

Notice of Determination

To: Office of Planning and Research
P.O. Box 3044, Room 222
Sacramento, CA 95812-3044

From: (Public Agency) Sierra County,
Department of Planning, P.O. Box 530,
Downieville, California 95936

County Clerk
County of Sierra

SIERRA COUNTY CLERK

DEC 05 2017

BY: HEATHER FOSTER
DEPUTY



Subject:

Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

Project Title General Plan Amendment-5th Cycle Housing Element (PD File # 1551)

2017082084

Brandon Pangman

(530) 289-3251

State Clearing House Number
(If submitted to Clearinghouse)

Lead Agency
Contact Person

(Area Code) Telephone

Project Location (include county)

Project Description: General Plan Amendment to update the General Plan Housing Element

**Applicant Address
and phone number:** Sierra County
PO Box 530
Downieville, CA 95936
530-289-3251

This is to advise that the County of Sierra has approved the project described above on
 Lead Agency Responsible Agency

December 5, 2017 and has made the following determinations regarding the project described above:

1. The project [will will not] have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [were were not] made a condition of the approval of the project.
4. A mitigation monitoring & reporting program (MMRP) [was was not] adopted for this project.
5. A statement of Overriding Considerations [was was not] adopted for this project.
6. Findings [were were not] made pursuant to the provisions of CEQA.
7. Sierra County as a responsible agency has considered the ND as prepared by the lead agency.

This is to certify that the final Mitigated Negative Declaration with comments and responses and record of project approval is available to the General Public at:

Sierra County Planning Department, 101 Courthouse Square, Downieville, CA

[Signature]
Signature (Public Agency)

December 5, 2017
Date

Assist. Dir. of Planning
Title

Date received for filing at OPR:

**AGREEMENT FOR
PROFESSIONAL
SERVICES**

Housing Element (5th Cycle)

THIS AGREEMENT for Professional Services ("Agreement") is made as of the Agreement Date set forth below by and between the **County of Sierra**, a political subdivision of the State of California ("COUNTY"), and **Mintier Harnish**, a California Limited Partnership, J. Laurence Mintier and James Harnish as General Partners ("CONTRACTOR")

In consideration of the services to be rendered, the sums to be paid, and each and every covenant and condition contained herein, the parties hereto agree as follows:

OPERATIVE PROVISIONS

1. SERVICES.

The CONTRACTOR shall provide those legal services described in Attachment "A", Provision A.1. CONTRACTOR shall provide said services at the time, place and in the manner specified in Attachment "A", Provisions A-2 through A-3.

2. TERM.

Commencement Date: Upon Notice to Proceed by the COUNTY
(On or about October 20, 2015)

Termination Date: December 31, 2016

3. PAYMENT.

COUNTY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B". The payment specified in Attachment "B" shall be the only payment made to CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billings for said services to COUNTY in the manner specified in Attachment "B".

4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF COUNTY.

CONTRACTOR shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement, except as provided in this paragraph. COUNTY shall furnish CONTRACTOR only those facilities, equipment, and other materials and shall perform those obligations listed in Attachment "A".

5. ADDITIONAL PROVISIONS.

Those additional provisions unique to this Agreement are set forth in Attachment "C".

6. GENERAL PROVISIONS.

The general provisions set forth in Attachment "D" are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other terms or conditions insofar as the latter are inconsistent with the general provisions.

7. DESIGNATED REPRESENTATIVES.

Tim Beals is the designated representative of the COUNTY and will administer this Agreement for the COUNTY. J. Laurence Mintier and James Harnish are the authorized representatives for CONTRACTOR. Changes in designated representatives shall occur only by advance written notice to the other party.

8. ATTACHMENTS.

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

- Attachment A - Services
- Attachment B - Payment
- Attachment C - Additional Provisions
- Attachment D - General Provisions
- Attachment E - Form of Invoice

9. AGREEMENT DATE. The Agreement Date is October 6, 2015.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day here first above written.

