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AGREEMENT FOR USE OF WEIGHT TRUCK AND WEIGHT STANDARDS

THIS AGREEMENT made and entered into this 10th day of March, 2009, by and between the County of Placer, hereinafter referred to as "Placer", and the County of El Dorado, hereinafter referred to as "El Dorado", both political subdivisions of the State of California.

WITNESSETH

WHEREAS, Placer and El Dorado each have responsibilities under the Business and Professions Code to inspect, try, and test all weighing and measuring devices used for commercial purposes, and each jurisdiction has the need for the use of a heavy weight truck and weight standards from time-to-time to fulfill said responsibilities, and

WHEREAS, in order to most efficiently utilize their limited economic resources, Placer and El Dorado desire to jointly share the use of a heavy weight truck, weight standards and weight cart, and

WHEREAS, El Dorado currently owns weight standards and a weight cart, and Placer is willing to purchase a weight truck ,

NOW, THEREFORE, Placer and El Dorado, in consideration of the mutual covenants herein set forth herein, agree as follows:

1. Purchase of Weight Truck by Placer. Placer agrees to purchase a 26,000 LB GVWR, 2wd flatbed weight truck, including crane and tool boxes, (the "Weight Truck") suitable for use by the Sealer of Weights and Measures of each jurisdiction in undertaking each party's respective responsibilities to test and inspect commercial vehicle, winery, livestock and other large capacity shipping and receiving scales in their counties. El Dorado agrees to provide to Placer the sum of Twenty-Thousand Dollars (\$20,000) to be utilized by Placer solely towards the purchase price of the Weight Truck, which is estimated to have a total cost of One Hundred-Thousand Dollars (\$100,000). El Dorado shall provide the funds upon request of Placer, and Placer shall provide El Dorado with such reasonable assurances as El Dorado may require to substantiate the use of the funds towards the purchase of the Weight Truck.
2. Joint Use of Weight Truck. Placer shall take possession of and hold title to the Weight Truck. Placer agrees that El Dorado shall be entitled to utilize the Weight Truck upon reasonable prior notice to Placer at no additional cost to El Dorado, except as set forth herein for maintenance and repair. The jurisdictions agree to communicate on a regular basis to coordinate usage of the Weight Truck. The Weight Truck shall be garaged by Placer and El Dorado shall take possession from and return possession to Placer at the location designated by Placer. Each jurisdiction shall be responsible for ensuring that the Weight Truck is filled with fuel after use, and that only properly licensed and trained employees of each jurisdiction shall be allowed to operate the Weight Truck. Placer shall be responsible for performing the State required weight truck calibration each year. Placer and El Dorado acknowledge that it will reduce the costs to each jurisdiction if the Weight Truck were to be leased to other jurisdictions and agree to jointly pursue such third-jurisdiction leasing opportunities based upon terms and conditions similar to those set forth herein. Any revenues derived from

leasing the Weight Truck shall be paid to Placer County and placed into a fund to be used solely for costs associated with the Weight Truck. This fund shall be established and maintained by Placer County.

3. Joint Use of Weight Standards and Weight Cart. El Dorado currently owns fourteen (14) 1,000 pound certified weight standards and a motorized weight cart, which equipment is utilized in conjunction with the Weight Truck. El Dorado shall retain ownership of this equipment, but Placer shall be granted possession of them to be kept for use with the Weight Truck. Each jurisdiction that uses or leases the Weight Truck shall bear the responsibility for any damage to the certified weight standards sustained when using the standards. Each jurisdiction that uses or leases the Weight Truck shall bear the costs of any non-routine repairs necessitated while the Weight Cart is in the custody of that jurisdiction, whether caused by third-party accident or operator negligence; provided, however, the costs of major mechanical repairs necessitated by failure as a result of ordinary wear and tear, and not due to the negligence or willful act of the operator, shall be borne by each jurisdiction in accordance with their agreed-upon allocation of routine maintenance and service.
4. Responsibility for Costs of Maintenance and Repair. Each jurisdiction shall be responsible for paying their own regular and normal operational costs during their own time of possession and usage of the Weight Truck, such as fuel and oil. Placer shall be responsible for performing routine maintenance and service of the Weight Truck and weight cart; provided, however, no later than February 1st of each year, the parties shall meet and agree upon a proposed allocation of the anticipated costs therefore based upon their estimated proportional usage of the Weight Truck in the upcoming twelve months based upon a per-mile or other basis as determined equitable by the jurisdictions, and at the same time shall review and resolve the responsibility for any discrepancy from the estimate for the previous twelve month period, if any. El Dorado shall pay Placer its agreed-upon share of the estimated maintenance costs upon request of Placer within Forty-Five (45) days of receipt of written invoice. Each jurisdiction that uses or leases the Weight Truck shall bear the costs of any non-routine major repairs necessitated while the Weight Truck is in the custody of that jurisdiction, whether caused by third-party accident or operator negligence; provided, however, the costs of major mechanical repairs necessitated by failure as a result of ordinary wear and tear, and not due to the negligence or willful act of the operator, shall be borne by each jurisdiction in accordance with their agreed-upon allocation of routine maintenance and service.
5. Term of Agreement. It is the intent of the jurisdictions to continue to jointly utilize the Weight Truck for the full extent of its useful working term, which is estimated to be One Hundred and Eighty (180) months. This Agreement shall continue in force and effect from year to year; provided, however, either party may terminate this Agreement upon twelve (12) months prior written notice. Within sixty (60) days of receipt of any such notice, the jurisdictions shall meet to discuss the cause of the termination and if the jurisdiction seeking termination does not rescind its notice, to allocate responsibility for the costs, if any, which may result from the termination. Upon termination, Placer shall retain ownership and possession of the Weight Truck and El Dorado shall be entitled to full possession of the weight standards and weight cart, as well as a portion of the original Twenty-Thousand Dollar (\$20,000) contribution, which shall be adjusted for depreciation on a quarterly basis throughout the useful working term of the Weight Truck.

