

## AGREEMENT FOR LEASE OF WEIGHT TRUCK, WEIGHT STANDARDS, AND LPG PROVERS

This LEASE AGREEMENT ("Agreement") made and entered into this 28<sup>th</sup> day of September, 2021, by and between the County of Placer (hereinafter referred to as "Placer"), the County of El Dorado (hereinafter referred to as "El Dorado") and the County of Amador (hereinafter referred to as "Lessee"), all political subdivisions of the State of California. Placer, El Dorado and Lessee are sometimes hereinafter referred to individually as a "party" and collectively as the "parties."

### WITNESSETH

WHEREAS, Placer, El Dorado and Lessee 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 weight truck, weight standards and liquid propane gas (LPG) provers from time to time to fulfill said responsibilities; and

WHEREAS, in 2009, Placer and El Dorado entered into an agreement to share the use of a weight truck, weight standards and weight cart ("2009 Agreement"); and

WHEREAS, in furtherance of that 2009 agreement, Placer purchased a 26,000 LB GVWR, 2WD flatbed weight truck, including crane and tool boxes ("Weight Truck"), and El Dorado owns fourteen (14) 1,000 pound certified weight standards and a motorized weight cart ("Weight Standards and Cart"). Pursuant to the terms of the 2009 agreement, El Dorado, while retaining ownership of the Weight Standards and Cart, granted Placer the right to keep, store and use the Weight Standards and Cart in conjunction with the Weight Truck; and

WHEREAS, in the 2009 agreement, Placer and El Dorado acknowledged and agreed that to reduce the costs to each jurisdiction of the use and maintenance of the Weight Truck and Weight Standards and Cart, both jurisdictions would jointly pursue lease opportunities with other local counties or cities ("Third-Party Jurisdictions") for the same; and

WHEREAS, Placer and El Dorado have identified Lessee as a Third-Party Jurisdiction and desires to lease the Weight Truck and Weight Standards and Cart based on the terms and conditions of this Lease Agreement; and

WHEREAS, Placer also owns two LPG provers that Placer is willing to lease to Lessee, and Lessee desires to lease the same from Placer; and

WHEREAS, the parties wish to pursue this Agreement in order to most efficiently utilize limited economic resources.

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

1. Lease of Weight Truck by Lessee. Placer and El Dorado agree to lease to Lessee, on the terms herein specified, a 26,000 LB GVWR, 2WD flatbed weight truck, including crane and tool boxes (the "Weight Truck"), suitable for use by Lessee's Sealer of Weights and Measures in order to

allow Lessee to undertake its responsibilities to test and inspect commercial vehicle, winery, livestock and other large capacity shipping and receiving scales within the boundaries of Lessee's jurisdiction. In exchange for payment as set forth in Section 7 below, Lessee shall be entitled to use the Weight Truck, including the Weight Standards and Cart as defined in Section 6 below (hereinafter sometimes collectively referred to as "Weight Equipment"), for a total of no more than thirty (30) days per each twelve (12) month period during the term of this Agreement on dates mutually agreed upon in advance by Placer and Lessee. Each twelve month period shall commence on July 1 and end on June 30.

