BOS AGREEMENT # 17-048*

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN COUNTY OF MENDOCINO AND COUNTY OF LAKE FOR SEALER OF WEIGHTS AND MEASURES SERVICES

This Memorandum of Understanding ("MOU"), dated as of July 1, 2017, by and between the County of Mendocino, hereinafter referred to as "Mendocino," and County of Lake, a California government entity, hereinafter referred to as "Lake," is made upon the following considerations:

WHEREAS, MENDOCINO, by and through its Department of Weights and Measures, desires to retain the services of LAKE to retain the services of a Sealer; and

WHEREAS, such work involves the performance of professional, expert and technical services for a specified period; and

WHEREAS, MENDOCINO has no employees available to perform such services and is unable to hire employees for the performance thereof for the period specified herein; and

NOW THEREFORE, the parties hereto mutually agree as follows:

1. Scope of Services:

LAKE agrees to provide MENDOCINO Acting Sealer services, pursuant to Business and Professions Code Section 12200 *et seq.*, sufficient to meet the requirements of the California Department of Food and Agriculture to the extent that such services are not capable of being performed by employees of MENDOCINO. Such services may be provided personally by the Agricultural Commissioner/Sealer of Weights and Measures of LAKE, or by staff of LAKE under the authority of the Commissioner/Sealer, as appropriate. LAKE shall devote that time reasonably necessary to perform services for MENDOCINO to the extent doing so does not conflict with the ability of the Agricultural Commissioner/Sealer of Weights and Measures of LAKE to perform his/her official functions and obligations for LAKE.

2. Compensation:

A. MENDOCINO shall pay LAKE as compensation for Acting Sealer services a flat rate payment of $1500.00 per month for each month any part of which the services described herein are provided. This amount will be paid by MENDOCINO no later than the last business day of the month following the month in which the services were provided.

B. When requested by the MENDOCINO County Executive Officer, LAKE shall provide Acting Sealer Services on-site in Mendocino County. If and when this occurs, MENDOCINO shall pay the traveler mileage and other travel expenses in the amounts consistent with current LAKE policies related to travel expenses.

3. Term:

This MOU shall begin July 1, 2017 and shall remain in full force and effect until August 31, 2017.

4. Termination:

Either party may terminate this MOU without cause upon thirty (30) days advance written notice. Such notice shall state the effective date of the termination. In the event of any termination of this MOU, LAKE shall be entitled to compensation for uncompensated services rendered hereunder through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owing to MENDOCINO resulting from a breach of this Agreement by LAKE.

5. Relationship of Parties:

MENDOCINO and LAKE are separate subdivisions of the State of California and are independent contractors with respect to each other. This MOU is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that LAKE shall not be entitled to any benefits to which MENDOCINO employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation. LAKE shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

6. Reports:

To the extent necessary, LAKE agrees to provide MENDOCINO with any and all reports that may be required by state and/or federal agencies for compliance with this MOU. If required, reports shall be submitted no later than fifteen (15) days after the end of each calendar quarter using the format required by the State of California as appropriate.

7. Indemnification:

A. Mutual Indemnity. Each Party shall indemnify, defend and hold harmless the other Parties hereto and their officers, officials, employees, agents, and volunteers from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including, without limitation, attorney's fees and other litigation costs, arising out of or in connection with the performance of its duties and obligations hereunder, except such loss or damage which was caused by the sole negligence or willful misconduct of another Party.

B. Comparative Liability. Notwithstanding Paragraph A above, in the event that more than one Party is held to be negligently or willfully responsible, each responsible Party will bear its proportionate share of liability as determined in any such proceeding. Each Party will bear their own costs and attorneys' fees..

8. Insurance Coverage:

Without limiting the Parties' indemnification obligations provided for herein, each Party will maintain in force and effect, at its own expense, comprehensive general liability and property damage insurance, comprehensive automobile insurance, workers' compensation and professional liability insurance throughout the term of the MOU.

9. Dispute Resolution:

Disputes between MENDOCINO and LAKE in connection with any matter relating to the terms or provisions of this MOU shall first be considered jointly by the County Executive Officer of MENDOCINO and the County Administrative Officer of LAKE.

Prior to taking any judicial action to interpret or enforce provisions of this MOU, the Parties agree to first submit the matter to a mediator, to be mutually agreed upon by the Parties hereto, in concert with a representative of each Party. Each Party shall pay one half of the fee of the mutually agreed upon mediator.

However, pending resolution, the existence of any dispute (except for disputed charges for which notice was timely provided as required herein) will not absolve either Party of the responsibility for making timely payments for provided services nor will such disputes absolve either Party of the responsibility for timely performance of its agreed upon services to the other.

10. Record Retention and Inspection:

A. Maintenance and Preservation of Records. LAKE agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this MOU, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the services provided hereunder.

B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of either Party, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after final payment under this MOU. Each Party hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by any duly authorized local, state and/or federal agencies. Each Party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this MOU, including, but not limited to, the costs of administering this MOU.

C. Audit Costs. In the event of an audit exception or exceptions, the party responsible for not meeting the program requirements shall be responsible for the deficiency and for the cost

of the audit. If the allowable expenditures cannot be determined because LAKE's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by MENDOCINO.

