

**COOPERATIVE AGREEMENT
SIGNATURE PAGE**

AGREEMENT NUMBER

23-0166-000-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 SAN BERNARDINO

2. The Agreement Term is: July 1, 2023 through June 30, 2024

3. The maximum amount of this Agreement is: \$28,800.00

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 2 Page(s)

Exhibit B: General Terms and Conditions 5 Page(s)

Exhibit C: Payment and Budget Provisions 2 Page(s)

Attachments: Scope of Work and Budget

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

RECIPIENT

RECIPIENT'S NAME (*Organization's Name*)

COUNTY OF SAN BERNARDINO

BY (*Authorized Signature*)



DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

Dawn Rowe, Chair, Board of Supervisors

ADDRESS

777 E Rialto Avenue, San Bernardino, CA 92415

STATE OF CALIFORNIA

AGENCY NAME

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)

BY (*Authorized Signature*)



DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

ANNABELE CUTAJAR, STAFF SERVICES MANAGER I, OFFICE OF GRANTS ADMINISTRATION

ADDRESS

1220 N STREET, ROOM 120

SACRAMENTO, CA 95814

CJ

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 and oil change shops, and auto service shops for compliance with the Business and Professions Code (BPC) Division 5.

Project Title: Fuels, Lubricants and Automotive Products Program

2. The Managers for this Agreement are:

FOR CDFA:		FOR RECIPIENT:	
Name:	Rebecca Bland	Name:	Brady Gergovich
Division/Branch:	Measurement Standards / Fuels, Lubricants, & Automotive Products Program	Organization:	COUNTY OF SAN BERNARDINO
Address:	6790 Florin Perkins Road, Suite 100	Address:	777 E Rialto Avenue
City/State/Zip:	Sacramento, CA 95828	City/State/Zip:	San Bernardino, CA 92415
Phone:	916-229-3000	Phone:	909-387-2150
Email Address:	rebecca.bland@cdfa.ca.gov	Email Address:	brady.gergovich@awm.sbcounty.gov

3. The Grant Administrative Contacts for this Agreement are:

FOR CDFA:		FOR RECIPIENT:	
Name:	Jessica Franklin	Name:	Jessica Naquin
Division/Branch:	Measurement Standards / Fuels, Lubricants, & Automotive Products Program	Organization:	County of San Bernardino
Address:	6790 Florin Perkins Road, Suite 100	Address:	777 E. Rialto Ave.
City/State/Zip:	Sacramento, CA 95828	City/State/Zip:	San Bernardino, CA 92415
Phone:	916-229-3300	Phone:	909-387-2150
Email Address:	jessica.franklin@cdfa.ca.gov	Email Address:	Jessica.naquin@awm.sbcounty.gov

FISCAL CONTACT FOR RECIPIENT (if different from above):

Name:

Organization:

Address:

City/State/Zip:

Phone:

Email Address:

4. RECIPIENT: Please check appropriate box below:

Research and Development (R&D) means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other R&D activities and where such activities are not included in the instruction function.

This award ☐ does ☒ does not support R&D.

5. For a detailed description of activities to be performed and duties, see Scope of Work and Budget.

EXHIBIT B

GENERAL TERMS AND CONDITIONS

1. Approval

This Agreement is of no force or effect until signed by both parties. The Recipient may not invoice for activities performed prior to the commencement date or completed after the termination date of this Agreement.

2. Agreement Execution

Unless otherwise prohibited by state law, regulation, or Department or Recipient policy, the parties agree that an electronic copy of a signed Agreement, or an electronically signed Agreement, has the same force and legal effect as an Agreement executed with an original ink signature. The term "electronic copy of a signed Agreement" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed Agreement in a portable document format. The term "electronically signed Agreement" means an Agreement that is executed by applying an electronic signature using technology approved by all parties.

3. Assignment

This Agreement is not assignable by the Recipient, either in whole or in part, without the prior consent of the CDFA Agreement Manager or designee in the form of a formal written amendment.

4. Governing Law

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

5. State and Federal Law

It is the responsibility of the Recipient to know and understand which State, Federal, and local laws, regulations, and ordinances are applicable to this Agreement and the Project, as described in Exhibit A. The Recipient shall be responsible for observing and complying with all applicable State and Federal laws and regulations. Failure to comply may constitute a material breach.

6. Recipient Commitments

The Recipient accepts and agrees to comply with all terms, provisions, conditions and commitments of the Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by the Recipient in the application, documents, amendments, and communications in support of its request for funding.

7. Performance and Assurances

The Recipient agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in the Scope of Work, and to apply grant funds awarded in this Agreement only to allowable Project costs.

8. Mutual Liability

Parties shall, to the extent allowed by law, each be individually liable for any and all claims, losses, causes of action, judgments, damages, and expenses to the extent directly caused by their officers, agents, or employees.

9. Unenforceable Provision

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the parties agree that all other provisions of this Agreement shall remain operative and binding.