2. Priority Use of Weight Truck. Lessee understands that El Dorado is entitled to utilize the Weight Truck upon reasonable prior notice to Placer, that the Weight Truck is garaged by Placer and that El Dorado takes possession from and returns possession to Placer at the location designated by Placer. Lessee understands that Placer and El Dorado have first priority of usage, and agrees to request usage in writing in advance and to schedule usage in coordination with El Dorado to the greatest extent possible such that Lessee retrieves the Weight Equipment from El Dorado or delivers it to El Dorado, thereby reducing extra mileage from Placer County to Amador County. Lessee agrees to take possession of the Weight Truck and return it to the location specified by Placer.
3. Lease of LPG Provers by Lessee. Placer agrees to lease to Lessee, on the terms herein specified, one 100-gallon LPG Prover, consisting of a trailer with permanent-mounted LPG prover for testing LPG delivery truck meters, and one 25-gallon LPG Prover, consisting of a trailer with permanent-mounted LPG prover for testing stationary LPG meters.
4. Priority Use of LPG Provers. Placer hereby grants to Lessee use of said LPG Provers for up to thirty (30) days per each twelve (12) month period, excluding the months of September and October, during the term of this Agreement, on dates mutually agreed upon in advance by Placer and Lessee. Each twelve month period shall commence on July 1 and end on June 30. Lessee shall retrieve the LPG Provers and return them to Placer at 11477 E Avenue, Auburn, California. The LPG Provers shall be transported and operated by an Amador employee/driver who possesses a "Class C" California Driver's License.
5. Costs of Repair. Lessee shall be responsible for paying its own regular and normal operational costs, such as fuel and oil, during its time of possession and for ensuring that the Weight Truck is filled with fuel after use. Lessee shall be responsible for ensuring that only properly licensed and trained employees are allowed to operate the Weight Truck. As a condition of leasing the Weight Truck, Lessee shall bear the responsibility for any damage to the Weight Truck and shall bear the costs of any non-routine major repairs necessitated while the Weight Truck is in the custody of Lessee, whether caused by third-party accident or operator negligence, excepting 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. Lessee shall also bear the costs of any non-routine repairs necessitated while the LPG provers are in its custody, whether caused by third-party accident or operator negligence.
6. Use of Weight Standards and Cart with Weight Truck. El Dorado currently owns fourteen (14) 1,000 pound certified weight standards and a motorized weight cart (the "Weight Standards and Cart") which are kept with and utilized in conjunction with the Weight Truck. While El Dorado retains ownership of this equipment, the Weight Standards and Cart are kept for use with the Weight Truck pursuant to the terms of the 2009 agreement between Placer and El Dorado. As a condition of leasing the Weight Truck, Lessee shall bear the responsibility for any damage to

the Weight Standards and Cart sustained when using the standards and shall bear the costs of any non-routine repairs necessitated while the Weight Standards and Cart are in the custody of Lessee, whether caused by third-party accident or operator negligence, excepting 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.

7. Lease Payments. Lessee agrees to pay Placer Three Thousand Dollars (\$3,000.00) per year as compensation for the use of the Weight Equipment. Commencing July 1, 2021, Lessee shall pay Placer One Thousand Dollars (\$1,000.00) per year for use of the LPG provers. Except as stated herein, all yearly lease payments shall be made on or before October 15 of each year.
8. Term of Lease Agreement. This Agreement shall commence on the date of the last party signature below and continue in full force and effect through June 30, 2022.
9. Termination. The parties may terminate this Agreement upon sixty (60) days prior written notice. In the event of termination during the fiscal year, Lessee shall owe a percentage of its \$4,000 lease payment based on the number of days Lessee has actually used the Weight Equipment and LPG provers out of the allowable 30-day maximum usage. Depending on whether the lease payment has already been made, either Placer shall reimburse Lessee or Lessee shall submit payment to Placer based on Lessee's proportional usage. Said payment shall be made by the date of termination.
10. Hold Harmless and Indemnification. Lessee hereby agrees to protect, defend, indemnify, and hold Placer and El Dorado free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by Placer or El Dorado arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of Placer or El Dorado) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. Lessee agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Lessee. Lessee also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Lessee, El Dorado or Placer or to enlarge in any way the Lessee's liability but is intended solely to provide for indemnification of Placer and El Dorado from liability for damages or injuries to third persons or property arising from Lessee's performance pursuant to this contract or agreement.

As used above, the term Placer means Placer County or its officers, agents, employees, and volunteers and the term El Dorado means El Dorado County or its officers, agents, employees, and volunteers.

11. Insurance. Lessee may provide proof of full self-insurance with the following coverage, but if not so fully self-insured, then shall keep in full force and effect concurrently herewith, for the benefit of Placer, the following 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 Lessee's 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 changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer and the County of El Dorado."

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against Placer, El Dorado, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the Lessee.

Lessee shall require all subcontractors to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation insurance shall be filed forthwith with Placer and El Dorado upon demand.

#### GENERAL LIABILITY INSURANCE:

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Lessee, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (1) Contractual liability insuring the obligations assumed by Lessee in 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 Lessee 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
- Two million dollars (\$2,000,000) aggregate

D. If Lessee 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

→Two million dollars (\$2,000,000) 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:

Lessee shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of Placer, 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

→Two million dollars (\$2,000,000) General Aggregate

(2) The insurance coverage provided by Lessee shall contain language providing coverage up to one (1) year 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.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by Placer as noted above. In no cases shall the types of policies be different.

