Resolution No. _____
DEPARTMENT OF FOOD AND) Agreement No. _____
AGRICULTURE REGARDING NEMATODE)
INSPECTIONS)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Approved an Agreement with the California Department of Food and Agriculture, to provide funding of \$1,125.00 to offset the costs of providing soil and commodities treatment supervision and/or nematode sampling for the California Department of Food and Agriculture retroactive from July 1, 2020 through June 30, 2021. This Agreement was retroactive because the document was not received from the State until July 10, 2020.
2. Found that the Board had authority to enter into the proposed Agreement as of July 1, 2020, and that it was in the County's best interest to enter into the Agreement on that date.
3. Authorized the Chairman to sign two copies of the Agreement.

**COOPERATIVE AGREEMENT
SIGNATURE PAGE**

AGREEMENT NUMBER
20-0379-000-SA

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

STATE AGENCY'S NAME

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)

RECIPIENT'S NAME

COUNTY OF TULARE

2. The Agreement Term is: July 1, 2020 through June 30, 2021

3. The maximum amount of this Agreement is: \$1,125.00

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

Exhibit A: Recipient and Project Information

Approved as to Form
County Counsel

1 Page

Exhibit B: General Terms and Conditions

3 Page(s)

Exhibit C: Payment and Budget Provisions

By Deputy: /s/ Aaron Zaheen
Matter No: 2020869

1 Page

Attachments: Scope of Work and Budget

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

RECIPIENT

RECIPIENT'S NAME (*Organization's Name*)

COUNTY OF TULARE

BY (*Authorized Signature*)

DATE SIGNED (*Do not type*)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

4437 S Laspina Street, Tulare, CA 93274

STATE OF CALIFORNIA

AGENCY NAME

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)

BY (*Authorized Signature*)

DATE SIGNED (*Do not type*)

PRINTED NAME AND TITLE OF PERSON SIGNING

CRYSTAL MYERS, BRANCH CHIEF, OFFICE OF GRANTS ADMINISTRATION

ADDRESS

1220 N STREET, ROOM 120
SACRAMENTO, CA 95814

CJ

EXHIBIT A

RECIPIENT AND PROJECT INFORMATION

1. CDFA hereby awards an Agreement to the Recipient for the project described herein:
County agrees to provide soil and commodities treatment supervision and/or soil sampling as required by laws pertaining to the Nematode Control Program.

Project Title: Nematode Control Program

2. The Managers for this Agreement are:

FOR CDFA:	FOR RECIPIENT:
Name: Juan Koponen	Name: Tom Tucker
Division/Branch: PHPPS / Pest Exclusion	Organization: COUNTY OF TULARE
Address: 1220 N Street	Address: 4437 S Laspina Street
City/State/Zip: Sacramento, CA 95814	City/State/Zip: Tulare, CA 93274
Phone: 916-654-0435	Phone: 559-684-3350
Email Address: juan.koponen@cdfa.ca.gov	Email Address: ttucker@co.tulare.ca.us

3. The Grant Administrative Contacts for this Agreement are:

FOR CDFA:	FOR RECIPIENT:
Name: Michael Paule	Name: Nicole Motley
Division/Branch: PHPPS / Pest Exclusion	Organization: COUNTY OF TULARE
Address: 1220 N Street	Address: 4437 S. Laspina
City/State/Zip: Sacramento, CA 95814	City/State/Zip: Tulare, CA 93274
Phone: 916-403-6634	Phone: 559-684-3350
Email Address: michael.paule@cdfa.ca.gov	Email Address: Nmotley@co.tulare.cs.us

FISCAL CONTACT FOR RECIPIENT (if different from above):
Name:
Organization:
Address:
City/State/Zip:
Phone:
Email Address:

4. **RECIPIENT: Please check appropriate box below:**
Research and Development (R&D) means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other R&D activities and where such activities are not included in the instruction function.

This award does does not support R&D.

5. For a detailed description of activities to be performed and duties, see Scope of Work and Budget.

EXHIBIT B

GENERAL TERMS AND CONDITIONS

1. **Approval**

This Agreement is of no force or effect until signed by both parties. The Recipient may not invoice for activities performed prior to the commencement date or completed after the termination date of this Agreement.

2. **Assignment**

This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of CDFA Agreement Manager or designee in the form of a formal written amendment.

3. **Governing Law**

This Agreement is governed by and will be interpreted in accordance with all applicable State and Federal laws.

4. **State and Federal Law**

It is the responsibility of the Recipient to know and understand which state, federal, and local laws regulations, and ordinances are applicable to this Agreement and Project. Recipient shall be responsible for observing and complying with all applicable state and federal laws and regulations, and failure to comply may constitute a material breach.

