County of Los Angeles
**CHIEF EXECUTIVE OFFICE**
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
http://ceo.lacounty.gov

WILLIAM T FUJIOKA
Chief Executive Officer

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

July 8, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**AGRICULTURAL COMMISSIONER/WEIGHTS AND MEASURES: APPROVAL OF PETROLEUM PRODUCTS AND WEIGHMASTER ENFORCEMENT AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE FOR INSPECTING RETAIL GAS STATIONS AND LICENSED WEIGHMASTERS (ALL DISTRICTS) (3 VOTES)**

## SUBJECT

The Agricultural Commissioner/Weights and Measures (ACWM) is requesting approval to execute a contract agreement for $132,675 with the California Department of Food and Agriculture (CDFA). The ACWM will be reimbursed for inspections conducted at retail motor fuel stations to ensure compliance with California advertising and signage requirements. The ACWM will also be reimbursed for inspections conducted at businesses (weighmasters) that weigh, measure, or count commodities and for which charges, either for buying or selling, are then based on those weighments, measurings, or counts.

## IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Agricultural Commissioner/Director of Weights and Measures to sign the accompanying agreement with the CDFA which reimburses the County $132,675 for one year, beginning July 1, 2008, for inspections conducted at retail gas stations and licensed weighmasters, by employees of the ACWM.

2. Authorize the ACWM to amend the agreement, if necessary, in an amount not to exceed 10 percent of the original agreement amount, at no County cost, subject to review and approval by County Counsel and the Chief Executive Office, and notification to Board offices.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION:**

For the past 19 years, CDFA has contracted with the ACWM to enforce California Business and Professions Code (BPC), Division 5, Chapters 14, 14.5, and 15, pertaining to gasoline station advertising signage, petroleum product labeling, and quality standards. CDFA has also contracted with the ACWM to enforce BPC, Division 5, Chapter 7, and California Code of Regulations, Title 4, Division 9, Chapter 9, pertaining to weighmaster laws and regulations. CDFA wishes to continue reimbursing the ACWM for these enforcement activities under a single agreement.

Approval of the recommended agreement would allow the ACWM to continue the long-standing contractual and mutually beneficial relationship with CDFA.

**Implementation of Strategic Plan Goals:**

The agreement supports the County Strategic Plan Goals of Service Excellence (Goal 1), and Fiscal Responsibility (Goal 4). County residents benefit when the approximately 1,900 retail gasoline stations maintain accurate, easily visible advertising displays at the street and at the dispensers. They further benefit when various products, including lubricants, antifreeze, and gasoline, are properly identified as to their uses and quality attributes. Consumers benefit when commercial transactions that are based on quantities of commodities certified on weighmaster certificates are accurate, enabling both the purchaser and seller to have confidence in the accuracy of quantities represented on these certificates.

**FISCAL IMPACT/FINANCING:**

The contract is 100 percent revenue offset. The County will receive $108,975 for petroleum products inspections, and $23,700 for enforcement of weighmaster laws and regulations, up to a maximum $132,675.

**FACTS AND PROVISIONS/LEGAL REQUIREMENTS:**

It is within the scope of the mission of the ACWM to ensure that the residents of the County are protected from deceptive advertising practices that could take place at retail gasoline stations or deceptive practices at the licensed weighmaster establishments. The ACWM is also directed by law to protect consumers from being sold petroleum products that fail to meet established quality standards. ACWM inspectors issued 719 notices of violation to retail gasoline stations during Fiscal Year 2006-07 for violations of Chapters 14, 14.5, and 15. During the same period, 148 notices of violation were issued to licensed weighmaster establishments for violations of BPC Chapter 7, and California Code of Regulations, Title 4, Division 9, Chapter 9.

The terms of the Petroleum Products and Weighmaster Enforcement Agreement shall be for the period commencing July 1, 2008 through June 30, 2009.

The agreement has been approved as to form by County Counsel.

**IMPACT ON CURRENT SERVICES (OR PROJECTS):**

The Petroleum Products and Weighmaster Enforcement Agreement support enforcement programs already in place.

