



**Agricultural
Commissioner/Sealer
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One
PETE VANDER POEL
District Two
PHILLIP A. COX
District Three
J. STEVEN WORTHLEY
District Four
MIKE ENNIS
District Five

AGENDA DATE: June 17, 2014

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
CONTACT PERSON: David Case PHONE: 684-3350		

SUBJECT: Approve an agreement with the California Department of Food and Agriculture for the County Petroleum Product Compliance Program

REQUEST(S):
That the Board of Supervisors:

1. Approve Agreement Number 14-0052-SA with the California Department of Food and Agriculture in the amount of \$12,075.00 for the County Petroleum Product Compliance Program, effective July 1, 2014 through June 30, 2015.
2. Authorize the Chairman of the Board to sign two (2) copies of Agreement Number 14-0052-SA with the California Department of Food and Agriculture effective July 1, 2014 through June 30, 2015.

SUMMARY:
This agreement is intended to provide financial aid to the County for inspections and sampling relating to the advertising and labeling of petroleum and automotive products at establishments selling or distributing petroleum and/or automotive products. This agreement continues this long-standing program for fiscal year 2014/2015.

This Agreement includes the following provisions which deviate from the County contract protocol:

1. Exhibit C (General Terms and Conditions):
 - a. (3) Indemnification: County indemnifies, defends and saves harmless the State, only.
 - b. (4) Disputes: CDFA Secretary's decision regarding disputes is final.

SUBJECT: Approve an agreement with the California Department of Food and Agriculture for the County Petroleum Product Compliance Program

DATE: June 17, 2014

FISCAL IMPACT/FINANCING:

The County will receive up to \$12,075 in state subvention funds if this Agreement is approved. State revenues and the associated expenditures for this ongoing program will be budgeted in the Agricultural Commissioner/Sealer's fiscal 2014/2015 budget request. There will be no net county cost for conducting this program (Petroleum). The effective date of this Agreement is July 1, 2014.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

Tulare County's five year strategic plan includes Strategic Initiative #2: Economic Well-Being – Promote economic development opportunities, effective growth management and a quality standard of living. Approval of this Agreement with the California Department of Food and Agriculture would continue a longstanding program that promotes a quality of standard of living by ensuring equity in the marketplace for all transactions involving weight, measure or count by enforcing laws and regulations regarding petroleum products.

ADMINISTRATIVE SIGN-OFF:

Marilyn Kinoshita
Agricultural Commissioner
Sealer of Weights and Measures

Tom Tucker
Assistant Agricultural Commissioner
Sealer of Weight and Measures

Cc: Auditor-Controller
County Counsel
County Administrative Office (2)

Attachment: Agreement 14-0052-SA

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF AGREEMENT)
WITH THE CALIFORNIA DEPARTMENT) Resolution No. _____
OF FOOD AND AGRICULTURE) Agreement No. _____

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JEAN M. ROUSSEAU
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

That the Board of Supervisors:

1. Approved Agreement Number 14-0052-SA with the California Department of Food and Agriculture in the amount of \$12,075 for the County Petroleum Product Compliance Program effective July 1, 2014 through June 30, 2015.
2. Authorized the Chairman of the Board to sign two (2) copies of Agreement Number 14-0052-SA with the California Department of Food and Agriculture effective July 1, 2014 through June 30, 2015.

COOPERATIVE AGREEMENT
SIGNATURE PAGE

AGREEMENT NUMBER
14-0052-SA

1. This Agreement is entered into between the State Agency and the Recipient named below:
- STATE AGENCY'S NAME
DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)
- RECIPIENT'S NAME
COUNTY OF TULARE
2. The term of this Agreement is: July 1, 2014 through June 30, 2015
3. The maximum amount of this Agreement is: \$12,075.00
Twelve Thousand Seventy-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)
- Budget & Payment Provisions
 - Budget
- Exhibit C – General Terms and Conditions 2 Page(s)

Name of Project: Petroleum Product Program

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

RECIPIENT

RECIPIENT'S NAME (County's Name)
COUNTY OF TULARE

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

4437 S Laspina Street, Tulare, CA 93274-9537

STATE OF CALIFORNIA

AGENCY NAME

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

APPROVE AS TO FORM:
COUNTY COUNSEL
BY *[Signature]*
DEPUTY
MAY 14 2014

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: Steven Cook / Rebecca Bland	Name: Marilyn Kinoshita
Section/Unit: Measurement Standards Div / Petroleum Products Program	Section/Unit: COUNTY OF TULARE
Address: 6790 Florin Perkins Road, Suite 100	Address: 4437 S Laspina Street
City/State/Zip: Sacramento, CA 95828	City/State/Zip: Tulare, CA 93274-9537
Phone: 916-229-3000	Phone: 559-684-3350
Email Address: steven.cook@cdfa.ca.gov / rebecca.bland@cdfa.ca.gov	Email Address: mkinoshi@co.tulare.ca.us

3. For a detailed description of work 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 TULARE (County) 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 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 for actual costs incurred up to \$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 \$12,075.00 for this Agreement. This represents 161 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 at \$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 directed otherwise, all samples are to be submitted to the Division's laboratory in Sacramento.