5. **Recipient Commitments**

The Recipient accepts and agrees to comply with all terms, provisions, conditions and commitments of the Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by the Recipient in the application, documents, amendments, and communications in support of its request for funding.

6. **Performance and Assurances**

The Recipient agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in the Scope of Work, and to apply grant funds received only to allowable Project costs in accordance with applicable provisions of the law and Grant Procedures Manual, if applicable.

7. **Mutual Liability**

Each party hereto agrees to be responsible and assume mutual and proportional liability for its own wrongful or negligent acts of omissions, or those of its officers, agents or employees to the full extent required by law.

8. **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 will not be affected thereby.

9. **Contractors/Consultants**

The Recipient, and the agents and employees of Recipient, in the performance of this Agreement, are not officers, employees, or agents of the CDFA. The Recipient's obligation to pay its Contractors/Consultants is an independent obligation from the CDFA's obligation to make payments to the Recipient. Recipient agrees to comply with all applicable State and local laws and regulations during the term of this Agreement. All Contractors/Consultants shall have the proper licenses/certificates required in their respective disciplines. The Contractors/Consultants shall not affect the Recipient's overall responsibility for the management of the project, and the Recipient shall reserve sufficient rights and control to enable it to fulfill its responsibilities under this Agreement.

10. **Non-Discrimination Clause**

During the performance of this Agreement, Recipient and its Contractors will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical or mental disability, medical condition, age, marital status, and denial family care leave.

The Recipient and Contractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Recipient and Contractors will comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 *et seq.*) and the applicable regulations promulgated there under (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. Recipient and its Contractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining unit or other Agreement. The Recipient must include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

11. 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 CDFA 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.

12. Disputes

The Recipient must continue with the responsibilities under this Agreement during any dispute. In the event of a dispute, the Recipient must file a "Notice of Dispute" with the CDFA Agreement Manager or designee within ten (10) calendar days of discovery of the problem. The Notice of Dispute must contain the Agreement number. Within ten (10) calendar days of receipt of the Notice of Dispute, the CDFA Agreement Manager or designee must meet with the Recipient for the purpose of resolving the dispute. In the event of a dispute, the language contained within this Agreement prevails.

13. Right to Terminate

This Agreement may be terminated by either party hereto upon written notice delivered to the other party at least thirty (30) calendar days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred prior to the date of termination. In the event of Termination for Convenience of this Agreement by CDFA, CDFA must pay all responsible costs and non-cancellable obligations incurred by the Recipient as of the date of termination.

14. Termination for Cause

Either party reserve the right to immediately terminate this Agreement for cause subject to written notice. However, each party will have ten (10) calendar days after receipt of the termination notice to cure the breach. If the breach is not cured within ten (10) calendar days of receipt of notice, the CDFA shall reimburse the Recipient for all documented costs incurred up to the date of termination, including all non-cancellable obligations.

15. Force Majeure

The Recipient shall not be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any of the following: labor disturbances or disputes of any kind, accidents, failures of any required governmental approval, civil disorders, acts of aggression, acts of God, energy or other conservation measures, failure of utilities, mechanical breakdowns, materials shortages, disease, or similar occurrences.

16. Suspension of Payments

Reimbursement under this Agreement may be suspended or terminated, or both, and Recipient may be subject to debarment if CDFA determines that Recipient has breached the terms of this Agreement. A determination of breach may be appealed in writing and post marked within ten (10) calendar days of the date of notification, and addressed to CDFA, Legal Hearing and Appeals Office or emailed to CDFA.LegalOffice@cdfa.ca.gov.

California Department of Food and Agriculture
Legal Hearing and Appeals Office
1220 N Street
Sacramento, CA 95814

17. Breach Provisions

The Recipient may be in material breach under this Agreement if it fails to comply with any term of this Agreement. In the event of a material breach, CDFA shall provide in writing a Notice of Breach to the Recipient within ten (10) calendar days upon discovery of breach. Recipient shall have ten (10) calendar days from receipt of the notice to cure the breach. If the Recipient fails to cure the breach within the time prescribed by this Agreement, CDFA may do any of the following:

- A. Suspend payments;
- B. Demand repayment of all funding;
- C. Terminate the Agreement; or
- D. Take any other action deemed necessary to recover costs.