"COUNTY"

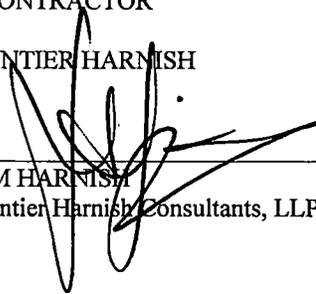
COUNTY OF SIERRA

By 

 JAMES BEARD
 Chairman, Board of Supervisors

"CONTRACTOR"

MINTIER HARNISH



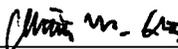
 JIM HARNISH
 Mintier Harnish Consultants, LLP

ATTEST:



 HEATHER FOSTER
 Clerk of the Board

APPROVED AS TO FORM:



 JAMES A. CURTIS
 County Counsel, by
 Christian Curtis,
 Deputy County Counsel

ATTACHMENT A

A.1 SCOPE OF SERVICES, DUTIES & EXPRESS WARRANTIES.

The services to be provided by CONTRACTOR and the scope of CONTRACTOR's duties include all work necessary and appropriate to prepare an administrative draft update of the Sierra County General Plan 5th Cycle Housing Element (the "Housing Element") consistent with state law; assistance with responses to comments by the California Department of Housing and Community Development; and to prepare such environmental documentation as required to comply with the California Environmental Quality Act ("CEQA") in order to provide for the adoption of the Housing Element General Plan Amendment.

The scope of services is as generally described in the Sierra County Housing Element Update Assistance – Scope of Services letter dated July 10, 2015, attached hereto as Attachment A-1; provided however, that nothing therein shall be deemed to constitute a limitation on CONTRACTOR's responsibility to complete to COUNTY's satisfaction the preparation of the administrative draft Housing Element Update and CEQA documentation.

In undertaking the above scope of work, CONTRACTOR, expressly acknowledges and agrees that the final work product is subject to the acceptance of same by the COUNTY Board of Supervisors, in order that the Board may exercise its legislative powers and duties to adopt policies and laws, including General Plan Amendments that they determine are appropriate for the COUNTY. CONTRACTOR expressly agrees that work required and costs associated with making changes to the Housing Element and the proposed CEQA documentation as determined by the COUNTY, including ultimately the Board of Supervisors, are factored into the lump sum costs as the basis for CONTRACTOR's compensation and that any changes to these documents and/or any additional work associated therewith shall not be a basis for any additional compensation under this Agreement or otherwise authorize CONTRACTOR to not complete the development of the subject documents.

CONTRACTOR expressly warrants that it has the knowledge and expertise to and will prepare legally adequate documents as otherwise described herein. In the event that any legal challenges are filed against County contesting the adoption of the general plan amendment (Housing Element update) and/or the CEQA document, CONTRACTOR shall be required to make such changes thereto as COUNTY and/or the Court may direct.

A.2. TIME SERVICES RENDERED.

Work will begin immediately upon execution of this Agreement by the County. Thereafter, CONTRACTOR shall perform services in a diligently and timely manner.

A.3. MANNER SERVICES ARE TO BE PERFORMED.

As an independent contractor, CONTRACTOR shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. COUNTY shall not control the manner of performance.

A.4. FACILITIES & SERVICE FURNISHED BY COUNTY.

Copies of existing records and supporting documentation as necessary to perform all work will be provided by COUNTY. In addition, COUNTY shall provide the services of the equivalent of one part-time planner from the County Planning Department staff – consisting of the time from either or both of the current two full time staff planners employed in the Planning Department. This support by COUNTY shall be provide based on timely and reasonable requests by CONTRACTOR, provide however, that CONTRACTOR shall otherwise be solely responsible for reasonably and prudently managing its use and integration with COUNTY into CONTRACTOR's work program so as not to exceed the equivalent of one part time staff planner (amounting to no more than 20 hours of work in any given week.) Delays and/or additional work by CONTRACTOR based on the failure of CONTRACTOR to manage its use of COUNTY staff in accordance with the above shall be solely the responsibility of the CONTRACTOR, and in no event shall COUNTY be responsible for any costs cost overruns incurred by CONTRACTOR with regard to the scope of work as described in Section A.1, above.

ATTACHMENT A-1

Sierra County Housing Element Update Assistance – Scope of Services letter dated July 10, 2015

(ATTACHMENT A-1 follows, and is 4 pages total)

July 10, 2015

Tim Beals
Planning Director
Sierra County
101 Courthouse Square
Downieville, CA 95936

RE: Sierra County Housing Element Update Assistance

Dear Tim,

This letter serves as our proposal to assist the County of Sierra in updating its Housing Element and conducting the associated environmental review. While we will only be involved in assisting the County with technical aspects of the project, we are flexible in our approach and available to expand our involvement to better fit the County's needs.

