

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Agricultural Commissioner

BOARD AGENDA # *B-1

Urgent

Routine

Daniel Bemociah

AGENDA DATE December 17, 2013

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Authorize the Agricultural Commissioner to Sign the Weighmaster Enforcement Junk Dealers and Recyclers Agreement with the California Department of Food and Agriculture for Fiscal Year 2013-2014

STAFF RECOMMENDATIONS:

1. Authorize the Agricultural Commissioner to sign the Weighmaster Enforcement Junk Dealers and Recyclers Agreement for Fiscal Year 2013-2014.
2. Authorize the Auditor-Controller to adjust appropriations and estimated revenue in the amount of \$10,560 as detailed on the attached Budget Journal for Fiscal Year 2013-2014.

FISCAL IMPACT:

The total amount of the Cooperative Agreement is \$10,560. An increase in revenue and appropriations is requested for the Agricultural Commissioner's budget for Fiscal Year 2013-2014.

BOARD ACTION AS FOLLOWS:

No. 2013-633

On motion of Supervisor Monteith, Seconded by Supervisor O'Brien
and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Agricultural Commissioner to Sign the Weighmaster Enforcement Junk Dealers and Recyclers Agreement with the California Department of Food and Agriculture for Fiscal Year 2013-2014

DISCUSSION:

On October 3, 2013, Governor Brown signed into California law Senate Bill 485 – Weighmasters: Junk Dealers and Recyclers. The legislation, sponsored by the West Coast Chapter of the Institute of Scrap Recycling Industries, is intended to deter fraudulent transactions at junk dealers and recyclers, and decrease the sale of stolen metal property.

Effective January 1, 2014, the new law requires junk dealers and recyclers, as defined in Business and Profession Code sections 21601 and 21605(b), to provide additional information to the Division of Measurement Standards (DMS) when applying for or renewing a weighmaster license. The law also creates an additional \$500.00 license fee for all junk dealer and recycler weighmaster locations throughout California. To reduce the number of non-compliant dealers, each location must be inspected after licensure to ensure that the information contained on the application is materially accurate. Non-compliant businesses are subject to license revocation.

DMS is entering into cooperative agreements to pay departments of Weights and Measures in County Agricultural Commissioner's offices to conduct the initial inspections at junk dealer and recycler locations. After reviewing the list of weighmaster licenses for businesses in Stanislaus County, it was determined that Stanislaus County may have to perform 44 such inspections. The cooperative agreement between DMS and Stanislaus County will pay \$240 per inspection, up to \$10,560 if all 44 inspections are completed.

POLICY ISSUE:

Approval of this item supports the Board Priority of promoting A Strong Agricultural Economy/Heritage, by helping to reduce the amount of agricultural metal theft that takes place in Stanislaus County.

STAFFING IMPACT:

Existing Agricultural Commissioner's Weights and Measures Inspectors will conduct the inspections.

CONTACT PERSON:

Milton O'Haire, Agricultural Commissioner

Telephone: 209-525-4730

Department of Food and Agriculture
COOPERATIVE AGREEMENT
GAU-03 (Rev. 7/13)

**COOPERATIVE AGREEMENT
SIGNATURE PAGE**

AGREEMENT NUMBER
13-0410-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 STANISLAUS

2. The term of this Agreement is: **January 1, 2014 through June 30, 2014**

3. The maximum amount of this Agreement is: **\$10,560.00**
Ten Thousand Five Hundred Sixty 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:

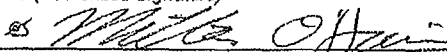
- Exhibit A: 4 Page(s)
 - Recipient and Project Information
 - Scope of Work
- Exhibit B: 2 Page(s)
 - Budget & Payment Provisions
 - Budget
- Exhibit C – General Terms and Conditions 2 Page(s)

Name of Project: Weighmaster Program

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

RECIPIENT

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


BY (Authorized Signature) 	DATE SIGNED (Do not type) 12-18-13
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PRINTED NAME AND TITLE OF PERSON SIGNING
Milton Ottawa, Agricultural Commissioner

ADDRESS
3800 Cornucopia Way, Suite B, Modesto, CA 95358-9494

STATE OF CALIFORNIA

AGENCY NAME
DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)

BY (Authorized Signature) 	DATE SIGNED (Do not type) 12/19/13
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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 perform inspections of assigned junk dealer and recycler establishments licensed as weighmasters to determine compliance with Business and Professions Code Section 12703.1.

