



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-1

For the meeting of: June 7, 2016

Date: May 17, 2016

To: Board of Supervisors

From: Jeff M. Dolf, Agricultural Commissioner/Sealer of Weights & Measures

Subject: APPROVAL OF COOPERATIVE AGREEMENT NO. 16-0157-SA, CERTIFIED FARMER'S MARKET INSPECTION CONTRACT IN THE AMOUNT OF \$11,540.00

RECOMMENDATION(S):

That the Board of Supervisors:

- 1. Approve Cooperative Agreement No. 16-0157-SA, known as the Certified Farmer's Market Inspection Program contract with the California Department of Food and Agriculture in the amount of \$11,540.00, and
2. Authorize the Chair to sign the original agreement, one copy of the cover page, and direct the Clerk of the Board to return all signed copies to the Agricultural Commissioner's Office for further processing, and
3. Grant a waiver from the provisions of the Nuclear Free Ordinance.

SOURCE OF FUNDING:

California Department of Food and Agriculture (CDFA)

Prepared by [Signature]

CAO Approval [Signature]

REVIEW: Auditor MBM County Counsel Human Resources Other

TYPE OF ITEM: X Consent Departmental Public Hearing Other

PREVIOUS ACTION/REFERRAL:

Board Order No.

Meeting of:

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor Bass Seconded by Supervisor Fennell

Ayes Sundberg, Fennell, Lovelace, Bohn, Bass
Nays
Abstain
Absent

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: June 7, 2016
By: [Signature]
Kathy Hayes, Clerk of the Board

DISCUSSION:

The waiver from the provision of the Nuclear Free Ordinance is requested since the State of California will not modify its Cooperative Agreements to accommodate local ordinances. The Agricultural Commissioner's Office receives annual subventions from CDFA to offset the local cost of enforcing certain State-mandated programs. CDFA's Direct Marketing program provides opportunities for California farmers to market their products directly to consumers with Standardization Program exemptions for minimum size, labeling, standard pack, and container requirements. The Direct Marketing Program is intended to provide a viable channel for California farmers to market their agricultural products directly to the consumer, thereby providing a significant source of revenue for participating farmers and access to local fresh produce for County residents.

Cooperative Agreement No. 16-0157-SA will provide funding for the enforcement of State requirements for the direct marketing of agricultural products at Certified Farmer's Markets (CFM). Beginning July 1, 2016 Humboldt County will be paid to conduct additional inspections and investigations of Certified Farmer's Markets and participating Certified Producer's production sites. Inspections will include but are not limited to growing ground and storage site inspections, verification of acreages and crops consistent with producer's certificates, and inventory inspections of commodities offered for sale. In 2016, there are 9 Certified Farmer's Markets and 89 Certified Producers participating at Humboldt County Farmer's Markets.

Approval of this agreement is consistent with your Board's Strategic Priority Framework's core roles of encouraging local enterprise, creation of private sector jobs and opportunities for improved health by supporting greater access to locally produced fruits, vegetables and livestock products.

FINANCIAL IMPACT:

Cooperative Agreement No. 16-0157-SA provides \$11,540.00 for the Certified Farmer's Inspection Program in fiscal year 2016-17. Humboldt County will be reimbursed on the basis of monthly invoices for actual costs incurred for inspections or investigations including: inspection tasks, hours of enforcement work, mileage and travel time. No supplemental budget accompanies this agreement as revenue and expenditure accounts for fiscal year 2016-17 were previously funded in anticipation of this agreement.

OTHER AGENCY INVOLVEMENT:

CDFA

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board discretion

ATTACHMENTS:

One complete Cooperative Agreement No. 16-0157-SA, one copy of the cover page.

**COOPERATIVE AGREEMENT
SIGNATURE PAGE**

AGREEMENT NUMBER
16-0157-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 HUMBOLDT

2. The term of this Agreement is: July 1, 2016 through June 30, 2017

3. The maximum amount of this Agreement is: \$11,540.00
Eleven Thousand Five Hundred Forty Dollars and Zero Cents

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	1 Page
Exhibit B: General Terms and Conditions	2 Page
Exhibit C: Payment and Budget Provisions	1 Page(s)
Attachments: Scope of Work and Budget	3 Page(s)

Name of Project: Certified Farmers Market Inspections

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

RECIPIENT

RECIPIENT'S NAME (Organization's Name)
COUNTY OF HUMBOLDT

BY (Authorized Signature)



DATE SIGNED (Do not type)

6/7/16

PRINTED NAME AND TITLE OF PERSON SIGNING

Mark Lovelace, Chair, Board of Supervisors

ADDRESS

5630 S. Broadway, Eureka, CA 95503-6905

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

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EXHIBIT A

RECIPIENT AND PROJECT INFORMATION

1. CDFA hereby awards an Agreement to the Recipient for the project described herein:
The County will inspect as outlined in the Food and Agricultural Code, Division 17, Chapter 10.5, the California Code of Regulations, Title 3, Subchapter 4, Article 6.5; and any established Certified Farmers Market and/or State policies and procedures.
2. The Managers for this Agreement are:

FOR CDFA:		FOR RECIPIENT:	
Name:	Kiley Potter	Name:	Jeff Dolf
Section/Unit:	Inspections Svcs Div / Inspection & Compliance	Section/Unit:	COUNTY OF HUMBOLDT
Address:	2800 Gateway Oaks Drive, Suite 100	Address:	5630 S. Broadway
City/State/Zip:	Sacramento, CA 95833	City/State/Zip:	Eureka, CA 95503-6905
Phone:	916-900-5198	Phone:	707-445-7223
Email Address:	kiley.potter@cdfa.ca.gov	Email Address:	jdolf@co.humboldt.ca.us

3. 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 the Agreement Manager, in the form of a formal written amendment.