Scope of Services

Task 1: Administrative Draft Housing Element

The Consultants will prepare an administrative draft Housing Element. The Consultants will provide to the County all native files used to prepare the draft (e.g., Microsoft Word and Excel and ArcMap GIS) and source documents gathered in the development of the draft document.

Task 1.1: Administrative Review Draft Housing Element Background Report

Sub-Task 1.1A: Document Review

The Consultants will review all applicable County, regional, and State documents pertaining to the Housing Element update, including but not limited to, the County General Plan, Specific Plans, Zoning Ordinance, building codes and permit data, and any other County housing policies and programs.

Sub-Task 1.1B: Housing Needs Assessment

The Housing Needs Assessment is a comprehensive evaluation of current demographic, employment, housing, and housing market conditions and trends. This section will be used as the basis for determining the existing unmet housing needs in Sierra County.

The Consultants will prepare a thorough housing needs assessment of housing needs for all income groups and identify the County's special housing needs. The following topic areas will be included in this assessment:

Demographic Profile and Employment Profile. This section establishes "baseline" population and employment characteristics for the county, including population growth trends, age characteristics, race and ethnicity, income, and employment trends, as well as population and

employment projections. The Consultants will update the demographic and employment profile for Sierra County using the ABAG pre-approved data package.

Household Characteristics and Housing Supply. The Consultants will use recent data sources to update the description of the existing housing stock in terms of housing stock growth and composition, vacancy rates, housing age and conditions, and overcrowding. The Consultants will also describe housing cost burdens and the ability of households of different income levels to pay for housing. The Consultants will describe current housing market trends, home sales/prices, rental rates, and the impacts of foreclosures using recent data sources (e.g., DataQuick, Zillow, CalREALTORS records) and based on conversations with local realtors.

Special Needs Housing Analysis. The Consultants will update the analysis of housing needs for special needs populations, including senior households, persons with disabilities, large families, single female-headed households, farm workers, extremely low-income households, and persons in need of emergency shelter.

The Consultants will address the new requirements of SB 812 (2010), which require housing elements to include an analysis of persons with developmental disabilities.

Sub-Task 1.1C: Future Housing Needs Assessment

The Future Housing Needs Assessment will include a description of the County's 2014-2022 Regional Housing Needs Allocation (RHNA).

Units Approved, Built, or Under Construction. Since the RHNA period starts on January 1, 2014, the County will be able to count units that are approved or under construction as of that date, or completed after that date, but before Housing Element adoption. The Consultants will count any of these units against the RHNA and calculate the remaining housing need.

Sub-Task 1.1D: Housing Resource Inventory

This section analyzes the resources and opportunities available for the development, rehabilitation, and preservation of housing. Included is an inventory and analysis of the land resources (i.e., vacant and underutilized sites), as well as the financial and administrative resources available to support housing activities. The vacant sites inventory will be the bulk of the work in this sub-task.

Vacant Sites Inventory. The Consultants will review and update the vacant and underutilized sites inventory from the existing Housing Element to reflect the current (2015) capacity on vacant and underutilized sites in the county. The vacant sites inventory will be a parcel-specific land inventory as required by AB 2348.

The Consultants will strive to ensure that the inventory provides sufficient sites to meet the County's RHNA for both affordable and market-rate housing. If this analysis reveals insufficient sites, the Consultants will work with County staff to expand the inventory and propose possible sites for rezoning.

Adequacy of Public Facilities and Services. The Consultants will prepare an assessment of the adequacy of water and wastewater infrastructure to meet existing and future housing needs, based on information from local water and wastewater master plans, specific plans, and County staff input.

Inventory of Financial and Administrative Resources. The Consultants will describe local, State, and Federal financial and administrative resources available to help the County implement its housing programs. Based on information provided by County staff, the Consultants will

describe projected funds, including possible CDBG and HOME funds. This section will also include a description of the County's current (2014) housing programs.

Existing Affordable Housing. The Consultants will prepare a complete list of subsidized affordable housing developments in Sierra County. The list will include information regarding the number of units, target income groups, funding sources, year built, expiration of affordability covenants, and waiting list information.

