

AGREEMENT NUMBER
09-0346
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 TULARE

2. The term of this Agreement is: July 1, 2009 Through June 30, 2010
3. The maximum amount of this Agreement is: \$27,594.00
Twenty-seven Thousand Five Hundred Ninety-four Dollars and No Cents

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

Exhibit A – Scope of Work 1 Page(s)

Exhibit B – Budget Detail and Payment Provision 1 Page(s)
Attachment 1 3 Page(s)

Exhibit C – General Terms and Conditions - GTC 307 3 Pages

Check mark one item below as Exhibit D:

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

☐ Exhibit D*-Special Terms and Conditions

1 Page(s)

5. Name of Program: Pest Exclusion/Nursery Inspections

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

CONTRACTOR

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

COUNTY OF TULARE

BY (Authorized Signature)

—

DATE SIGNED)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

4437 S. Laspina Street, Tulare, CA 93274

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

California Department of General
Services Use Only

☒ Exempt per: DGS Ltr 28.6

**EXHIBIT A
(County Agreement)**

SCOPE OF WORK

1. Contractor agrees to provide the services described herein:

The Contractor shall provide all equipment and labor necessary to perform inspection and enforcement activities of nursery stock at all producer/wholesale nursery locations within the County.

2. The program contract managers for this Agreement are:

FOR CDFA, THE PROGRAM CONTRACT MANAGER IS:	FOR CONTRACTOR:
Name: Jenna Celigija	Name: Gary Kunkel
Section/Unit: Pest Exclusion	Section/Unit: Agricultural Commissioner
Address: 1220 N Street, Room A-372	Address: 4437 S. Laspina St.
City/Zip: Sacramento, CA 95814	City/Zip: Tulare, CA 93274
Phone: 916-654-0435	Phone: 559-685-3323
Email: jceligija@cdfa.ca.gov	Email: gkunkel@co.tulare.ca.us

3. Detailed description of work to be performed and duties of all parties:

The Contractor agrees to provide the California Department of Food and Agriculture (CDFA) all equipment and labor necessary to perform inspection and enforcement activities. The activities under this Agreement shall be completed within the term of this contract, July 1, 2009 through June 30, 2010.

Contractor shall inspect all nursery stock at all producer/wholesale nursery locations within the County. Specifically not included is nursery stock in the first year of a two-year production cycle, plant materials in parent stock or propagative stock beds or blocks that are not to be inspected and nursery stock that is entered in one of the State's registration or certification programs and is inspected by State staff.

Contractor shall enforce all laws and regulations pertaining to nursery stock, including licensing requirements, in accordance with the Memorandum of Understanding between CDFA and the California Agricultural Commissioners and Sealers Association entitled "State-County Nursery Inspection Program," incorporated by reference as if attached hereto.

Contractor shall respond to complaints against retail nursery establishments.

The California Department of Food and Agriculture shall make payment upon receipt of an approved invoice, not more often than monthly in arrears.

**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, California Code of Regulations.

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>

Tulare 09/10

The amount payable under this agreement shall not exceed **\$27,594.00** (rounded to the nearest dollar) based on **1,986.62** reimbursable acres as reported by the Contractor. Contractor shall be paid on a per acre basis for inspection and enforcement activities at a rate of **\$13.89** per reimbursable acre.

In addition, Contractor shall be paid \$50.00 for each new license secured and verified by inspection by the Contractor and \$50.00 for each renewed forfeited (delinquent) license secured by the Contractor. In addition, Contractor shall be paid a current hourly staff rate, not to exceed \$35.00 per hour, for nursery investigative work, provided such investigative work is approved in advance by the CDFA Nursery Program.

Payment shall be made quarterly in arrears upon submission and approval of an itemized invoice (see attached invoice template). Contractor shall submit an itemized invoice in arrears, in triplicate, referencing the Contract and sent to:

California Department of Food and Agriculture
Pest Exclusion Branch
Nursery, Seed, and Cotton Program
Attention: Mike Colvin
1220 N Street, Room A-372
Sacramento, California 95814

County Letterhead

Agreement No. 09-0346
Exhibit 31
Attachment 1
Page 2 of 3

Date 6/1/09

TO: Mike Colvin
California Department of Food and Agriculture
Pest Exclusion Branch
1220 N Street, Room A-372
Sacramento, CA 95814

S

County of _____ County Name _____
Contract Agreement Number 01-2345
Fiscal Year 09/10
Invoice for _1,2,3 or 4_ Quarter
Invoice Number _____ Invoice Number _____

A

M

Invoice Detail	Amount	Reimbursement Rate	Totals
Type 1 Acres =	100 X	13.89 =	\$1,389.00
Type 2 and 4 Acres =	100 (/4 = 25) X	13.89 =	\$347.25
Nursery License/Renewal	3 X	\$50.00 each license =	\$150.00
Invoice Total			\$1886.25

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

L

E

Signature Block

(Original Signature)
(Title)

SAMPLE BILLING

THIS SUPPLEMENTAL SHEET TO REPORT 7 SHALL BE USED FOR
NURSERY INSPECTION REIMBURSEMENT BILLING
BY THE COUNTIES

CDFA USE ONLY	
APPROVED BY:	
NURSERY REIMBURSEMENT:	
LICENSE REIMBURSEMENT:	
TOTAL REIMBURSEMENT:	0

COUNTY:	CONTRACT NUMBER:	MONTH/YEAR:
County Name	##-####	Month/Yr

PRODUCTION / WHOLESALE INSPECTIONS					
NAME OF NURSERY	LICENSE NUMBER	DATE(S) INSPECTED	NO. OF ACRES		CDFA USE ONLY
			TYPE 1*	TYPE 2*	
A Generic Nursery	A1234	6/22/2009	50		
A Different Nursery	B1234	6/23/2009	50		
A Type 2 Nursery	C1234	6/29/2009		100	
4					
5					
6					
7					
8					
9					
10					

NUMBER OF LOCATIONS INSPECTED:		TOTAL ACRES:	100.00	100.00
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NURSERY LICENSE ACTIVITY			
NAME OF NURSERY LICENSED (Use firm name)	NEW (LICENSE NUMBER)	RENEWAL (LICENSE NUMBER)	CDFA USE ONLY
I Grow Stuff Nursery	c6789		
Roam Depot	b4567		
Orchard Supply		a9876	

SIGNATURE:	TITLE:	DATE:
SIGNATURE:	TITLE:	6/30/2009

* Type 1 = Nursery production acreage consisting of nursery stock for farm and landscape planting, ornamentals in containers, and potted plants.
Reimbursement rate is the number of acres inspected multiplied by the hourly rate as stated in the contract.

EXHIBIT C
(County Agreement)

GENERAL TERMS AND CONDITIONS GTC 307

1. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT:** This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. **DISPUTES:** Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR:** Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. **TIMELINESS:** Time is of the essence in this Agreement.

13. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

EXHIBIT D
(County Agreement)

SPECIAL TERMS AND CONDITIONS

1. Excise Tax

The State of California is exempt from federal excise taxes and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

2. Settlement of Disputes

In the event of a dispute, Contractor shall file a "Notice of Dispute" with the CDFA within ten (10) days of discovery of the problem. Such Notice of Dispute shall contain the Agreement number. Within ten (10) days of receipt of such Notice of Dispute, the Agency Secretary, or Designee, shall meet with the Contractor and the CDFA project manager for the purpose of resolving the dispute. The decision of the Agency Secretary or Designee shall be final. In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.

3. Agency Liability

The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

4. Potential Subcontractors

If Contractor subcontracts out a portion of the work required by this Agreement, nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

5. Right To Terminate

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

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