11. Monitoring:

LAKE agrees that MENDOCINO has the right to monitor all activities related to this MOU, including, without limitation, the right to review and monitor LAKE's records, programs or procedures, at any time, as well as the overall operation of LAKE's programs, in order to ensure compliance with the terms and conditions of this MOU.

12. Compliance with Applicable Laws and Licensure Requirements:

Each Party hereto agrees to comply with any and all local, state and federal laws, regulations, policies and procedures applicable to the services covered by this MOU. Both Parties further agrees to comply with any and all applicable local, state and federal licensure and certification requirements at all times during the term of this MOU.

13. Jurisdiction and Venue:

This MOU shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California.

14. Non-Discrimination:

A. Professional Services and Employment. In connection with the execution of this MOU, LAKE, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state, or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.

B. Compliance with Anti-Discrimination Laws. LAKE further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government

Code Section 12990, set forth in Chapter 5, Division 4 of Title 2, of the California Code of Regulations are incorporated into this MOU by reference and made a part hereof as if set forth in full.

15. Provisions Required by Law:

This MOU is subject to any additional local, state and federal restrictions, limitations, or conditions that may affect the provisions, terms or funding of this MOU. This MOU shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

16. Reference to Laws and Rules:

In the event any law, regulation, policy or procedure referred to in this MOU is amended during the term hereof, the parties agree to comply with the amended provision as of the effective date of such amendment.

17. Waiver of Default:

The waiver by either party of any breach or violation of any requirement of this MOU shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this MOU. In no event shall any payment by MENDOCINO constitute a waiver of any breach of this MOU or any default which may then exist on the part of LAKE. Nor shall such payment impair or prejudice any remedy available to MENDOCINO with respect to any breach or default. MENDOCINO shall have the right to demand repayment of, and LAKE shall promptly refund, any funds disbursed to LAKE which, in the judgment of MENDOCINO, were not expended in accordance with the terms of this MOU.

18. Non-Liability of County Officials and Employees:

No official or employee of MENDOCINO shall be personally liable for any default or liability under this MOU.

19. Standard of Practice:

LAKE warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. LAKE's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

20. Subcontracts:

LAKE shall obtain prior written approval from MENDOCINO before subcontracting any of the services to be provided hereunder. Any and all subcontracts will be subject to all applicable provisions of this MOU. LAKE shall remain legally responsible for the performance

of all terms and conditions of this MOU, including work performed by third parties under subcontracts, whether approved by MENDOCINO or not.

21. Survival:

The duties and obligations of the parties set forth in Section 4(C) – Compensation Upon Termination, Section 10 – Record Retention and Inspection, and Section 7 – Indemnification shall survive the expiration or termination of this MOU.

22. Conflicting Terms or Conditions:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in paragraphs 1 through 31 of this MOU, paragraphs 1 through 31 of this MOU shall have priority.

23. Independent Construction:

The titles of the sections, subsections and paragraphs set forth in this MOU are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this MOU.

24. Severability:

If any provision of this MOU, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this MOU.

25. Notices:

Any and all notices required to be given or payments required to be made pursuant to the terms of this MOU shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

MENDOCINO: Mendocino County Department of Agriculture and Weights and Measures
Attention: Diane Curry
890 N Bush Street
Ukiah, CA 95482

LAKE: Lake County Department of Agriculture and Weights and Measures
Attn: Steven Hajik
883 Lakeport Blvd
Lakeport, CA 95453

26. Amendment:

This MOU may be amended at any time during the term of this MOU upon the mutual consent of both parties. No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by the parties hereto.

27. MOU Shall Bind Successors:

All provisions of this MOU shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

28. Interpretation:

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

29. Force Majeure:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

30. Entire Agreement:

This MOU contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind either of the parties hereto. In addition, this MOU shall supersede in its entirety any and all prior agreements, promises, representations, understandings and negotiations, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this MOU are hereby ratified.

31. Authority to Execute:

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of this MOU and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DEPARTMENT FISCAL REVIEW:

Diane C. Curry 6/26/17

DEPARTMENT HEAD DATE

Budgeted: ☐ Yes ☒ No

Budget Unit: 2710

Line Item: 863280

Grant: ☐ Yes ☒ No

Grant No.: _____

LAKE COUNTY DEPARTMENT OF AGRICULTURE

By: _____

NAME AND ADDRESS OF CONTRACTOR:

883 Lakeport Blvd.

Lakeport, CA 95453

COUNTY OF MENDOCINO

By: _____

JOHN McCOWEN, Chair
BOARD OF SUPERVISORS

JUL 11 2017

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

JUL 11 2017

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: _____ JUL 11 2017
Deputy

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

By: _____
Deputy

INSURANCE REVIEW:

RISK MANAGER

By: _____
ALAN D. FLORA, Risk Manager

FISCAL REVIEW:

By: _____
Deputy CEO/Fiscal

EXECUTIVE REVIEW:

APPROVAL RECOMMENDED

_____

CARMEL J. ANGELO
CHIEF EXECUTIVE OFFICER

Executed at _____, California on _____.

COUNTY OF LAKE

_____
CHAIR, Board of Supervisors

ATTEST:
CAROL J. HUCHINGSON
Clerk to the Board of Supervisors

By: _____

APPROVED AS TO FORM:
ANITA L. GRANT
County Counsel

By: _____