

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT BETWEEN SUTTER, NEVADA, AND YUBA COUNTIES FOR THE PURPOSE OF PURCHASING AND MAINTAINING A WEIGHT TRUCK

**THIS AMENDED AND RESTATED AGREEMENT** (“Agreement”) is made and entered into this 13th day of December, 2016, by and between the COUNTIES OF SUTTER, NEVADA and YUBA (collectively “Counties”), each of which is a political subdivision of the State of California. Counties are collectively referred to as “Parties,” “Members,” “Member Counties,” or “Member Agencies.” This Agreement shall be effective on the date that the last party signs their counterpart to this Agreement.

**WHEREAS**, the forgoing Parties to this Agreement, pursuant to Section 12200 of the California Business and Professions Code, have the responsibility to maintain the Office of County Sealer of Weights and Measures and appoint a person as the County Sealer of Weights and Measures; and

**WHEREAS**, in accordance with Section 12210 of the California Business and Professions Code each County Sealer of Weights and Measures shall, within his or her county inspect, try and test all weighing and measuring devices used for commercial purposes; and

**WHEREAS**, in order for the County Sealer to meet mandated responsibilities it is necessary for the Sealer of Weights and Measures to have the use of a heavy capacity commercial weights and measures vehicle (hereafter Weight Truck) and the parties to this agreement collectively have a present need to replace the existing Weight Truck; and

**WHEREAS**, a weights and measures truck is a heavy capacity commercial vehicle used for the purpose of testing large capacity commercial weighing devices; and

**WHEREAS**, the existing Weight Truck is worn and needs to be replaced; and

**WHEREAS**, the Parties have identified the need to purchase a Conventional Weights and Measures truck with a flatbed, as a suitable replacement Weight Truck; and

**WHEREAS**, the Member Agencies co-own a crane that will be transferred to the new Weight Truck; and

**WHEREAS**, there is an economic advantage to the parties to this agreement to jointly purchase and use a Weight Truck;

**WHEREAS**, Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing at Section 6500) authorizes the foregoing parties to enter into an agreement for the joint exercise of any power common to them and, by that agreement, to create an entity that is separate from each of the parties to the Agreement;

**WHEREAS**, the Member Agencies deemed it necessary and appropriate to create a separate public entity under a joint exercise of powers agreement, to form, participate in and operate a Weight Truck Joint Powers Agreement (JPA) to effectively and economically facilitate the use of a Weight Truck and meet their respective state mandated obligations pursuant to Business and Professions Code section 12210;

**WHEREAS**, the Member Agencies have been working cooperatively under the existing Joint Powers Agreement originally established in 1989 to jointly purchase and use a Weight Truck and desire to amend and restate the provisions of the existing “Heavy Truck Joint Powers Agreement” (Heavy Truck JPA;) and

**WHEREAS**, the Members desire to rename the joint powers agreement as the “Weight Truck Joint Powers Agreement” (hereafter Weight Truck JPA;) and

**WHEREAS**, upon the adoption of this Agreement, the parties shall transfer title to all properties currently owned or held by or in trust for the Heavy Truck JPA, currently administered by Sutter County, together with all debts, demands, liabilities or other obligations existing in favor of or against such JPA shall become those of the Weight Truck JPA.

**NOW, THEREFORE**, The Boards of Supervisors of the Counties of Sutter, Nevada and Yuba for and in consideration of the facts stated above, the mutual advantages to be derived, and the mutual promises and agreements contained herein, do agree as follows:

1. Formation of Agency. The Heavy Truck Joint Powers Agreement (Heavy Truck JPA) was established in 1989 upon the execution of the Original Agreement by all designated county Members. The amended, restated and renamed “Weight Truck JPA” shall be a public agency separate and distinct from its Members, and which may sue and be sued. This Agreement shall become effective upon unanimous approval of all Members and shall continue unless terminated as hereinafter provided. This Agreement is intended to supersede the previous Heavy Truck JPA agreement executed in 1989.
2. Purpose. The purpose of the Agreement shall be to provide for the joint participation by Members, as Members of the JPA, to:
  - A. Effectively and economically facilitate the use of a Weight Truck to meet their respective state-mandated obligations pursuant to Business and Professions Code section 12210;
  - B. Prevent unnecessary duplication of effort and resources on behalf of Members; and