10. Contractors/Consultants

The Recipient assumes full responsibility for its obligation to pay its Contractors/Consultants. The Recipient is responsible to ensure that any/all contractors/consultants it engages to carry out activities under this Agreement shall have the proper licenses/certificates required in their respective disciplines. The Recipient's use of contractors/consultants shall not affect the Recipient's responsibilities under this Agreement.

11. Non-Discrimination Clause

The Recipient agrees that during the performance of this Agreement, it will not discriminate, harass, or allow harassment or discrimination against any employee or applicant for employment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Recipient agrees to require the same of all contractors and consultants retained to carry out the activities under this Agreement.

The Recipient agrees that during the performance of this Agreement, the evaluation and treatment of its employees and applicants for employment are free from discrimination and harassment. The Recipient will comply with the provisions of the Fair Employment and Housing Act (Government Code section 12990 *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. The Recipient 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.

The Recipient agrees to require the same of all contractors and consultants retained to carry out activities under this Agreement.

12. 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.

13. Disputes

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

14. Termination for Convenience

This Agreement may be terminated by either party upon written notice. Notice of termination must be delivered to the other party at least thirty (30) calendar days prior to the intended date of termination. Notice of termination does not 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.

15. Termination for Cause

Either party may terminate this Agreement for cause in the event of a material breach of this Agreement, provided that the non-breaching party provides written notice of the material breach and ten (10) calendar days to cure the breach. If the breach is not cured to the satisfaction of the non-breaching party within ten (10) calendar days of receipt of notice, this Agreement shall automatically terminate and the CDFA shall reimburse the Recipient for all documented costs incurred up to the date of the notice of termination, including all non-cancellable obligations.

16. Acceptable Failure to Perform

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, or the inability to obtain any required government approval to proceed, civil disorders, acts of aggression, acts of God, energy or other conservation measures, failure of utilities, mechanical breakdowns, materials shortages, disease, pandemics, or similar occurrences.

17. Breach

Reimbursement under this Agreement may be suspended, terminated, or both, and the Recipient may be subject to debarment if CDFA determines that the Recipient has breached the terms of this Agreement. A determination of breach may be appealed in writing to the CDFA. The appeal must be post marked within ten (10) calendar days of the date the Recipient received notification and addressed to the CDFA Legal Office of Hearing and Appeals or emailed to CDFA.LegalOffice@cdfa.ca.gov.

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

18. Non-Material Breach

The Recipient may be in material breach under this Agreement if it fails to comply with any term of this Agreement. In the event of a material breach, CDFA shall provide in writing a Notice of Breach to the Recipient within ten (10) calendar days upon discovery of breach. The Recipient shall have ten (10) calendar days from receipt of the notice to cure the breach. If the Recipient fails to cure the breach within the time prescribed by this Agreement, CDFA may do any of the following:

- A. Suspend payments;
- B. Demand repayment of all funding;
- C. Terminate the Agreement; or
- D. Take any other action deemed necessary to recover costs.

If CDFA determines that the Recipient is not in material breach but that the Project is not being implemented in accordance with the provisions of this Agreement, or that the Recipient has failed in any other respect to comply with the provisions of this Agreement, and the Recipient has failed to remedy any such failure in a reasonable and timely manner, CDFA may withhold all or any portion of the grant funding and take any other action that CDFA deems necessary to protect its interests.

Where a portion of the grant funding has been disbursed to the Recipient and CDFA notifies the Recipient of its decision not to release funds that have been withheld pursuant to paragraph 17, the portion that has been disbursed shall thereafter be repaid immediately. CDFA may consider the Recipient's refusal to repay the requested disbursed amount a material breach.

If CDFA notifies the Recipient of its decision to withhold the entire funding amount from the Recipient pursuant to this paragraph, this Agreement shall terminate upon receipt of such notice by the Recipient and CDFA shall no longer be required to provide funds under this Agreement and the Agreement shall no longer be binding on either party.

In the event CDFA finds it necessary to enforce this provision of this Agreement in the manner provided by law, the Recipient agrees to pay all enforcement costs incurred by CDFA including, if CDFA should prevail in a civil action, reasonable attorneys' fees, legal expenses, and costs related to the action.

19. 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 and in accordance with the Grant Procedures Manual if incorporated by reference and attachment to the Agreement. The Recipients may not use the CDFA logo.

20. News Releases/Public Conferences

The Recipient agrees to notify the CDFA in writing at least two (2) business days before any news releases or public conferences are initiated by the Recipient or its Contractors/Consultants regarding the project described in the Attachments, Scope of Work and Budget and any project results.

21. Scope of Work and Budget Changes

Changes to the Scope of Work, Budget, or the Project term, must be requested in writing to CDFA Grant Administrative Contact no less than thirty (30) days prior to the requested implementation date. Any changes to the Scope of Work and Budget are subject to CDFA approval and, at its discretion, CDFA may choose to accept or deny any changes. If accepted and after negotiations are concluded, the agreed upon changes will be made and become part of this Agreement. CDFA will respond in writing within ten (10) business days as to whether the proposed changes are accepted.