**CONCLUSION:**

When approved, please return the original Petroleum Products and Weighmaster Enforcement Agreement to ACWM, along with an adopted copy of this letter, and the minute order directing the Agricultural Commissioner/Director of Weights and Measures to sign. The ACWM will forward copies of the documents to the CDFA Contracts Office.

Respectfully submitted,

WILLIAM T FUJIOKA
Chief Executive Officer

WTF:SRH:RDC
KEF: RKI:JNH:jh/yjf

Attachment

C: Maya Lee, County Counsel
Auditor-Controller

Petroleum.Products.bm

STATE OF CALIFORNIA
**STANDARD AGREEMENT**
STD 213 (Rev 10/05)

| AGREEMENT NUMBER |
|---|
| **08-0026** |
| 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 LOS ANGELES**

2. The term of this Agreement is: July 1, 2008 Through June 30, 2009

3. The maximum amount of this Agreement is: $132,675.00
One Hundred Thirty Two Thousand Six Hundred Seventy Five 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) |
| Attachment 1 | 3 Page(s) |
| Attachment 2 | 3 Page(s) |
| Exhibit B – Budget Detail and Payment Provision | 1 Page(s) |
| Attachment | 1 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) — Page(s)

☐ Exhibit D*-Special Terms and Conditions

APPROVED AS TO FORM
RAYMOND G FORTNER, JR., County Counsel
By _____ Deputy

5. Name of Program: County Petroleum Products Compliance and Weighmaster Enforcement Programs

**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 LOS ANGELES** | | |
| BY *(Authorized Signature)* – | DATE SIGNED) | |
| PRINTED NAME AND TITLE OF PERSON SIGNING | | |
| ADDRESS 12300 Lower Azusa Road, Arcadia, CA 91005 | | |
| **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: |

STATE OF CALIFORNIA
**STANDARD AGREEMENT**
STD 213 (Rev 10/05)

| AGREEMENT NUMBER |
|---|
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| Attachment | 1 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

APPROVED AS TO FORM
RAYMOND G FORTNER, JR., County Counsel
By _____
Deputy

5. Name of Program: County Petroleum Products Compliance and Weighmaster Enforcement Programs

**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 LOS ANGELES** | | |
| BY *(Authorized Signature* | DATE SIGNED) | |
| – | | |
| PRINTED NAME AND TITLE OF PERSON SIGNING | | |
| | | |
| ADDRESS | | |
| 12300 Lower Azusa Road, Arcadia, CA 91005 | | |
| **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 | | ☐ Exempt per: |
| 1220 N STREET, ROOM 115, SACRAMENTO, CA 95814 | | |

# EXHIBIT A
**(County Agreement)**

## SCOPE OF WORK

1. Contractor agrees to provide the services described herein:

   Contractor will inspect for compliance in accordance to the California Business Professions Code: 1) The petroleum and automotive products advertising and labeling (Code Section 13434), and 2) The weighmaster records and verification inspections (Division 5, Chapter 7, and the California Code of Regulations, Title 4, Division 9, Chapter 9).

2. The contract managers for this Agreement are:

| **FOR CDFA: THE PROGRAM CONTRACT MANAGER IS:** | | **FOR CONTRACTOR:** | |
|---|---|---|---|
| Name: | Kristin Macey | Name: | Kurt Floren |
| Section/Unit: | Division of Measurement Standards | Section/Unit: | County of Los Angeles |
| Address: | 6790 Florin Perkins Road Suite 100 | Address: | 12300 Lower Azusa Road |
| City/Zip: | Sacramento, CA 95828 | City/Zip: | Arcadia, CA 91005 |
| Phone: | (916) 229-3044 | Phone: | (626) 575-5451 |

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

4. The County will be reimbursed for the following programs

| | |
|---|---|
| a. Petroleum Products Compliance | $108,975.00 |
| b. Weighmaster Enforcement Program | $23,700.00 |
| **Total Contract Amount:** | **$132,675.00** |

# SCOPE OF WORK

## Initial Inspections:

In the best interest of the State, in accordance with California Business and Professions Code Section 13434, and under the authority of the Secretary of the California Department of Food and Agriculture (CDFA); the Division of Measurement Standards (Division) and the **County of Los Angeles** agree to the following:

An initial inspection is the first inspection in the fiscal year of a location where the ***primary*** business is the sale of petroleum products (i.e., retail service stations, distributors of engine fuels, oils, quick-lube shops, etc.).