At-Risk Analysis. As required by State law, the Consultants will identify any publicly-assisted affordable housing units that are at risk of converting to market rate within 10 years from the Housing Element due date (i.e., through 2024). If at-risk units are identified, the Consultants will analyze the potential risk of conversion and estimate and analyze the costs of replacing versus preserving the units. The Consultants will also identify qualified entities and potential Federal, State, and local funding sources to preserve at-risk units.

Energy Conservation Opportunities. The Consultants will describe opportunities for energy conservation, including the County's existing General Plan policies that promote energy conservation, and alternative energy and green building measures. The Consultants will also describe local energy conservation programs, such as weatherization and rebate programs provided by local utility companies.

Sub-Task 1.1E: Analysis of Constraints

The Consultants will review and update the analysis of both governmental and non-governmental constraints, such as land and development costs, site constraints, existing or planned infrastructure, land use controls, building code regulations, fees, and permit and processing procedures.

The Consultants will also analyze constraints on housing for persons with disabilities as required by SB 520 (2002), as well as the County's current permitting procedures for emergency shelters, transitional and supportive housing, and single-room occupancy units. The Consultants will update this section to address the current economic climate and housing market.

The housing constraints analysis will document local efforts to remove governmental constraints to improve the County's ability to meet its share of the regional housing needs.

Task 1.2: Administrative Review Draft Policy/Program Evaluation

The Consultants will review and evaluate implementation of the existing Housing Element policies and programs based on information provided by County staff. The evaluation will identify which programs have been accomplished, which programs have been the most successful, and why some housing programs have not been implemented or have been proven unsuccessful. The Consultants will rely on annual Housing Element reports submitted to HCD, if available.

Task 1.3: Administrative Review Draft Policy Document

The Consultants will update the existing Housing Element goals, policies, programs, and quantified objectives based on the evaluation of the existing Housing Element, the housing needs and constraints identified in the Background Report, recent changes to State Housing Element Law, public input from the community meetings, and feedback from County staff. Housing policies and programs will build upon the most successful policies and programs from the existing Housing Element.

Task 2: Assistance with Responses to HCD Comments

During HCD's review process the Consultants will assist the County with responding to any questions he/she may have early in the process. It is assumed that the Consultants will not attend meetings or participate in conference calls with HCD, develop additional data, or prepare written responses.

Task 3: Draft Initial Study/Negative Declaration

The Consultants will prepare a screencheck draft Initial Study to determine the appropriate project environmental document and review process. While we cannot predict in advance what level of environmental review will be required and the extent of needed mitigation until the draft Housing Element has been prepared, for the purpose of providing a cost estimate, we have budgeted for a Negative Declaration.

The Consultants will prepare an Initial Study/Negative Declaration (IS/ND) using the most current State CEQA Guidelines checklist. Our basis for proposing an IS/ND is that the Housing Element implements the General Plan. Assuming that no significant land use changes are proposed in the Housing Element, environmental impacts associated with residential development should already have been evaluated in the previous General Plan environmental documentation.

In the event that a more robust environmental analysis is required, the Consultants will prepare a scope of work for additional environmental review.

Schedule

The Consultants will prepare the Administrative Draft Housing Element (Task 1) by September 1, 2015. We will prepare the Initial Study and Negative Declaration within 30 days of the end of the 60-day HCD review period.

Compensation

Mintier Harnish will bill its services monthly on a time-and-materials basis according to the attached 2015 Billing Rate Schedule. Total cost for the services outlined shall not exceed \$12,500 without the express approval of the County.

We look forward to discussing our proposal with you in more detail and look forward ultimately to working with you and the County on this important project.

Sincerely,



Jim Harnish
Principal/Owner

Attachments: 2015 Billing Rate Schedule

October 20, 2015



1415 20TH STREET
 SACRAMENTO, CALIFORNIA 95811
 (916) 446-0522
 FAX (916) 446-7520
 mintier@mintierharnish.com
 www.mintierharnish.com

BILLING RATE SCHEDULE

Effective July 1, 2015*

PROFESSIONAL SERVICES

Principal/Owner	\$225/hour
Senior Associate	TBD
Principal Planner	\$185/hour
Senior Project Manager	\$170/hour
Project Manager	\$155/hour
Associate	\$140/hour
Planner	\$120/hour
Business Manager	\$100/hour
Office Manager	\$85/hour
Graphic Production Manager	\$85/hour
Research Assistant	\$50/hour