2. The Managers for this Agreement are:

FOR CDFA:		FOR RECIPIENT:	
Name:	Steven Cook / Rebecca Bland	Name:	Milton O'Haire
Section/Unit:	Weighmaster Program	Section/Unit:	COUNTY OF STANISLAUS
Address:	6790 Florin Perkins Road, Suite 100	Address:	3800 Cornucopia Way, Suite B
City/State/Zip:	Sacramento, CA 95828	City/State/Zip:	Modesto, CA 95358-9494
Phone:	916-229-3000	Phone:	209-525-4730
Email Address:	steven.cook@cdfa.ca.gov / rebecca.bland@cdfa.ca.gov	Email Address:	miltono@stancounty.com

3. For a detailed description of work to be performed and duties, see Scope of Work.

**Weighmaster Enforcement
(Junk Dealers and Recyclers)**

SCOPE OF WORK

In the best interest of the State, in accordance with the California Business and Professions Code (BPC), Division 5, Chapter 7, Section 12703.1, 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 Stanislaus** (County) agree to the following:

The Division will pay the County \$240.00 for each completed initial inspection of an assigned junk dealer or recycler establishment licensed as a weighmaster to determine compliance with Business and Professions Code section 12703.1. For purposes of this Agreement, a "junk dealer" and "recycler" are as defined in BPC sections 20601 and 21605(b). An initial inspection is the first inspection in the fiscal year of a business location after renewal or issuance of a weighmaster license. The total allocation to the County for these inspections shall not exceed **\$10,560.00** for this Agreement.

The County shall obtain all required information regarding a newly licensed junk dealer or recycler weighmaster via the county "undisclosed" link. The County shall have 75 calendar days after issuance of a license to conduct a physical initial inspection at each assigned junk dealer or recycler weighmaster location. Failure to perform an inspection within 75 calendar days shall result in nonpayment.

The County shall complete an initial inspection of all the information required in the application as per BPC 12703.1. (c) (1). Findings shall be recorded on the Weighmaster Inspection Report (Form 42-009, Rev. 11/13) supplied by the Division.

An initial inspection shall verify the following items are materially accurate:

- Weighmaster License Application information;
- Business License information;
- Weighmaster License information;
- Thumbprinting equipment is functioning and in good working order;
- Photograph/camera equipment is functioning and in good working order;
- Business has a stormwater permit, or has applied for a stormwater permit, or substantiation the stormwater permit is not required; and
- Commercial weighing devices are sealed.

The County may observe other violations while performing an initial inspection. The County agrees to document and take the appropriate enforcement action upon

**Weighmaster Enforcement
(Junk Dealers and Recyclers)**

discovery of any violation of weights and measures law during the inspection, as per BPC 12015.

Within 5 calendar days of conducting a physical initial inspection, the County shall scan or photograph the completed Weighmaster Inspection Report and upload it to the Division via the county "undisclosed" link. For business locations failing an initial inspection, all supporting evidence (documents/photographs in pdf, jpg, or png format) shall also be uploaded via the county "undisclosed" link. **Note:** The Weighmaster Inspection Report must be scanned or photographed separately from any supporting documents; however, the supporting documents/photographs may be combined into one file. Uploading the Weighmaster Inspection Report and any supporting documents completes the initial inspection and entitles the County to payment. The County agrees to follow these procedures. Failure to comply will result in nonpayment.

When a location is found to be out of business, the County shall complete and upload a Weighmaster Inspection Report indicating the location is no longer in business and notify the Division in accordance with the instructions above. Out of business locations are not billable.

The original Weighmaster Inspection Report shall be maintained at the County Office of Weights and Measures for three years and be made available to the Division upon request.

All requests for payment under this Agreement shall be made on County official letterhead. The invoice shall include the number of inspections completed, a list of locations where the inspections were conducted, the weighmaster license name, the weighmaster license number, and the amount of money requested. The County shall submit its invoice in pdf, jpg, or png format by uploading the invoice via the county "undisclosed" link. The County agrees to follow these invoice procedures. Failure to comply will result in nonpayment. Funds will be disbursed to the County on approval of the invoice submitted quarterly.

County Letterhead

Weighmaster 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 #

54001

In accordance with the California Business and Professions Code Section 12703.1, 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 completed, location of inspections, the weighmaster license name, the weighmaster license number, and the amount of money requested. **Please submit invoice in pdf, jpg, or png format by uploading via the county "undisclosed" link.**

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: Stanislaus

Weighmaster Enforcement:

PCA 54001

44 Site Inspections at \$240.00 per Inspection:

\$ 10,560.00

Total Agreement Amount:

\$ 10,560.00

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 CDFFA 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 CDFFA'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 CDFFA Agreement Manager via letter, fax or email no later than thirty (30) days prior to the requested implementation date. CDFFA 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 CDFFA prior to implementation. If approved by CDFFA, the agreed upon changes will be made and become part of this Agreement.