3. **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.

4. **Disputes**

The Recipient must continue with the responsibilities under this Agreement during any dispute with the CDFA. In the event of a dispute, the Recipient must file a "Notice of Dispute" with the CDFA Agreement Manager 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 Agreement Manager 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.

5. **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 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 contract 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.

6. **Non-Discrimination Clause**

The Non-Discrimination Clause applies to the extent that the requirements therein are applicable to the Federal Government. 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 disability, mental disability, medical condition, age, marital status, and denial family care leave.

The Recipients 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 (a-f) *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.

7. **Governing Law**

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

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. **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.

10. 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.

11. Termination for Cause

The parties may terminate this Agreement should either party fail to perform the requirements of this Agreement at the time and in the manner herein provided. However each party will have fifteen (15) calendar days after receipt of the termination notice to cure the breach. If the breach is not cured within fifteen (15) calendar days of receipt of notice, the CDFA shall reimburse the Recipient for all project specific costs incurred through the date of termination, including all uncancellable obligations applicable to sponsored agreements.

12. Reporting Requirements

The Recipient agrees to complete all reporting requirements listed in Scope of Work.

13. 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. Recipients may not use the CDFA logo.

14. Property Damage Claims Process

Should the 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 Victims Compensation Government Claims Board.

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. Amendments

Changes to Scope of Work, Budget, or the end date, must be requested in writing to the CDFA Agreement Manager via letter, fax or email no later than sixty (60) calendar days prior to the requested implementation date. Any changes to the Scope of Work, Budget, and end date are subject to Agreement Manager approval, and, at its discretion, the Agreement Manager may choose to accept or deny these changes. A formal amendment to the Agreement is required for these changes. No amendments are possible if the Agreement is expired.

17. Suspension of Payments

Payment under this Agreement may be suspended or terminated, or both, and Recipient may be subject to debarment if the CDFA determines that Recipient has breached the terms of this Agreement. Upon discovery of any violations of the Agreement terms and conditions, Recipient will be advised in writing of the terms breached and the reasons for imposing suspension of payments. A determination of breach may be appealed in writing and addressed to the CDFA, Legal Hearing and Appeals Office at:

California Department of Food and Agriculture
Attn: Legal, Hearing and Appeals Office
1220 N Street, Suite 400
Sacramento, CA 95814

EXHIBIT C

PAYMENT AND BUDGET PROVISIONS

1. Invoicing and Payment

- A. For activities performed according to the attached Scope of Work, Budget and the terms of this Agreement, and upon receipt of the invoices, the CDFA agrees to compensate the Recipient for actual allowable expenditures incurred in accordance with this Agreement and stated 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, monthly invoices must be submitted to the CDFA Agreement Manager, within thirty (30) calendar days after the end of each month in which activities under this Agreement were performed.
- D. 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. Budget Contingency Clause

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

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. Allowable Line Item Shifts

The Recipient must obtain written approval from the CDFA Agreement Manager for any line-item shifts.

5. Allowable Expenses and Fiscal Documentation

- A. The Recipient must maintain adequate documentation for expenditures subject to this Agreement to permit the determination of the allowability of expenditures reimbursed by the CDFA under this Agreement. If CDFA cannot determine expenditures are allowable under the terms of this Agreement because records are nonexistent or inadequate according to Generally Accepted Accounting Principles, the CDFA may disallow the expenditure.
- B. 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).
- C. If international 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.
- D. The Recipient must maintain and have available, upon request by the CDFA, all financial records and documentation pertaining to this Agreement. These records and documentation must 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.

6. Budget

For a detailed budget of all the activities to be performed under the Scope of Work, see attached Budget.

SCOPE OF WORK

The County agrees to provide enforcement through market and production site inspections and investigations in collaboration with the California Department of Food and Agriculture (CDFA), Certified Farmers' Market (CFM) Program. These activities are in addition to the normal inspection and investigation activities being performed by the County and those required under statute. The activities provided under this agreement should be consistent with normal inspection and certification procedures currently performed by the County. Accordingly, inspections shall be performed as outlined in the Food and Agricultural Code, Division 17, Chapter 10.5 and the California Code of Regulations, Title 3, Subchapter 4, Article 6.5. The County shall follow established direct marketing practices and procedures and any state policies and procedures. Activities to be invoiced under this Cooperative Agreement will commence no earlier than July 1, 2016.