An initial inspection shall include the verification of compliance with the appropriate provisions of the Business and Professions Code and California Code of Regulations relating to the advertising and labeling of petroleum and automotive products, and to verify compliance with the provisions of Section 13660 at the location. Inspection reports shall be made for each establishment inspected on forms supplied by or approved by the Division containing legible heading and violation information. Two copies of the inspection reports shall be sent to the regional field office. The original inspection reports shall be maintained at said county Office of Weights and Measures for three years and be made available to the CDFA, Division of Measurement Standards, upon request.

The Department will pay said County $75.00 for each initial inspection of establishments selling or distributing petroleum and/or automotive products; provided the inspection is done to determine compliance with California Business and Professions Code, Division 5, Chapters 14, 14.5 and 15. The total allocation to said County for these inspections shall not exceed **$108,975.00** for this agreement. This represents **1,453** initial inspections per fiscal year.

## Inspection Requirements

The Division reserves the rights to, at its discretion, assign and direct the county to take designated samples of bulk automotive or petroleum products for the purpose of marketplace surveys. The locations visited for the purpose of obtaining these designated samples shall be counted as inspections authorized by this agreement and will be paid at $75.00 per location. The assigned number of inspections at brake shops, quick-lube shops, and other retail establishments selling bulk petroleum products or automotive products shall not exceed 10% of the total annual initial inspections authorized. Prior to being assigned sampling duties, the Division will provide training in the proper sampling and sample tag/chain of evidence completion procedures. Unless directed otherwise, all samples are to be submitted to the Division's Sacramento laboratory.

Sample containers and subvention sample identification tags will be provided by the Division. Payment for samples and transportation of the sample to the Division's Sacramento laboratory shall be the responsibility of said County. The color coded subvention sample identification tags must be used on subvention samples to identify them for reimbursement verification. Said County will use the inspection and sampling procedures outlined in the Division of Measurement Standards' "Petroleum Products Inspection and Sampling Procedure Manual." Off sale of samples not meeting

product specifications shall be the responsibility of the County or the Division, if requested to do so by the County, and will be handled in accordance with the guidelines established in the Division's "Citation Procedure Manual."

Nothing in this agreement prevents or precludes Division staff from performing routine location inspections within the county. The Division also reserves the right to do random re-inspections of locations that were billed for by the County. These re-inspections will be performed by Division staff for the purpose of evaluating the work of the county. Enforcement action, if needed, will be taken by Division staff following the "Citation Procedure Manual" guidelines. The county will be notified when Division staff is performing location inspections within the county.

Said County agrees that appropriate enforcement action shall be taken upon discovery of violation(s) at the location being inspected. The enforcement actions will be handled in accordance with the guidelines established in the Division's "Citation Procedure Manual." When an enforcement action other than the issuance of a Notice of Violation (NOV) is specified and said county is unable or fails to take that action, the Division shall take the specified enforcement action. Payment for the inspection will be withheld if enforcement action is not taken against the violator.

**All requests for payment** shall be made using the Petroleum Subvention Contract Invoice, supplied, and shall include the official county letterhead.

Funds will be disbursed to the County on approval of the invoice submitted quarterly. Included with the invoice shall be a list stating the total number of initial inspections conducted, the name and address of the location inspected, the number of designated samples taken, the name and location where the samples were taken, and the amount of money requested.

The invoice for billing shall be submitted to the Division of Measurement Standards Office in Sacramento.

**Completed legible copies of both the pink and goldenrod report forms are to be forwarded to the regional office within (five) working days after completion of the inspection.**

# *County Letterhead*

## Petroleum Subvention Contract

## INVOICE

**To:**

California Department of Food & Agriculture
Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828
Attn: Kristin Macey, Contract Manager

Agreement #

Fiscal Year:

Quarter:

PCA # **55001**

In accordance with the California Business and Professions Code Section 13434, funds have been allocated for CDFA to pay the County of
the sum of $ per fiscal year.

The County has complied with the conditions as required.