- C. Assume any additional purposes, duties and functions as may be determined by all parties to this Agreement.
3. Administrative Committee. The Administrative Committee as described in this agreement shall be defined as consisting of the Sealers of Weights and Measures of Sutter, Nevada and Yuba Counties. Each county will have equal representation, specifically, each member County will have one equal vote on the Administrative Committee.
  4. Authority of Administrative Committee. The Administrative Committee shall have the following powers and functions:
    - A. To act as the policy making body of the JPA;
    - B. To act as the executive body of the JPA;
    - C. To enter into contracts and to accept and expend funds from Federal, State, Member Agencies, and other sources for the purposes specified herein; and
    - D. To appoint or hire such staff or contract with such entities or individuals as the Administrative Committee deems necessary to carry out the JPA’s functions and purposes.
  5. Budget. An annual budget for the operation of the JPA and fiscal year shall be adopted by the Administrative Committee.
  6. Financing. The Members shall provide the cost of administration of the JPA: All contributions to the JPA shall be in accordance with the cost formula established by the Committee (hereafter “Proportionate Share,”) which formula or plan may be amended at any time and from time to time. Required contributions may be “in-kind” provided the approval therefor shall have first been obtained from the Committee.
    - A. The Proportionate Share of buying and placing in service a heavy weight truck shall be as follows:
 

NEVADA COUNTY	Twenty (20) percent of cash outlay costs or reserves in Maintenance and Replacement fund.
SUTTER COUNTY	Fifty (50) percent of cash outlay costs or reserves in Maintenance and Replacement Fund.

YUBA COUNTY

Thirty (30) percent of cash outlay costs or reserves in Maintenance and Replacement Fund.

- B. The Maintenance and Replacement Fund as described in the Agreement shall be defined as monies collected and held in trust to pay for routine maintenance, expenses, repairs and replacement of the Weight Truck.

- 7. Equity in the Weight Truck. Equity means the share of current value a party to this agreement shall have in the then existing Weight Truck at any time during the time this agreement is in force. The parties shall have the following Proportionate Shares of current value:

Nevada County: Twenty (20) percent

Sutter County: Fifty (50) percent

Yuba County: Thirty (30) percent

The current value shall normally be the purchase price of the Weight Truck less accrued depreciation using the standard depreciation schedule for twenty years. If, however, contributions to the Maintenance and Replacement fund herein established are greater than or equal to the accrued depreciation, the current value shall be equal to the original purchase price. For purposes of this subparagraph, the original purchase price shall be (1) the price paid to the truck dealer plus (2) parts, equipment and labor as part of the Placing-In-Service costs.

- 8. Purchase. As agreed by the Administrative Committee, Sutter County will administer the purchase of the heavy weight truck in compliance with all federal, state and local regulations established for purchasing.
  - A. Truck Specifications. Truck specification will be determined by Administration Committee.
  - B. Secure bids. Secured bids shall not exceed \$168,000, unless approved by the Board of Supervisors that are party to this Agreement.
  - C. Purchase. Process Purchase Order and arrange for delivery of truck.
    - 1. Sutter County will process the purchase order and arrange for delivery of truck.
    - 2. If the reserve funds from the current Maintenance and Replacement funds are insufficient, Sutter County will temporarily cover the deficit and will issue a check for purchase of the Weight Truck under the following conditions:

- i. After Sutter County purchases the weight truck:
- ii. Sutter County will invoice Nevada and Yuba Counties for their proportionate share of the deficit amount.
- iii. Nevada County and Yuba County will pay their proportionate share of cost directly to Sutter County within 30 days following the receipt of invoice from Sutter County.
- iv. Any monies due and payable to Sutter County that are not paid as stipulated will be charged interest at the same rate as the County's pooled interest rate per month or portion of month in which payment is due.

3. The Weight Truck shall be titled in the name of the Weight Truck JPA.

9. Placing "In Service." As agreed by the Administrative Committee, Sutter County will be responsible for placing the Weight Truck into service which may require additional costs. If additional costs are incurred, Sutter County will then bill Nevada and Yuba Counties for their proportionate share of placing in service costs which is equal to the proportionate share of equity described above for each party. These costs are to be paid within 30 days of billing. These additional costs shall not exceed \$10,000 in total unless approved by the Board of Supervisors of the parties to this Agreement.

10. Truck Use. The Administrative Committee shall establish policy and procedures for the use schedule, operations policy and procedures of the Weight Truck during and after placing in service. Policy and procedures must include the following:

- A. Members shall ensure that only properly licensed and trained individuals will be allowed to operate the Weight Truck, including, but not limited to, an appropriate commercial driver's license. Such individuals must be employees of the State of California or the counties party to this agreement or of parties that may rent the truck.
- B. If the Weight Truck and associated weights and equipment are damaged due to neglect or accident, the member county or leasing party using the truck at the time will be liable to fix or replace the same. The Administration Committee shall have sole authority to determine whether needed repairs or replacement are due to neglect or accident.

