

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

111A



FROM: Agricultural Commissioner's Office

SUBMITTAL DATE:
June 5, 2012

SUBJECT: Cooperative Agreement No. 12-0031-SA Regarding the Petroleum Product Sampling and Weighmaster Enforcement Programs.

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve Cooperative Agreement No. 12-0031-SA with the California Department of Food and Agriculture in the amount of \$30,675 for FY 11/12; and
- 2) Authorize the chairman to sign the agreement.

BACKGROUND: This agreement is renewed annually and provides for county reimbursement for all costs associated with these two programs. The Petroleum Product Sampling program involves conducting quality control inspections of businesses that sell various petroleum products and for sampling of petroleum products to determine compliance with the California Business and Professions Code. The Weighmaster Enforcement Program involves conducting undercover purchases/sales at licensed weighmaster locations, as well as conducting verification inspections on pre-determined tare weights. Revenue from this source was included in the Agricultural Commissioner's FY 12/13 budget request. The contract was approved as to form by County Counsel.

John Snyder
**John Snyder, Agricultural Commissioner/
 Sealer of Weights and Measures**

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 30,675	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$	Budget Adjustment:	No
	Annual Net County Cost:	\$	For Fiscal Year:	2012/2013

SOURCE OF FUNDS: California Department of Food and Agriculture	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
 BY: *Denise C. Harder*
County Executive Office Signature Denise C. Harder

FORM APPROVED COUNTY COUNSEL
 BY: *Neal R. Kipnis*
 NEAL R. KIPNIS
 DATE: *6/5/12*
 Departmental Concurrence

ep't Recomm.: Consent
 er Exec. Ofc.: Consent
 Policy
 Policy

**COOPERATIVE AGREEMENT
SIGNATURE PAGE**

AGREEMENT NUMBER
12-0031-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 RIVERSIDE

2. The term of this Agreement is: July 1, 2012 through June 30, 2013

3. The maximum amount of this Agreement is: \$30,675.00
Thirty Thousand Six Hundred 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: 7 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 RIVERSIDE

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

4080 Lemon Street, Room 19, Riverside, CA 92502-1089

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

KATHY ALAMEDA, MANAGER - FEDERAL FUNDS MANAGEMENT OFFICE

ADDRESS

1220 N STREET, ROOM 120
SACRAMENTO, CA 95814

MA,

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS DATE

EXHIBIT A

RECIPIENT AND PROJECT INFORMATION

1. CDFA hereby awards an Agreement to the Recipient for the project described herein:

Inspection of service stations, quick lube 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:	Kevin Batchelor / Rebecca Bland	Name:	John Snyder
Section/Unit:	Measurement Standards / Petroleum Products	Section/Unit:	COUNTY OF RIVERSIDE
Address:	6790 Florin Perkins Road, Suite 100	Address:	4080 Lemon Street, Room 19
City/State/Zip:	Sacramento, CA 95828	City/State/Zip:	Riverside, CA 92502-1089
Phone:	916-229-3050	Phone:	951-955-3045
Email Address:	kevin.batchelor@cdfa.ca.gov	Email Address:	jsnyder@co.riverside.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 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 Riverside (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 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 California Business and Professions Code, Division 5, Chapters 14, 14.5 and 15. The total allocation to said County for these inspections shall not exceed \$23,625.00 for this agreement. This represents 315 initial inspections per fiscal year.

Inspection Requirements

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

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

subvention sample identification tags must be used on subvention samples to identify them for reimbursement verification. Said County will use the inspection and sampling procedures outlined in the Division of Measurement Standards' "Petroleum Products Inspection and Sampling Procedure Manual." Off sale of samples not meeting product specifications shall be the responsibility of the County or the Division, if requested to do so by the County, and will be handled in accordance with the guidelines established in the Division's "Citation Procedure Manual." Current versions of the "Petroleum Products Inspection and Sampling Procedure Manual" and the "Citation Procedure Manual" will be e-mailed upon request.

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

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

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

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

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

Completed legible copies of both the pink and goldenrod 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 Department, electronic forms may be submitted.