If CDFA determines that Recipient is not in material breach but that a Project is not being implemented in accordance with the provisions of this Agreement, or that Recipient has failed in any other respect to comply with the provisions of this Agreement, and if Recipient does not remedy any such failure in a reasonable manner, CDFA may withhold all or any portion of the grant funding and take any other action that CDFA deems necessary to protect its interests.

Where a portion of the grant funding has been disbursed to the Recipient and CDFA notifies Recipient of its decision not to release funds that have been withheld pursuant to Exhibit B, Suspension of Payments Provision, the portion that has been disbursed shall thereafter be repaid immediately. CDFA may consider Recipient's refusal to repay the requested disbursed amount a contract breach subject to the default provisions in Suspension of Payments Provision.

If CDFA notifies Recipient of its decision to withhold the entire funding amount from Recipient pursuant to this paragraph, this Agreement shall terminate upon receipt of such notice by Recipient and CDFA shall no longer be required to provide funds under this Agreement and the Agreement shall no longer be binding on either party.

In the event CDFA finds it necessary to enforce this provision of this Agreement in the manner provided by law, Recipient agrees to pay all costs incurred by CDFA including, but not limited to, reasonable attorneys' fees, legal expenses, and costs.

18. Publicity and Acknowledgement

The Recipient agrees that it will acknowledge CDFA's support whenever projects funded, in whole or in part, by this Agreement are publicized in any news media, brochures, publications, audiovisuals, presentations or other types of promotional material in accordance with the Grant Procedures Manual, if applicable. Recipients may not use the CDFA logo.

19. News Releases/Public Conferences

The Recipient agrees to notify the CDFA in writing at least two (2) business days before any news releases or public conferences are initiated by the Recipient or its Contractors/Consultants regarding the project described in the Attachments, Scope of Work and Budget and any project results.

20. Scope of Work and Budget Changes

Changes to the Scope of Work, Budget or the Project term, must be requested in writing to CDFA Grant Administrative Contact no later than thirty (30) days prior to the requested implementation date. Any changes to the Scope of Work and Budget are subject to CDFA approval and, at its discretion, CDFA may choose to accept or deny any changes. If accepted and after negotiations are concluded, the agreed upon changes will be made and become part of this Agreement. CDFA will respond in writing as to whether the proposed changes are accepted.

21. Reporting Requirements

The Recipient agrees to comply with all reporting requirements specified in Scope of Work and/or Grant Procedures Manual, if applicable.

22. Equipment

Purchase of equipment not included in the approved Budget requires prior approval. The Recipient must comply with applicable state requirements regarding the use, maintenance, disposition, and reporting of equipment as contained in CCR, Title 3, Division 1, Chapter 5, Sections 303, 311, 324.1 and 324.2.

23. Closeout

The Agreement will be closed out after the completion of the project or project term, receipt and approval of the final invoice and final report, and resolution of any performance or compliance issues.

24. Confidential and Public Records

The Recipient and CDFA understand that each party may come into possession of information and/or data which may be deemed confidential or proprietary by the person or organization furnishing the information or data. Such information or data may be subject to disclosure under the California Public Records Act or the Public Contract Code. CDFA has the sole authority to determine whether the information is exempt from public release. If CDFA deems the data exempt, it shall maintain such information as confidential and notify the Recipient of any requests for release of the information.

25. Property Damage Claims Process

Should a property owner claim damages arising under, related to or involving this Agreement, the Recipient shall forward the property owner's written request for compensation to the CDFA Agreement Manager. The written request shall be fully supported by factual information. The Agency Secretary or designee will have thirty (30) calendar days after receipt of the written request to render a written decision. If a written decision is not rendered within thirty (30) calendar days after receipt of the request or the property owner disputes the CDFA's decision, the property owner may file a claim with the California Department of General Services.

26. Amendments

Changes to funding amount or Agreement term require an amendment and must be requested in writing to the CDFA Agreement Manager or designee no later than sixty (60) calendar days prior to the requested implementation date. Amendments are subject to CDFA approval, and, at its discretion, may choose to accept or deny these changes. No amendments are possible if the Agreement is expired.

EXHIBIT C

PAYMENT AND BUDGET PROVISIONS

1. Invoicing and Payment

- A. For activities satisfactorily rendered and performed according to the attached Scope of Work and Budget, and upon receipt and approval of the invoices, CDFA agrees to reimburse the Recipient for actual allowable expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. Invoices must include the Agreement Number, performance period, type of activities performed in accordance with this Agreement, and when applicable, a breakdown of the costs of parts and materials, labor charges, and any other relevant information required to ensure proper invoices are submitted for payment.
- C. Unless stated in the Scope of Work and/or Grant Procedures Manual, if applicable, quarterly invoices must be submitted to the CDFA Administrative Contact, within thirty (30) calendar days after the end of each quarter in which activities under this Agreement were performed.
- D. Unless stated in the Scope of Work and/or Grant Procedures Manual, if applicable, a final invoice will be submitted for payment no more than thirty (30) calendar days following the expiration date of this Agreement, or after project is complete, whichever comes first. The final invoice must be clearly marked "Final Invoice" thus indicating that all payment obligations of the CDFA under this Agreement have ceased and that no further payments are due or outstanding.