EXPENSES

Mileage**	\$.58/mile
Travel Expenses	Actual Cost
Postage and Shipping	Actual Cost
Photocopies	\$.15/page (B&W 8½ x 11 or 8½ x 14) \$.50/page (Color 8½ x 11 or 8½ x 14) \$.30/page (B&W 11 x 17) \$1.00 (Color 11 x 17)
Large Format Printer	\$.75/sq. ft. (B&W) \$4.00/sq. ft. (Color)
\$8.00/sq. ft. (Glossy Photo)	
Subcontractors	Actual Cost

*Billing rates are subject to revision effective January 1 of each year.

** Mileage rates subject to change depending on IRS regulations.

ATTACHMENT B

PAYMENT

For all work performed under this Agreement, COUNTY shall pay CONTRACTOR as follows:

B.1 CONTRACT FEE. COUNTY shall pay CONTRACTOR for monthly billed services on a time-and-materials basis according to CONTRACTOR's 2015 Billing Rate Schedule, the total cost of which payments shall not exceed the amount of **Twelve Thousand, Five Hundred Dollars and no cents (\$12,500.00)**. CONTRACTOR may submit requests for payment on invoice forms showing all work completed and delivered to the County Planning Director as of the date of the invoice. Invoices shall be substantially in the form of the invoice attached hereto as Attachment E. Payment shall be made within thirty (30) days after the submission of the invoice, provided however, that payment is contingent upon the County Planning Director accepting the work product that is the subject of the invoice as being substantially in compliance with the requirements of this Agreement and meeting the legislative intent of the COUNTY. Should the Planning Director determine that the work product submitted needs to be revised in order to be acceptable, then payment shall not be made until after the work product is resubmitted and accepted by the County Planning Director.

In no event shall total compensation paid to CONTRACTOR under this Agreement exceed **\$12,500.00**.

B.2 TRAVEL COSTS. Included in base fee.

B.3 AUTHORIZATION REQUIRED. Services performed by CONTRACTOR and not authorized in this Agreement shall not be paid for by COUNTY. Payment for additional services shall be made to CONTRACTOR by COUNTY if, and only if, this Agreement is amended in writing by both parties in advance of performing additional services.

B.4 SPECIAL CIRCUMSTANCES. None.

B.5 MAXIMUM CONTRACT AMOUNT. The maximum amount payable to CONTRACTOR under this Agreement shall not exceed the following:

B.1	Base Contract Fee	\$12,500.00
B.2	Travel Costs	(included in base fee)
B.3	Authorization Required	0
B.4	Special Circumstances	0
	MAXIMUM CONTRACT AMOUNT	\$12,500.00

B.6 CONTRACT FEE IN EVENT OF TERMINATION In the event of termination of this Agreement by COUNTY for any reason other than due to the failure of CONTRACTOR's performance (non-performance), then COUNTY shall pay CONTRACTOR for work completed with respect to the invoices received by the Planning Director prior to COUNTY notifying CONTRACTOR of termination of this Agreement. In the event that COUNTY terminates this Agreement due to non-performance by CONTRACTOR or CONTRACTOR ceases performance or otherwise constructively terminates this Agreement, then in such event, recognizing that the value to COUNTY under this Agreement is the completion and delivery of the planning documents as more fully described in Attachment A – Paragraph A.1, then CONTRACTOR shall not be entitled to any compensation.

ATTACHMENT B - Page 1 of 1

ATTACHMENT C
ADDITIONAL PROVISIONS
(None)

ATTACHMENT D
GENERAL PROVISIONS

D.1 INDEPENDENT CONTRACTOR. For all purposes arising out of this Agreement, CONTRACTOR shall be an independent contractor and CONTRACTOR and each and every employee, agent, servant, partner, and shareholder of CONTRACTOR (collectively referred to as "The Contractor") shall not be, for any purpose of this Agreement, an employee of COUNTY. Furthermore, this Agreement shall not under any circumstance be construed or considered to be a joint powers agreement as described in *Government Code* Section 6000, et seq., or otherwise. As an independent contractor, the following shall apply:

D.1.1 CONTRACTOR shall determine the method, details and means of performing the services to be provided by CONTRACTOR as described in this Agreement.

