



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-1

For the meeting of: June 23, 2015

Date: June 9, 2015
To: Board of Supervisors
From: Jeff M. Dolf, Agricultural Commissioner/Sealer of Weights & Measures
Subject: **APPROVAL OF COOPERATIVE AGREEMENT NO. 15-0169-SA, PETROLEUM PRODUCTS COMPLIANCE CONTRACT IN THE AMOUNT OF \$4,725.00**

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve Cooperative Agreement No. 15-0169-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 *Jeff M. Dolf* CAO Approval *Cheryl Dillingham*
 REVIEW: Auditor *MSM* 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 *Bass* Seconded by Supervisor *Sundberg*
 Ayes *Sundberg, Fennell, Bohn, Bass*
 Nays _____
 Abstain _____
 Absent *Lovlace*

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

Dated: *June 23, 2015*
 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 2015-16, State funding provided by Cooperative Agreement No. 15-0169-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 2015-16, Cooperative Agreement No. 15-0169-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. 15-0169-SA will be credited to revenue account no. 1100261-518010, State Aid for Weights and Measures. Agriculture Commissioner revenue and expenditure accounts for FY 2015-16 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. 15-0169-SA and one copy of the cover page.

**COOPERATIVE AGREEMENT
SIGNATURE PAGE**

AGREEMENT NUMBER
15-0169-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, 2015 through June 30, 2016

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 which are by this reference made a part of the Agreement:

Exhibit A: 4 Page(s)
• Recipient and Project Information
• Scope of Work

Exhibit B: 2 Page(s)
• Payment Provisions and Budget
• Budget

Exhibit C: General Terms and Conditions 2 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)

6/23/15

PRINTED NAME AND TITLE OF PERSON SIGNING

Estelle Fennell, 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, MANAGER, FEDERAL FUNDS MANAGEMENT OFFICE

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 / Weighmaster	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 / rebecca.bland@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.

SCOPE OF WORK

Initial Inspections:

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

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

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 BPC Section 13660 at the location. Inspection reports shall be made for each establishment inspected on Petroleum Inspection Report forms supplied by or approved by the Division containing legible heading and violation information. The original inspection report shall be maintained at said County Office of Weights and Measures for four (4) years and be made available to the Department of Food and Agriculture, 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 BPC Chapters 14, 14.5 and 15. The total allocation to said County for these inspections shall not exceed **\$4,725.00** for this Agreement. This represents **63** initial inspections per fiscal year.

Inspection Requirements

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 take designated samples of bulk automotive or petroleum products for the purpose of conducting marketplace surveys and initial inspections at specific stations. The locations visited for the purpose of obtaining these designated samples shall be counted as inspections authorized by this Agreement and will be paid up to \$75.00 per location. Prior to being assigned sampling duties, the Division will provide training in the proper sampling and sample tag/chain of evidence completion procedures. Unless otherwise directed, all samples are to be submitted to the Division's laboratory in Sacramento.

Sample containers and color-coded subvention sample identification tags will be provided by the Division. Payment for samples and transportation of the sample to the Division's laboratory shall be the responsibility of said County. The color-coded

subvention sample identification tags must be used on all 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." Current versions of the "Petroleum Products Inspection and Sampling Procedure Manual" and the "Citation Procedure Manual" are available on the Division's website at <http://www.cdffa.ca.gov/dms/>.

Nothing in this Agreement prevents or precludes Division staff from performing routine location inspections within the County. The County will be notified when Division staff is performing location inspections within the County. The Division also reserves the right to re-inspect locations that were 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 Procedure Manual" guidelines.

As per BPC Section 12015, 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." 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.

All requests for payment shall be made using the Petroleum Agreement Invoice, supplied, and shall include the official County letterhead.

Funds will be disbursed to the County on approval of the quarterly invoice submitted. 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, 6790 Florin Perkins Road, Suite 100, Sacramento, 95828.

Completed legible copies of both the pink and goldenrod Petroleum Inspection Report forms are to be forwarded to the regional office within five (5) working days after completion of the inspection. Upon approval by the Division, electronic forms may be submitted.

County Letterhead Here

Petroleum Agreement		INVOICE								
To:	California Department of Food & Agriculture Division of Measurement Standards 6790 Florin Perkins Road, Suite 100 Sacramento, CA 95828 Attn: Lance Simmons, Agreement Manager	<table border="0" style="width: 100%;"> <tr> <td style="width: 60%;">Agreement #</td> <td></td> </tr> <tr> <td>Fiscal Year:</td> <td style="text-align: right;">FY 15/16</td> </tr> <tr> <td>Quarter:</td> <td></td> </tr> <tr> <td>PCA #</td> <td style="text-align: right;">55001</td> </tr> </table>	Agreement #		Fiscal Year:	FY 15/16	Quarter:		PCA #	55001
Agreement #										
Fiscal Year:	FY 15/16									
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, number of designated samples taken, and amount of money requested.

EXHIBIT B

PAYMENT PROVISIONS AND BUDGET

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 and approval 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 Exhibit A, 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. All international travel must comply with the "Fly America Act" USC Title 49 § 40118.
- 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.

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

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 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 must obtain prior approval from the CDFA Agreement Manager before hiring contractors, consultants or both. Recipient must follow their organization's written procurement policy and in the absence of a written policy or when the policy does not require competition the organization must conduct a competitive procurement process. The procedures must reflect applicable State and local laws and regulations and all contractors must have the proper licenses/certificates required in their respective disciplines.

A contract under this Agreement must be a written Agreement between the Recipient and the Contractor/Consultant, and must state the activities to be performed, the time schedule, the policies and requirements that apply to the Contractor/Consultant, the amount of the contract, and the requirements and restrictions to be used in determining allowable costs. The contract must not affect the Recipient's overall responsibilities for the management of the project, and the Recipient must reserve sufficient rights and control to enable it to fulfill its responsibilities under this Agreement. If the Recipient contracts for a portion of the work required by this Agreement, nothing contained in this Agreement or otherwise shall create any contractual relation between the CDFA and any Contractor/Consultant, and no contract shall relieve the Recipient of its responsibilities and obligations hereunder. The Recipient's obligation to pay its Contractors/Consultants is an independent obligation from the CDFA's obligation to make payments to the Recipient. The CDFA shall have no obligation to pay or to enforce the payment of any monies to any Contractor/Consultant.

The Recipient agrees to be as fully responsible to the CDFA for the acts and omissions of its contractors 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 Recipient. The Recipient, and the agents and employees of the Recipient, in the performance of this Agreement, will act in an independent capacity and not as officers or employees or agents of the State.

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 CDFA may terminate this Agreement should the Recipient fail to perform the requirements of this Agreement at the time and in the manner herein provided. However the Recipient 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, subject to the requirements of 2 CFR 200.471, applicable to sponsored agreements.

12. Reporting Requirements

The Recipient agrees to complete all reporting requirements listed in Exhibit A, 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 United States Department of Agriculture logo or 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 Exhibit A, Scope of Work, Exhibit B, 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.