2. Allowable Expenses and Fiscal Documentation

- A. The Recipient must maintain adequate documentation for expenditures of this Agreement to permit the determination of the allowability of expenditures reimbursed by CDFA under this Agreement. If CDFA cannot determine if expenditures are allowable under the terms of this Agreement because records are nonexistent or inadequate according to Generally Accepted Accounting Principles, CDFA may disallow the expenditures.
- B. Mileage reimbursement for using a privately-owned vehicle will be at the standard mileage rate established by the United States (U.S.) Internal Revenue Service (IRS) and in effect at the time of travel. The standard mileage rate in effect at the time of travel can be found on [IRS's website](#) regardless of funding source/type.
- C. If domestic travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures. The maximum rates allowable for travel within California are those established by the California Department of Human Resources ([CalHR](#)). The maximum rates allowable for domestic travel outside of California are those established by the United States General Services Administration ([GSA](#)).
- D. If foreign travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures. The maximum rates allowable are those established in a per diem supplement to Section 925, Department of State Standardized Regulations.
- E. The Recipient will maintain and have available, upon request by CDFA, all financial records and documentation pertaining to this Agreement. These records and documentation will be kept for three (3) years after completion of the Agreement period or until final resolution of any performance/compliance review concerns or litigation claims.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, California Government Code Title 1, Division 3.6, Part 3, Chapter 4.5, commencing with Section 927 - The California Prompt Payment Act.

4. Budget Contingency Clause

If funding for any fiscal year is reduced or deleted for purposes of this program, the CDFA has the option to either cancel this Agreement with no liability occurring to the CDFA, or offer to amend the Agreement to reflect the reduced amount.

**Nematode Control Program
Scope of Work
Fiscal Year 2020-21
Tulare**

The Recipient agrees to perform soil treatment supervision, commodity treatment supervision and commodity and/or soil sampling as required by the laws, regulations and procedures pertaining to the Nematode Control Program which are in effect at the time this Agreement is duly executed, as well as those directing the program as it proceeds. The Recipient agrees to furnish all equipment, supplies and labor necessary to perform the prescribed work. The Recipient shall provide a quarterly activity report on the Nursery Nematode Certification Report/Billing Form (64-086) and invoice coversheet to the Nursery Program (see attached samples). Recipient shall submit an itemized invoice referencing the Cooperative Agreement Number and sent to:

Attn: Michael Paule
California Department of Food and Agriculture
Pest Exclusion Branch
Nursery, Seed, and Cotton Program
1220 N Street
Sacramento, CA 95814

The laws and regulations pertaining to the Nematode Control Program are contained in Division 4 of the Food and Agricultural Code and Title 3 of the California Code of Regulations. The procedures are those contained in the Nursery Inspections Procedures Manual and Nursery Advisory letters. By this reference, all are made a part of this Agreement.

Counties will be reimbursed for work performed at the rate of \$45.00 per hour or County rate whichever is less, for the supervision and documentation of soil and/or commodity treatments, or soil sampling. Counties that perform nematode sample processing will be reimbursed at the rate of \$20.00 per sample or County rate, whichever is less. Counties must obtain approval to process samples prior to commencing sample processing.

1. Number of anticipated hours of inspections/supervisions: **25**
2. Total amount (**25** hours x **\$45.00** rate) for current year: **\$1,125.00**

County Letterhead

Invoice for Nematode Inspection Reimbursement

Date _____

Attn: Juan Koponen
California Department of Food and Agriculture
Pest Exclusion Branch
Nursery, Seed, and Cotton Program
1220 N Street
Sacramento, CA 95814

Re: County of _____
Agreement Number: 20-XXXX-000-SA
Fiscal Year 20/21
Invoice for _____ Quarter
Invoice Number _____

Attached is Form 64-086 (Nursery Stock Nematode Certification Report/Billing) for reimbursement of nematode inspections performed by the County for the period noted above.

Please remit payment to: County of _____
Address line 1
Address line 2
Address line 3

Signature Block

(Original Signature)
(Title)

Attachment (64-086)