



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

D-1

For the meeting of: May 3, 2016

Date: March 23, 2016

To: Board of Supervisors

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

Subject: **APPROVAL OF COOPERATIVE AGREEMENT NO. 16-0030-SA, PETROLEUM PRODUCTS COMPLIANCE CONTRACT IN THE AMOUNT OF \$4,725.00**

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve Cooperative Agreement No. 16-0030-SA, known as the Petroleum Products Compliance contract with the California Department of Food and Agriculture, and
2. Authorize the Chair to sign the original agreement and one copy of the cover page, and direct the Clerk of the Board to return the 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 _____

CAO Approval _____

Cheryl Dillingham

REVIEW: _____

Auditor _____

County Counsel _____

Personnel _____

Risk Manager _____

Other _____

TYPE OF ITEM:

☒ Consent
☐ Departmental
☐ Public Hearing
☐ Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Fennell* Seconded by Supervisor *Bass*

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: *May 3, 2016*

By: _____

Kathy Hayes
Kathy Hayes, Clerk of the Board

DISCUSSION:

The waiver from the provisions of the Nuclear Free Ordinance is requested because the State of California will not modify its Cooperative Agreements to accommodate local ordinances. The Agricultural Commissioner/Sealer's Office receives annual subventions from CDFA to help offset the local cost of enforcing certain State-mandated programs.

In accordance with the California Business and Professions Code Section 13434 and under the authority of the Secretary of CDFA, County staff under the local direction of the Sealer of Weights & Measures will conduct inspections to verify compliance with regulations governing the advertising and labeling of petroleum products offered for sale at service stations, quick-lube shops and at distributors of engine fuels and oils. Commissioner/Sealer's staff typically conduct Petroleum Inspections at the same time as they are on-site to conduct retail petroleum device inspections. In FY 2016-17, State funding provided by Cooperative Agreement No. 16-0030-SA reimburses Humboldt County \$75.00 per inspection and funds up to 63 inspections of establishments selling or distributing petroleum and other related automotive products.

Approval of this agreement is consistent with your Board's Strategic Priority Framework's core role of enforcing laws and regulations to protect residents.

FINANCIAL IMPACT:

In fiscal year 2016-17, Cooperative Agreement No. 16-0030-SA provides a total of \$4,725.00 for petroleum products compliance inspections. Payments will be made in arrears to Humboldt County based on invoices submitted quarterly to CDFA by the Agricultural Commissioner's Office. Revenue from Cooperative Agreement No. 16-0030-SA will be credited to revenue account no. 1100261-518010, State Aid for Weights and Measures. Agriculture Commissioner revenue and expenditure accounts for FY 2016-17 have been funded in anticipation of this Cooperative Agreement; therefore no supplemental budget accompanies this request.

OTHER AGENCY INVOLVEMENT:

CDFA Division of Measurement Standards

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board discretion

ATTACHMENTS:

One complete original Cooperative Agreement No. 16-0030-SA and one copy of the cover page.

**COOPERATIVE AGREEMENT
SIGNATURE PAGE**

AGREEMENT NUMBER

16-0030-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: \$4,725.00
Four Thousand Seven Hundred Twenty-five 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: Payment and Budget Provisions	1 Page
Exhibit C: General Terms and Conditions	2 Page(s)
Attachments: Scope of Work and Budget	4 Page(s)

Name of Project: Petroleum Products Program

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)

5/3/16

PRINTED NAME AND TITLE OF PERSON SIGNING

Mark Lovelace, Chair

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

MA

EXHIBIT A

RECIPIENT AND PROJECT INFORMATION

1. CDFA hereby awards an Agreement to the Recipient for the project described herein:
The County will inspect service stations, quick lube and oil change shops, and auto service shops for compliance with the Business and Professions Code, Division 5 for petroleum and automotive products advertising and labeling.
2. The Managers for this Agreement are:

FOR CDFA:		FOR RECIPIENT:	
Name:	Lance Simmons/Rebecca Bland	Name:	Jeff Dolf
Section/Unit:	Measurement Stds Div./Petroleum Products	Section/Unit:	COUNTY OF HUMBOLDT
Address:	6790 Florin Perkins Road, Suite 100	Address:	5630 S. Broadway
City/State/Zip:	Sacramento, CA 95828	City/State/Zip:	Eureka, CA 95503-6905
Phone:	916-229-3000	Phone:	707-445-7223
Email Address:	lance.simmons@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.