C. The Weight Truck may be rented to the State or other counties. Monies collected shall be deposited into the Maintenance and Replacement Fund. The rental fee shall be pursuant to a uniform fee schedule adopted by the Secretary of the California Department of Food & Agriculture authorized in Section 12212 of the Business & Professions Code. The Administrative Committee will determine the specific rental conditions. As a condition of such rental, the user shall provide the parties to this agreement proof of insurance in the amount determined by the Administrative Committee and a written agreement to indemnify or “hold harmless” the Weight Truck JPA and JPA Members.

11. Insurance. The JPA will purchase and maintain, Combined Single Limits of a \$1,000,000 Occurrence Based Commercial Liability Insurance and \$1,000,000 Errors and Omissions Insurance for the life of this Agreement. Each County member of the JPA has an insurable interest and shall be named “as additional insured” on the Policy. Said insurance shall be purchased from an “admitted” California Insurance Company with a solid A.M. Best financial rating of no less than A-. The cost of said insurance shall be paid proportionately by funds collected by the members in the previous year and as approved by the majority of the parties to this Agreement. Sutter County will purchase insurance on behalf of the JPA. The JPA shall reimburse Sutter County from the Maintenance and Replacement Fund.
- A. Each County party to this agreement will indemnify, defend and hold harmless the other parties for any liability exposure as a result of actions or negligence of their own employees.
  - B. Each County will provide their own Worker’s Compensation insurance covering their respective employees.
12. Liability. Pursuant to Section 6508.1 of the Government Code, the debts, liabilities and obligations of this joint powers entity shall not constitute the debts, liabilities, and obligations of the parties to this agreement. Each party is independent of every other party and of the entity and not the agent of any party or of the joint powers entity. Except as hereinafter provided, liability of each party shall be limited to its proportionate share as provided in Section 7 of this Agreement. Each party agrees to save harmless and indemnify every other party from all claims and demands of any kind or nature whatsoever which may be made by any person resulting

from the action or inaction of any party or its officers, agents or employees under or in connection with any activity under this Agreement.

13. Custody of funds. All payments of public funds shall be paid to and disbursed by the Weight Truck JPA which shall be strictly accountable for all funds and responsible for reporting to the Members hereof concerning all receipt disbursements. All of the JPA's funds shall be deposited in the Weight Truck Maintenance and Replacement fund established for this purpose in the treasury of one County Member. The Administrative Committee has agreed that Sutter County will administer the Weight Truck Maintenance and Replacement Fund. The treasurer of said county shall be in charge of and be the depository for said funds and other property of the JPA. No bond shall be required of said treasurer.
  
14. Maintenance and Replacement. As agreed by the Administrative Committee, A Weight Truck Maintenance and Replacement fund shall be established and administered by Sutter County and be strictly accounted for pursuant to Section 6505 of the Government Code. The Administrative Committee shall review use patterns and financial needs on a yearly basis and determine the total annual cost of maintenance and evaluate the status of the replacement reserves.
  - A. Each county will be responsible for submitting an annual contribution to the fund based upon the annual cost estimate and their Proportionate Share ratio. Said committee may increase or decrease the total yearly payment based on actual and/or projected expenditures. Any such determination by the Administrative Committee that exceeds a total of \$10,000.00 shall be approved, prior to budgeting, by the Board of Supervisors of the parties to this agreement. Otherwise proposed changes will be approved through the normal budget process.
  - B. Each calendar year, each member shall pay a mutually agreeable contribution. On September 1<sup>st</sup> of subsequent years the same amount shall be paid into this account unless altered by the Administrative Committee. The Administrative Committee shall, on or before March 1 of each year, set an amount for the annual contribution based on adopted or approved and anticipated costs. Each member shall budget sufficient funds and pay the annual contribution.
  - C. Payments made out of the Weight Truck Maintenance and Replacement Fund will be under the direction of the Administrative Committee, and paid by Sutter County.