ENDORSEMENTS:

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

A. "The County of Placer and County of 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 by the Lessee, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer and County of El Dorado with respect to any insurance or self-insurance programs maintained by the County of Placer or County of El Dorado and no insurance held or owned by the County of Placer or the County of El Dorado shall be called upon to contribute to a loss."

C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer and the County of El Dorado."

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 shall include owned, non-owned, and hired automobiles/trucks.

ADDITIONAL REQUIREMENTS:

Premium Payments - The insurance companies shall have no recourse against Placer County, El Dorado County and funding agencies, their officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles - Lessee shall be responsible for all deductibles in all of the Lessee's insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

Lessee's Obligations - Lessee's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Verification of Coverage - Lessee shall furnish Placer and El Dorado with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by Placer and El Dorado before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. Placer and El Dorado reserve the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Material Breach - Failure of the Lessee to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

12. Notice. All notices, approvals, payments, 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 if mailed, forty-eight (48) hours after depositing the same in the United States mail, certified or registered, postage prepaid to the addresses shown below. Notice given by any other means that is actually received shall also be effective with respect to the receiving party. Changes in contact person or address information shall be made by notice, in writing, to the other party.

Placer County:  
Agricultural Commissioner  
11477 E Avenue  
Auburn, California 95603

El Dorado County:  
Agricultural Commissioner  
311 Fair Lane  
Placerville, CA 95667

Lessee:  
Agricultural Commissioner  
12200 B Airport Road  
Jackson, CA 95642

13. 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 the agreement among the parties concerning the subject matter addressed herein, and supersede all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.
14. Amendments. No revision or amendment to this Agreement shall be valid unless made in writing and signed by duly authorized representatives of all parties.
15. Time of the Essence. Time is of the essence with respect to the obligations to be performed under this Agreement.
16. Successors and Assigns. Neither party shall assign the obligations or benefits 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 compliance with 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.
17. Status of Employees. All persons performing services for Lessee shall be solely employees or contractors of Lessee and not employees of Placer or El Dorado, except those persons expressly and directly employed by Placer or El Dorado. Furthermore, Lessee is not an agent of Placer or El Dorado.
18. 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.
19. Captions. The captions in this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section or paragraph of this Agreement. All references to section numbers refer to sections in this Agreement.
20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when affixed together shall constitute but one and the same instrument.

21. Severability. The invalidity of any term or provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof. Each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
22. Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of any right or remedy that said party may have, and shall not be deemed a waiver of said party's right to require strict performance of all terms, covenants, and conditions thereafter, nor a waiver of any remedy for the subsequent breach of any of the terms, covenants or conditions.
23. Force Majeure. If any party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.
24. Legal Jurisdiction. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under and construed and enforced in accordance with the laws of the State of California. Venue for any disputes shall be the Superior Court for the State of California, in Placer County. The parties hereby waive any federal court removal rights and/or original jurisdiction rights that they may have.
25. Authority to Execute Agreement. Each party represents that it has the legal authority to enter into this Agreement and to perform its obligations hereunder.
26. Prior Agreement Superseded. As of its effective date, this Agreement shall supersede the prior agreement entered into between the parties on September 11, 2018, regarding the lease of the Weight Truck and Weight Standards. However, said prior agreement shall govern and remain in effect with respect to the parties' actions prior to the effective date of this Agreement.

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

COUNTY OF PLACER

COUNTY OF AMADOR

By: \_\_\_\_\_  
Josh Huntsinger  
Agricultural Commissioner

By: \_\_\_\_\_  
Chair, Board of Supervisors

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

ATTEST:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Clerk of the Board

APPROVED AS TO FORM:

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Eric Brumfield  
County Counsel

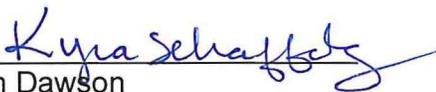
BY: \_\_\_\_\_  
County Counsel

COUNTY OF EL DORADO

By:   
John Hidahl  
Chair, Board of Supervisors

Dated: 9/28/21

ATTEST:

BY:   
Kim Dawson  
Clerk of the Board

APPROVED AS TO FORM:

BY:   
Daniel Vandekoolwyk  
County Counsel

*Deputy*