22. Reporting Requirements

The Recipient agrees to comply with all reporting requirements specified in Scope of Work and/or Grant Procedures Manual if incorporated by reference to this Agreement as an attachment.

23. California State Auditor

This Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years after final payment under the Agreement.

24. Equipment

Purchase of equipment not included in the approved Budget requires prior approval. The Recipient must comply with applicable state requirements regarding the use, maintenance, disposition, and reporting of equipment as contained in CCR, Title 3, Division 1, Chapter 5, sections 303, 311, 324.1 and 324.2.

25. Closeout

The Agreement will be closed out after the completion of the Project or project term, receipt and approval of the final invoice and final report, and resolution of any performance or compliance issues.

26. Confidential and Public Records

The Recipient and CDFA understand that each party may come into possession of information and/or data which may be deemed confidential or proprietary by the person or organization furnishing the information or data. Such information or data may be subject to disclosure under the California Public Records Act or the Public Contract Code. CDFA has the sole authority to determine whether the information is releasable. Each party agrees to maintain such information as confidential and notify the other party of any requests for release of the information.

27. Amendments

Changes to funding amount or Agreement term require an amendment and must be requested in writing to the CDFA Agreement Manager or designee no later than sixty (60) calendar days prior to the requested implementation date. Amendments are subject to CDFA approval, and, at its discretion, may choose to accept or deny these changes. No amendments are possible if the Agreement is expired.

28. Executive Order N-6-22 Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate agreements with, and to refrain from entering any new agreements with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

EXHIBIT C

PAYMENT AND BUDGET PROVISIONS

1. Invoicing and Payment

- A. For activities satisfactorily rendered and performed according to the attached Scope of Work and Budget, and upon receipt and approval of the invoices, CDFA agrees to reimburse the Recipient for actual allowable expenditures incurred in accordance with the rates specified 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, quarterly invoices must be submitted to the CDFA Administrative Contact, within thirty (30) calendar days after the end of each quarter in which activities under this Agreement were performed.
- D. Unless stated in the Scope of Work, 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. Allowable Expenses and Fiscal Documentation

- A. The Recipient must maintain adequate documentation for expenditures of this Agreement to permit the determination of the allowability of expenditures reimbursed by CDFA under this Agreement. If CDFA cannot determine if expenditures are allowable under the terms of this Agreement because records are nonexistent or inadequate according to Generally Accepted Accounting Principles, CDFA may disallow the expenditures.
- B. If mileage is a reimbursable expense, using a privately-owned vehicle will be at the standard mileage rate established by the United States (U.S.) Internal Revenue Service (IRS) and in effect at the time of travel. The standard mileage rate in effect at the time of travel can be found on [IRS's website](#) regardless of funding source/type.
- C. If domestic travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures. The maximum rates allowable are those established by the Federal Travel Regulation, issued by [General Services Administration \(GSA\)](#), including the maximum per diem and subsistence rates prescribed in those regulations.
- D. If foreign 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.
- 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.

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. Budget Contingency Clause

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

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 (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 fuels, lubricants, and automotive products; e.g., retail service stations, distributors of engine fuels, oils, and quick-lube shops. Inspections at equipment rentals, marinas, and/or aviation fuel locations will not be accepted. No compensation will be paid for duplicated site inspections at the same location anytime during the same fiscal year.

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 fuels, lubricants and automotive products, and for 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 a completed legible copy of the pink Petroleum Inspection Report form to the Sacramento office. Electronic submission may be provided to the Fuels, Lubricants, and Automotive Products Program's e-mail address at cdfa.dms_petroleum@cdfa.ca.gov.

The assigned number of inspections at brake shops, quick-lube shops, and other retail establishments selling bulk lubricant 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 lubricants or automotive 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 product samples and transportation of the sample to the Division's laboratory shall be the sole 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 processed 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 DMS County Portal.

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 Fuels, Lubricants, and Automotive Products Agreement Invoice with the County's official letterhead. 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.

How to submit quarterly invoice:

Electronic submission: cdfa.dms_petroleum@cdfa.ca.gov

or

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

County Letterhead Here

Fuels, Lubricants, and Automotive Products Program Agreement

INVOICE

To:

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

Agreement # _____

Fiscal Year

FY 2023/24

Quarter _____

Program Code

9999000551

In accordance with the California Business and Professions Code Section 13434, funds have been allocated for CDFA to pay the County of _____ in the sum of \$ _____ for fiscal year 2023/24.

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

Electronic submission may be provided to the Fuels, Lubricants, and Automotive Products Program's e-mail address at cdfa.dms_petroleum@cdfa.ca.gov.

Fuels, Lubricants and Automotive Products Program
FY 2023/24

BUDGET

County: San Bernardino

Fuels, Lubricants and Automotive Products Program Enforcement: Program Code - 9999000551

384 Site Inspections at \$75.00 per Inspection:	\$ 28,800.00
--	---------------------

Total Agreement Amount:	<u>\$ 28,800.00</u>
--------------------------------	----------------------------