***Approved:*** _____ Date: _____
County Representative

***Approved:*** _____ Date: _____
Division of Measurement Standards

Include a summary list stating the total number of initial inspections conducted, the number of designated samples taken, and the amount of money requested.

# SCOPE OF WORK

## Initial Audit Inspections:

The California Department of Food and Agriculture (CDFA) will pay the **County of Los Angeles** $75.00 for each initial audit inspection of an establishment licensed as a weighmaster; provided the inspection is done to determine compliance with California Business and Professions Code, Division 5, Chapter 7 and California Code of Regulations, Title 4, Division 9, Chapter 9. The total allocation to the County for these inspections shall not exceed **$11,850.00** this agreement. This represents **158** initial inspections per fiscal year or approximately 20% of the licensed locations in the County.

An initial audit inspection is the first audit inspection in the fiscal year of a business location that is operating as a licensed weighmaster.

Locations to be visited for initial audit inspections shall be chosen from those licensees that have not been inspected in the proceeding four (4) years. The exception to this will be a county that has a limited number of licensed locations that would not permit it. When a location is found to be out of business, an audit report form shall be completed indicating that the location is no longer in business. **Out of business locations are not billable. An alternate location shall be selected for an audit.**

## Verification Inspections:

The CDFA will also pay the County in accordance with the following rate schedule for the indicated type of verification inspections; provided the inspection is done to determine compliance with California Business and Professions Code, Division 5, Chapter 7 and California Code of Regulations, Title 4, Division 9, Chapter 9. The total allocation to the County for these inspections shall not exceed **$11,850.00** for this agreement.

Common Tare Weights @ $75.00 each
Predetermined Individual Tare Weights @ $37.50 each
Seasonal Tare Weights (Cab Cards) @ $37.50 each
Follow-up Audit Inspection to verify previous "substantial" violations are corrected @ $75.00 each
Undercover Purchases/Sales (excluding CRV containers) at businesses licensed under Chapter 7@ $75.00 each
Verified unlicensed weighmaster location that licensed as a result of a documented county informational visit – must verify they have become licensed and include license number on invoice for payment @ $37.50 each

## Inspection Requirements:

Any inspection shall include the verification of compliance with the appropriate provisions of the Business and Professions Code and the California Code of Regulations relating to weighmasters at the location. Inspection reports shall be made for each establishment inspected on forms supplied

by the Division of Measurement Standards (Division). The original inspection reports shall be maintained at the County Office of Weights and Measures for three years and be made available to the CDFA, Division of Measurement Standards, upon request.

The Division reserves the rights to, at its discretion, assign and direct the County to inspect the specified Weighmaster licensees for the purpose of marketplace surveys or follow up inspections. The locations visited for the purpose of performing these designated inspections shall be counted as inspections authorized by this agreement. The assigned number of inspections shall not exceed 10% of the total annual initial inspections authorized.

The Division reserves the right to do random re-inspections of locations that were billed for by the County. These re-inspections will be performed by Division staff for the purpose of evaluating the work of the county. Enforcement action, if needed, will be taken by Division staff following the "Citation Procedure Manual" guidelines.

The County will use the inspection procedures outlined in the Division's "Weighmaster Enforcement Program Procedure Manual."

The County agrees that appropriate enforcement action shall be taken upon discovery of violation(s) at the location being inspected. The enforcement actions will be handled in accordance with the guidelines established in the Division's "Citation Procedure Manual." When an enforcement action other than the issuance of a Notice of Violation (NOV) is specified and the County is unable or fails to take that action, the Division shall take the specified enforcement action. Payment for the inspection will be withheld if enforcement action is not taken against the violator.

**All requests for payment** shall be made using the Weighmaster Subvention Contract Invoice, supplied, and shall include the official county letterhead.

Funds will be disbursed to the County on approval of the invoice submitted quarterly. Included with the invoice shall be a list stating the total number of inspections conducted, the type of inspection conducted at each location, the Weighmaster license name, the Weighmaster license number, and the amount of money requested.