EXHIBIT B

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.

EXHIBIT C

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

SCOPE OF WORK

In the best interest of the state, under the authority of the Secretary of the California Department of Food and Agriculture (CDFA), and in accordance with the California Business and Professions Code (BPC), Section 13434, the Division of Measurement Standards (Division) and the County agree to the conditions and requirements within this Scope of Work.

The Division will pay the County \$75.00 for each completed initial inspection of a business establishment selling or distributing petroleum and/or automotive products, provided the inspection is completed to determine compliance with BPC Chapters 14, 14.5 and 15. The total allocation to the County for these inspections shall not exceed this Agreement. For purposes of this Agreement, an initial inspection is the first physical inspection in the fiscal year of a business establishment where the **primary** business is selling petroleum products; e.g., retail service stations, distributors of engine fuels, oils, and quick-lube shops.

Inspection Requirements:

The County shall complete an initial inspection to verify compliance with the appropriate provisions of the BPC and the California Code of Regulations relating to the advertising and labeling of petroleum and automotive products and compliance with the provisions of BPC Section 13660. Findings shall be recorded on the Petroleum Inspection Report supplied by, or approved by, the Division.

Within five (5) working days of conducting an inspection, the County shall submit completed legible copies of both the pink and goldenrod Petroleum Inspection Report forms to the regional office. Upon approval by the Division, electronic forms may be submitted.

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. The Division reserves the right to, at its discretion, assign and direct the County to collect designated samples of bulk automotive or petroleum products for the purpose of conducting marketplace surveys and initial inspections at specific stations. The business establishments visited for the purpose of obtaining these designated samples shall be counted as inspections authorized under this Agreement and will be billable up to \$75.00 per location. Prior to being assigned sampling duties, the Division will provide training in the proper sampling and chain of evidence completion procedures. Unless otherwise directed, all samples are to be submitted to the Division's laboratory in Sacramento.

Sample containers will be provided by the Division. Payment for samples and transportation of the sample to the Division's laboratory shall be the responsibility of the County. The County will use the inspection and sampling procedures outlined in the Division of Measurement Standards' "Petroleum Products Program 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 Manual." Current versions of the "Petroleum Products Program Manual" and the "Citation Manual" are available on the Division's website at <http://www.cdfa.ca.gov/dms/>.

Nothing in this Agreement prevents or precludes Division staff from performing routine business establishment inspections within the County. The County will be notified when Division staff is performing these inspections within the County. The Division also reserves the right to re-inspect business establishments that were previously inspected and billed for by the County. These re-inspections are for the purpose of evaluating the work of the County. Enforcement action, if needed, will be taken by Division staff following the "Citation Manual" guidelines.

Per BPC Section 12015, the County agrees that appropriate enforcement action shall be taken upon discovery of violation(s) at the business establishment being inspected. The enforcement actions will be handled in accordance with the guidelines established in the Division's "Citation Manual." If the appropriate enforcement action is more than the issuance of a Notice of Violation (NOV), and if the County is unable or fails to take that action against the violator, the Division shall take the specified enforcement action and payment for the inspection will be withheld.

The original inspection report shall be maintained at the County Office of Weights and Measures for four (4) years and be made available to the CDFA upon request.

All requests for payment under this Agreement shall be made using the Petroleum Agreement Invoice, attached, with the County's official letterhead included. The invoice shall be submitted quarterly and include a summary sheet with the following information: the total number of initial inspections conducted; the name and address of the business establishment inspected; the number of designated samples taken; the name and address where the samples were taken; and, the amount of money requested. Funds will be disbursed to the County on approval of the invoice submitted quarterly.

Submit quarterly invoice to:

Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828

County Letterhead Here

Petroleum Agreement		INVOICE
To:	Agreement #	
California Department of Food & Agriculture	Fiscal Year:	FY 16/17
Division of Measurement Standards	Quarter:	
6790 Florin Perkins Road, Suite 100	PCA #	55001
Sacramento, CA 95828		
Attn: Lance Simmons, Agreement Manager		

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, number of designated samples taken, and amount of money requested.

BUDGET

County: Humboldt

Petroleum Products Enforcement:

PCA 55001

63 Site Inspections at \$75.00 per Inspection:

\$ 4,725.00

Total Agreement Amount:

\$ 4,725.00