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

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." 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 do 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 headquarters at 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: Steven Cook, Agreement Manager

Agreement #

Fiscal Year:

Quarter:

PCA #

FY 14/15

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: _____
County Representative

Date: _____

Approved: _____
Division of Measurement Standards

Date: _____

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

EXHIBIT B

BUDGET 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 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.

Original invoices must include the Agreement Number, dates-of-service, type of work performed, 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.

B. Unless stated in Exhibit A, Scope of Work, monthly invoices must be submitted within thirty (30) days after the end of each month in which work under this Agreement was performed to the CDFA Agreement Manager.

C. A final invoice will be submitted for payment no more than thirty (30) days following the expiration date of this Agreement, unless an alternate deadline is agreed to by the CDFA Agreement Manager. The invoice must be clearly marked "Final Invoice" thus indicating that all payment obligations of the State 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 State will have the option to either cancel this Agreement with no liability occurring to the State, 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/Fiscal Documentation

A. The Recipient will comply with all applicable State regulations.

B. The Recipient will maintain adequate documentation for expenditures subject to this Agreement to permit the determination of the allowability of expenditures reimbursed by the State 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.

C. If domestic travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures. The maximum rates allowable are those established in Title 2, California Code of Regulations, Sections 599.619 and 599.630.

D. 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" U.S.C. Title 49 § 40118, government-financed air transportation.

E. The Recipient will maintain and have available, upon request by CDFA, all financial records and documentation pertaining to this Agreement. These records and documentation will 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 for all work to be performed under the Scope of Work, see attached Budget.

BUDGET

County: Tulare

Petroleum Products Enforcement:

PCA 55001

161 Site Inspections at \$75.00 per Inspection:

\$ 12,075.00

Total Agreement Amount:

\$ 12,075.00

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 work 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 CDFA, in the form of a form of writing.

3. Indemnification

The Recipient 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 Recipient in the performance of this Agreement.

4. Disputes

The Recipient will continue with the responsibilities under this Agreement during any dispute. In the event of a dispute, the Recipient will file a "Notice of Dispute" with the CDFA within ten (10) days of discovery of the problem. The Notice of Dispute will contain the Agreement number. Within ten (10) days of receipt of the Notice of Dispute, the Agency Secretary, or Designee, will meet with the Recipient, CDFA Program Management, and Federal Funds Management for the purpose of resolving the dispute. The decision of the Agency Secretary or Designee will be final. In the event of a dispute, the language contained within this Agreement will prevail.

5. Potential Contractors

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, the organization must conduct a competitive bid process. All contractors must have the proper licenses/certificates required in their respective disciplines.

If the Recipient contracts for a portion of the work required by this Agreement, nothing contained in this Agreement or otherwise, will create any contractual relation between the State and any contractors, and no contract will relieve the Recipient of their responsibilities and obligations hereunder. The Recipient agrees to be as fully responsible to the State 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's obligation to pay its contractors is an independent obligation from the State's obligation to make payments to the Recipient. As a result, the State will have no obligation to pay or to enforce the payment of any moneys to any contractor.

6. Independent Recipient/Contractor

The Recipient, and the agents and employees of Recipient, in the performance of this Agreement, will act in an independent capacity and not as officers or employees or agents of the State.

7. Non-Discrimination Clause

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 of family care leave.

The Recipients and contractors will insure 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 (Gov. Code §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 will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

8. Governing Law

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

9. 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.

10. 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.

11. Right to Terminate

CDFA reserves the right to terminate this Agreement subject to thirty (30) days written notice to the Recipient. The Recipient may submit a written request to terminate this Agreement only if CDFA substantially fails to perform its responsibilities as provided herein. However, the Agreement can be immediately terminated for cause.

12. Termination for Cause

The State may terminate this Agreement and be relieved of any payments should the Recipient 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 necessary by the State. All costs to the State will be deducted from any sum due the Recipient under this Agreement and the balance, if any, will be paid to the Recipient upon completion of the work.

13. Reporting Requirements

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

14. 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, or other type of promotional material.

15. Amendments

Changes to Exhibit A, Scope of Work, Exhibit B, Budget or the Agreement term, must be requested in writing to the CDFA Agreement Manager via letter, fax or email no later than thirty (30) days prior to the requested implementation date. CDFA Agreement Manager will respond in writing via letter, fax or email as to whether the proposed changes are accepted. Any changes to the Scope of Work, Budget, or Agreement term must be approved in writing by CDFA prior to implementation. If approved by CDFA, the agreed upon changes will be made and become part of this Agreement.