The invoice for billing shall be submitted to the Division of Measurement Standards Office in Sacramento. **Completed legible copies of both the pink and goldenrod report forms, copies of cab card and other tare weight verification forms, and copies of single transaction report forms are to be forwarded to the regional office within (five) working days after completion of the inspection.**

# *County Letterhead*

## Weighmaster Subvention Contract

## INVOICE

**To:**

California Department of Food & Agriculture
Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828
Attn: Kristin Macey, Contract Manager

Agreement #

Fiscal Year:

Quarter:

PCA # 54001

In accordance with the California Business and Professions Code Section 12709, funds have been allocated for CDFA to pay the County of
the sum of $ per fiscal year.

The County has complied with the conditions as required.

***Approved:*** _____ Date: _____
County Representative

***Approved:*** _____ Date: _____
Division of Measurement Standards

Include a summary list stating the total number of initial inspections conducted, the type of inspection conducted at each location, the weighmaster license name, the weighmaster license number, and the amount of money requested.

# EXHIBIT B
## (County Agreement)

## BUDGET DETAIL AND PAYMENT PROVISIONS

1. **Invoicing and Payment**

   A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.

   B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears. Invoices shall be submitted to the designated CDFA Contract Manager for this Agreement.

2. **Budget Contingency Clause**

   A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

   B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

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

   An annual report of expenditures, where county payments are supported by Federal funds, will be issued by CDFA Administrative Services, Financial Services Branch. This report will be issued by September 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

# BUDGET

**County: Los Angeles**

| | |
|---|---|
| Petroleum Products Enforcement: | $108,975.00 |
| Weighmaster Enforcement: | $23,700.00 |
| **Total Contract Amount:** | **$132,675.00** |

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.

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## CERTIFICATION

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

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

## CONTRACTOR CERTIFICATION CLAUSES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. SWEATFREE CODE OF CONDUCT:

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

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

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

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

## DOING BUSINESS WITH THE STATE OF CALIFORNIA

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

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

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

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

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

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

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

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

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

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

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

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

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

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

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

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

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

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

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

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

## VOLUNTARY STATISTICAL DATA SHEET

Information to be used for reporting purposes only

Public Contract Code 10111 requires state agencies to capture information on ethnicity, race and gender (ERG) of business owners on all awarded contracts and procurements to the extent that the information has been voluntarily reported to the department. The awarding department is prohibited from using this data to discriminate or provide a preference in the solicitation or acceptance of bids, quotes, or estimates for goods, services, construction and/or information technology. This information shall not be collected until after the contract award is made. The completion of this form is **strictly voluntary**.

The data you provide on this form should best describe the *ownership of your business*. Ownership of a business should be determined as follows:

- For a business that is an sole proprietorship, partnership, corporation, or joint venture at least 51 percent is owned by one or more individuals in a classification designated below or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more individuals in a designated classification, or
- For other business entities, the owner is the person controlling management and daily operations and who "owns" the business.

*For purposes of this report, respond only if the business has its home office in the United States and which is not a branch or subsidiary of a foreign corporation, firm, or other business.*

**Ethnicity/Minority Classification** As defined in Public Contract Code Section 2051 (c)

- ☐ **Asian-Indian** – a person whose origins are from India, Pakistan, or Bangladesh.
- ☐ **Black** – a person having origins in any of the Black racial groups of Africa.
- ☐ **Hispanic** – a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race.
- ☐ **Native American** – an American Indian, Eskimo, Aleut, or Native Hawaiian.
- ☐ **Pacific Asian** – a person whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, or the United States Trust Territories of the Pacific including the Northern Marianas
- ☐ **Other** – Any other group of natural persons identified as minorities in the respective project specifications of an awarding department or participating local agency.

**Race Classification** As defined by the Office of Management and Budget, Federal Register Notice, October 30, 1997, at http://www.whitehouse.gov/omb/fedref/1997standards.html

- ☐ American Indian or Alaska Native
- ☐ Asian
- ☐ Black or African American
- ☐ Native Hawaiian or Other Pacific Islander
- ☐ Other
- ☐ White

**Gender Classification**

- ☐ Female
- ☐ Male

**ITEMS BELOW TO BE COMPLETED BY STATE AGENCY/DEPARTMENT ONLY**

- ☐ **Goods**
- ☐ **Services**
- ☐ **Construction**

**Total Contract Purchase:** _____ **Contract Award Date:** _____