County Letterhead

Petroleum Subvention Agreement

INVOICE

To:

California Department of Food & Agriculture
Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828
Attn: Kevin Batchelor, Agreement Manager

Agreement #

Fiscal Year:

Quarter:

PCA #

55001

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

The County has complied with the conditions as required.

Approved: _____
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.

SCOPE OF WORK

Initial Audit Inspections:

The CDFA will pay the **County of Riverside** (County) \$75.00 for each initial audit inspection of an establishment licensed as a weighmaster; provided the inspection is done to determine compliance with California Business and Professions Code, Division 5, Chapter 7 and California Code of Regulations, Title 4, Division 9, Chapter 9. The total allocation to the County for these inspections shall not exceed **\$3,525.00** for this agreement. This represents **47** initial inspections per fiscal year or approximately 20% of the licensed locations in the County.

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

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

Verification Inspections:

The CDFA will also pay the County in accordance with the following rate schedule for the indicated type of verification inspections; provided the inspection is done to determine compliance with California Business and Professions Code, Division 5, Chapter 7 and California Code of Regulations, Title 4, Division 9, Chapter 9. The total allocation to the County for these inspections shall not exceed **\$3,525.00** for this agreement.

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

Inspection Requirements:

Any inspection shall include the verification of compliance with the appropriate provisions of the Business and Professions Code and the California Code of Regulations relating to weighmasters at the location. Inspection reports shall be made for each establishment inspected and the inspections will be completed on a Weighmaster Inspection Report form provided by the Division of Measurement

Standards or on an approved county inspection form. The original inspection reports shall be maintained at the County Office of Weights and Measures for three (3) years and be made available to the Department of Food and Agriculture, Division of Measurement Standards, upon request.

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

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

The County will use the inspection procedures outlined in the Division's "Weighmaster Enforcement Program Procedure Manual." Current versions of the "Weighmaster Enforcement Program Procedure Manual" and the "Citation Procedure Manual" will be e-mailed upon request.

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

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

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

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

Completed legible copies of both the pink and goldenrod Weighmaster Inspection Report forms, copies of cab card and other tare weight verification forms, and copies of single transaction 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 Department, electronic inspection forms may be submitted.

County Letterhead

Weighmaster Subvention Agreement	
INVOICE	
To: California Department of Food & Agriculture Division of Measurement Standards 6790 Florin Perkins Road, Suite 100 Sacramento, CA 95828 Attn: Kevin Batchelor, Agreement Manager	Agreement # Fiscal Year: Quarter: PCA # 54001

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

The County has complied with the conditions as required.

Approved: _____ Date: _____
 County Representative

Approved: _____ Date: _____
 Division of Measurement Standards

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

EXHIBIT B

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 shall 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 by the State Budget Act 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

- A. Upon approval of the CDFA Agreement Manager, line item shifts of up to ten percent (10%) of a budget category amount are allowed without changes to Exhibit B, Budget, so long as the annual Agreement total dollar amount neither increases nor decreases.
- B. The Recipient shall obtain approval from the CDFA Agreement Manager when a line item shift amount is over ten percent (10%).

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: Riverside

Petroleum Products Enforcement:

PCA 55001

315 Site Inspections at \$75.00 per Inspection:

\$ 23,625.00

Weighmaster Enforcement:

PCA 54001

47 Initial Audit Inspections at \$75.00 each:

\$ 3,525.00

Any combination of Verification Inspections not to exceed:

\$ 3,525.00

Common Tare Weights at \$75.00 each:

Predetermined Individual Tare Weights at \$37.50 each:

Seasonal Tare Weights (Cab Cards) at \$37.50 each:

Follow-up Audit Inspections at \$75.00 each:

Undercover Purchase/Sales at \$75.00 each:

Verified Unlicensed Weighmaster Locations at \$37.50 each:

Total Agreement Amount:

\$ 30,675.00

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

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

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

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

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. Recycling Certification

The Recipient will certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision will specify that the cartridges so comply (Pub. Contract Code §12205).

8. 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.

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.

Recipient will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

9. Governing Law

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

10. 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.

11. 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.

12. 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.

13. 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.

14. Reporting Requirements

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

15. 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.

16. 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.