- D. Each county will pay their own operational costs of fuel and oil in use of the Weight Truck.
  - E. The Administrative Committee will establish policies and procedures to be followed in maintaining records and handling repairs.
  - F. Sutter County shall provide all routine maintenance according to the Weight Truck manufacturer specifications and state law.
  - G. In the event the Weight Truck needs to be replaced, the truck and equipment shall be sold and the monies placed in the Replacement fund for each party to this agreement based upon each party's proportionate share of equity.
  - H. All funds maintained on behalf of the JPA shall accrue interest at a minimum of the pooled rate.
15. Non Use Storage. The Weight Truck, when not in use, shall be stored in a secure locked facility, such as a corp yard, which is protected from the elements. The Weight Truck will be kept in Sutter County. When in use by a Member County, Member County shall ensure that the truck is stored in a secure, locked facility, which is protected from the elements.
16. Reporting. Pursuant to Section 6503.5 of the Government Code, a notice of the Agreement or any amendment to the Agreement shall be prepared and filed with the Office of the Secretary of State within thirty (30) days after the effective date of the Agreement or any amendment thereto. Pursuant to Section 6503.6 of the Government Code, a copy of the full text of this Agreement, and any amendments to the Agreement, shall be filed with the State Controller. Sutter County shall be responsible for making the required filing with the State.
17. Limitations on expenditures. The Administrative Committee shall be limited in the making of expenditures or the incurring of liabilities to the amount of appropriations allowed by the budget as adopted by the Administrative Committee or thereafter revised by the Administrative Committee. There shall be no expenditure or contract made on behalf of the JPA without approval by the Administrative Committee. Except as otherwise provided by law; expenditures made or liabilities incurred in excess of any budget appropriation are not a liability of the JPA or a liability of any Member to this Agreement.



18. Term and Withdrawal. This agreement will continue in effect until terminated as provided for by this Agreement or withdrawal of all but one of the County Members. If one party wishes to withdraw from this agreement, it may do so providing the request is submitted in writing to the remaining parties at least sixty (60) days prior to the proposed withdrawal date. Withdrawal by any Member shall relieve said Member from any obligation to contribute any money or property previously required of said Member by the Administrative Committee, provided, however, that in the event that said withdrawing Member has received any benefit related to said required contributions, said Member shall not be relieved from said obligation. Provided the remaining members agree to purchase the withdrawing member's equity in the Weight Truck, the withdrawing party will be paid by the remaining parties of the JPA its proportionate share of the equity in the Weight Truck only. Any portion of the maintenance and replacement funds or any miscellaneous funds held by Sutter County on behalf of the JPA shall remain the property of the JPA to be used pursuant to this agreement. The withdrawing party will be required to obtain a formal appraisal performed by an independent third-party company that is not a party to this joint powers agreement. The withdrawing party will be solely responsible to arrange for and pay for all costs associated with the outside appraisal.
19. Termination for Cause. Participation by the Member Counties is essential to the successful operation of the JPA. In the event a Member County fails to contribute its proportionate monetary share, or fails to participate meaningfully on the Administrative Committee for an unreasonable period of time, the other two Member Counties may consider terminating the offending county's membership in the JPA by majority vote of the Administrative Committee Members.
20. Dissolution. In the event that two, or all three Member Counties agree to dissolve the JPA, for any reason, the administering county will dispose of the JPA property as detailed in Section 21.
21. Disposition of Property Upon Termination. In the event the JPA declines to purchase the withdrawing party's equity in the Weight Truck, or upon termination by agreement as described above in Section 18, or upon termination for cause as described above in Section 19, or upon termination by agreement as described above in Section 20, such truck and crane shall be sold and the monies received from the sale as well as any funds in the maintenance and replacement

fund and any other miscellaneous funds held by Sutter County for the JPA at the time of termination, after all debts and liabilities are paid, shall be distributed to the Member counties, then a part of this agreement, in proportion to the total amount of contributions made by each party.

22. Amendment. This Agreement may be amended at any time by the mutual written agreement and approval of the respective Boards of Supervisors of the Member Counties hereof.
23. Counterparts: This agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all counterparts together shall constitute one agreement.
24. Agency Designation: Pursuant to Government Code section 6509, the JPA's exercise of power is subject to the restrictions upon the manner of exercising the power of the designated administering agency. Sutter County is designated as the administering agency.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first herein above written.

-Signatures on Following Pages-

**JOINT EXERCISE OF POWERS AGREEMENT FOR WEIGHT TRUCK**

**COUNTY OF SUTTER**

By: \_\_\_\_\_  
Larry Munger, Chairman  
Board of Supervisors

ATTEST:  
Clerk of the Board of Supervisors of the  
County of Sutter, State of California

By: \_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jean Jordan  
County Counsel

**JOINT EXERCISE OF POWERS AGREEMENT FOR WEIGHT TRUCK**

**COUNTY OF NEVADA**

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

ATTEST:  
Clerk of the Board of Supervisors of the  
County of Nevada, State of California

By: \_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Alison Barratt-Green  
County Counsel

**JOINT EXERCISE OF POWERS AGREEMENT FOR WEIGHT TRUCK**

**COUNTY OF YUBA**

By: \_\_\_\_\_  
Roger Abe, Chairman  
Board of Supervisors

ATTEST:  
Clerk of the Board of Supervisors of the  
County of Yuba, State of California

By: \_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Angil Morris-Jones  
County Counsel