6. Hold Harmless and Indemnification. Each jurisdiction shall hold harmless, defend, and indemnify the other jurisdiction from any and all claims, damages, losses or expenses of any nature, whether to person or property, and including attorney fees, arising out of that jurisdiction's possession or usage of the Weight Truck, weight standards and/or weight cart, caused in whole or in part by any negligent or willful act or omission of that jurisdiction, or anyone directly or indirectly employed by that jurisdiction.
7. Insurance. Each jurisdiction (Placer or El Dorado, as the case may be) shall be fully self-insured with the following coverage, and if not so fully self-insured, then shall keep in full force and effect concurrently herewith, for the benefit of the other jurisdiction (El Dorado or Placer, as the case may be), insurance coverage in companies with a Best's Rating of no less than A:VII:

WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to Placer/El Dorado."

Each jurisdiction shall require all contractors to maintain adequate Workers' Compensation insurance.

GENERAL LIABILITY INSURANCE:

- A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Placer/El Dorado, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:
 - (1) Products and completed operations;
 - (2) Contractual liability insuring the obligations assumed by Placer/El Dorado under this Agreement; and
 - (3) Broad form property damage (including completed operations)

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limits, where applicable, shall apply separately to Placer/El Dorado's work under this Agreement.

- B. One of the following forms is required:
- (1) Comprehensive General Liability;
 - (2) Commercial General Liability (Occurrence); or
 - (3) Commercial General Liability (Claims Made).
- C. If Placer/El Dorado carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:
- One million dollars (\$1,000,000) each occurrence
 - One million dollars (\$1,000,000) aggregate
- D. If Placer/El Dorado carries a Commercial General Liability (Occurrence) policy:
- (1) The limits of liability shall not be less than:
 - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - One million dollars (\$1,000,000) for Products Completed Operations
 - One million dollars (\$1,000,000) General Aggregate
 - (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).
- E. Special Claims Made Policy Form Provisions:

Neither jurisdiction shall provide a Commercial General Liability (Claims Made) policy without the express prior written consent of the other, which consent, if given, shall be subject to the following conditions:

- (1) The limits of liability shall not be less than:
 - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - One million dollars (\$1,000,000) aggregate for Products Completed Operations
 - One million dollars (\$1,000,000) General Aggregate

- (2) The insurance coverage provided by each jurisdiction shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "Placer/El Dorado, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- B. "The insurance provided, including any excess liability or umbrella form coverage, is primary coverage with respect to any insurance or self-insurance programs maintained by the jurisdiction and no insurance held or owned by the jurisdiction shall be called upon to contribute to a loss."
- C. "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the other jurisdiction."

AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence. Covered vehicles should include owned, non-owned, and hired automobiles/trucks.

8. **Notice.** All notices, and approvals or demands of any kind required or desired to be given by one jurisdiction to the other shall be in writing and shall be deemed served or given upon delivery if personally delivered or faxed, or, if mailed, forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid to the addresses shown below.

Placer County: Agricultural Commissioner, Sealer of Weights & Measures
 11477 E Avenue
 Auburn, California 95603
 Fax: (530) 823-1698

El Dorado County: Agricultural Commissioner, Sealer of Weights & Measures
 311 Fair Lane
 Placerville, CA 95667-4197
 Fax: (530) 626-4756

9. **Entire Agreement.** This Agreement and any attachments hereto constitute the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties concerning the subject matter

addressed herein, and supersedes all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.

10. Construction and Interpretation. It is agreed and acknowledged by the parties that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.
11. Successors and Assigns. Neither party shall assign the obligations of this Agreement in whole or in part to any other public entity, individual, firm or corporation without the prior written consent of the other party. Subject to the provisions of the preceding sentence, if assigned, this Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the parties hereto.
12. Authority to Execute Agreement. Each party represents that it has the legal authority to enter into this Agreement and to perform its obligations hereunder.

IN WITNESS WHEREOF, the parties have hereunto set their hands the year and date written below.

EL DORADO COUNTY

PLACER COUNTY

BY:  _____

Ron Briggs
Chairman, Board of Supervisors

By:  _____

Christine Turner
Agricultural Commissioner,
Sealer of Weights & Measures

Dated: 3/10/09

Dated: March 13, 2009

ATTEST:

ATTEST:

BY:  _____

Suzanne Allen de Sanchez
Clerk of the Board

BY:  _____

ANN HOLMAN
Clerk of the Board

APPROVED AS TO FORM:

BY:  _____

County Counsel