Inspection hours and workdays should vary where appropriate and practical. Investigations should occur in a timely manner. The County shall provide necessary inspection supplies and equipment, with the exception of forms and supplies routinely provided by CDFA. Other equipment necessary to conduct enforcement may be requested by the County. Activities billable under this agreement by the County include: inspection and investigatory work, including follow-up inspections; administrative staff costs, including any functions and actions related to enforcement; mileage; travel time; contracting for hearing officers, and; any costs related to case closure. Inspections, investigations, and administrative staff costs related to enforcement such as the preparation of investigation reports and notices of proposed action (NOPAs) will be reimbursed on an hourly basis utilizing methods to ensure full cost recovery for County overhead. All reimbursements related to investigative work shall be related to a case. Additional inspections that exceed minimum inspection activities mandated under statute shall also be reimbursed on an hourly basis utilizing methods to ensure full cost recovery and can be used for routine market surveillance. Additional inspections do not require a case number or need to be tied to an ongoing case.

The County shall invoice CDFA for work performed under this agreement within 60 days after the end of each month in which activities were provided. The County must use the CFM Program County Invoice provided by CDFA. The County shall itemize staff salary costs for investigations, inspections, additional inspections, and administrative work (e.g., NOPA preparation, report writing, etc.) on the invoice. The County shall provide the name of the staff member performing the specified functions, a title (e.g., Agricultural Biologist I, Deputy Commissioner, etc.), a corresponding case number (if applicable), the activity performed (e.g., investigation, additional inspection, etc.), the billable hours, and a corresponding hourly rate without benefits. In addition, the County shall provide the actual benefit rate and any applicable County overhead charges on the invoice, as determined by the respective County Department of Finance or any other recognized entity that calculates personnel costs.

On the invoice, the County shall itemize any miscellaneous charges such as equipment, contracting for hearing officers, etc. Finally, the County shall document mileage and calculate the mileage reimbursement rate in accordance with the short-term travel vehicle mileage reimbursement rate



(Rev. 2/2016)

established by the California Department of Human Resources. Please refer to any applicable instructions when preparing and submitting the invoice.

Tasks performed by the County include:

MARKET SITE INSPECTIONS

- Traveling to and from the CFM where producers are selling
- Verifying Certified Producer's Certificates
- Performing a complete inventory of all commodities on display
- Performing a complete inventory of any commodities in the producer's vehicle
- Documenting and processing evidence obtained by photography using appropriate methods for scale (i.e., a ruler), if applicable
- Issuing Notices of Noncompliance, when necessary
- Composing a narrative of findings or investigation report, if applicable
- Coordinating with the CFM Program and the Production County (if applicable) via E-Mail when production site inspections or investigations are necessary

PRODUCTION SITE INSPECTIONS

- Traveling to and from the production site(s) or any applicable location where the commodities may be sold, transported or stored
- Photographing all applicable commodities, growing grounds, and storage locations, including commodities in storage using appropriate methods for scale, if applicable
- Documenting evidence obtained during the production site inspection
- Completing a narrative of findings or investigative report detailing results of the production site inspection
- When possible, production verification inspections should be scheduled within 48 hours of the market site inspection
- Coordinating with the CFM Program and the Market County (if applicable) when investigations are necessary

PRODUCER AND MARKET COUNTY INVESTIGATIONS

- **For market and production site inspections which are the result of an investigation, please do not inform the producer of any specific commodities which may be under investigation prior to the site inspection**
- The CFM Program will assist in the coordination of Market and Production Site inspections and assign a Case ID for substantiated cases
- Preparing Notices of Proposed Actions, when necessary
- Conducting Administrative Hearings, when necessary
- Providing inspection results to the CFM Program and applicable counties
- Recording billable hours for each activity

The State shall perform evaluations of county inspections, which could include, but are not limited to; on-site observations; assessment of inspection procedures, and; review of non-compliances and other reports for accuracy and consistency.



2016-2017 Certified Farmers' Market Fiscal Display

County Humboldt

Cooperative Agreement # _____

Estimated Market Inspection and Investigation Costs (Includes report writing, administrative staff costs, contracting for hearing officers, etc.)	Total \$5,983.00
Estimated Production Inspection and Investigation Costs (Includes report writing, administrative staff costs, contracting for hearing officers, etc.)	Total \$5,557.00
COOPERATIVE AGREEMENT TOTAL:	
	<u>\$11,540.00</u>

Operational needs may require changes to line item expenditures within the agreement budget. If changes are needed, the total agreement amount may not be exceeded. Actual invoices must reflect these changes. If additional funding is required, a budget amendment must be submitted for approval.

Investigation costs include: inspection and investigatory work, including follow-up inspections; administrative staff costs, including any functions and actions related to enforcement; mileage; travel time; contracting for hearing officers, and; any costs related to case closure. Inspections, investigations, and administrative staff costs related to enforcement such as the preparation of investigation reports and notices of proposed action (NOPAs) will be reimbursed on an hourly basis utilizing methods to ensure full cost recovery for County overhead. All reimbursement requests shall be related to a case.