D.1.2 CONTRACTOR shall be responsible to COUNTY only for the requirements and results specified by this Agreement and, except as specifically provided in this Agreement, shall not be subject to COUNTY's control with respect to the physical actions or activities of CONTRACTOR in fulfillment of the requirements of this Agreement.

D.1.3 CONTRACTOR shall be responsible for its own operating costs and expenses, property and income taxes, workers' compensation insurance and any other costs and expenses in connection with performance of services under this Agreement.

D.1.4 CONTRACTOR is not, and shall not be, entitled to receive from or through COUNTY, and COUNTY shall not provide or be obligated to provide the CONTRACTOR with workers' compensation coverage, unemployment insurance coverage or any other type of employee or worker insurance or benefit coverage required or provided by any federal, state or local law or regulation for, or normally afforded to, any employee of COUNTY.

D.1.5 The CONTRACTOR shall not be entitled to have COUNTY withhold or pay, and COUNTY shall not withhold or pay, on behalf of the CONTRACTOR any tax or money relating to the Social Security Old Age Pension Program, Social Security Disability Program or any other type of pension, annuity or disability program required or provided by any federal, state or local law or regulation for, or normally afforded to, an employee of COUNTY.

D.1.6 The CONTRACTOR shall not be entitled to participate in, or receive any benefit from, or make any claim against any COUNTY fringe benefit program including, but not limited to, COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan, or other type of benefit program, plan or coverage designated for, provided to, or offered to COUNTY's employees.

D.1.7 COUNTY shall not withhold or pay on behalf of CONTRACTOR any federal, state or local tax including, but not limited to, any personal income tax owed by CONTRACTOR.

D.1.8 The CONTRACTOR is, and at all times during the term of this Agreement shall represent and conduct itself as, an independent contractor and not as an employee of COUNTY.

D.1.9 CONTRACTOR shall not have the authority, express or implied, to act on behalf of, bind or obligate the COUNTY in any way without the written consent of the COUNTY.

D.2 LICENSES, PERMITS, ETC. CONTRACTOR represents and warrants to COUNTY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to COUNTY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed.

D.3 CHANGE IN STATUTES OR REGULATIONS. If there is a change of statutes or regulations applicable to the subject matter of this Agreement, both parties agree to be governed by the new provisions, unless either party gives notice to terminate pursuant to the terms of this Agreement.

D.4 TIME. CONTRACTOR shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONTRACTOR's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

D.5 INSURANCE.

D.5.1 Prior to rendering services provided by the terms and conditions of this Agreement, CONTRACTOR shall acquire and maintain during the term of this Agreement insurance coverage through and with an insurer acceptable to COUNTY, naming the COUNTY and COUNTY's officers, employees, agents and independent contractors as additional insured (hereinafter referred to as "the insurance"). The insurance shall contain the coverage indicated by the checked items below.

- D.5.1.1** Comprehensive general liability insurance including comprehensive public liability insurance with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and with not less than One Million Dollars (\$1,000,000) aggregate; CONTRACTOR shall insure both COUNTY and CONTRACTOR against any liability arising under or related to this Agreement.
- D.5.1.2** During the term of this Agreement, CONTRACTOR shall maintain in full force and effect a policy of professional errors and omissions insurance with policy limits of not less than One Million Dollars (\$1,000,000) per incident and One Million Dollars (\$1,000,000) annual aggregate, with deductible or self-insured portion not to exceed Two Thousand Five Hundred Dollars (\$2,500).
- D.5.1.3** Comprehensive automobile liability insurance with minimum coverage of One Hundred Thousand Dollars (\$100,000) per occurrence and with not less than One Hundred Thousand Dollars (\$100,000) on reserve in the aggregate, with combined single limit including owned, non-owned and hired vehicles.
- D.5.1.4** Workers' Compensation Insurance coverage for all CONTRACTOR employees and other persons for whom CONTRACTOR is responsible to provide such insurance coverage, as provided by Division 4 and 4.5 of the *Labor Code*.

D.5.2 The limits of insurance herein shall not limit the liability of the CONTRACTOR hereunder.

D.5.3 In respect to any insurance herein, if the aggregate limit available becomes less than that required above, other excess insurance shall be acquired and maintained immediately. For the purpose of any insurance term of this Agreement, "aggregate limit available" is defined as the total policy limits available for all claims made during the policy period.

D.5.4 The insurance shall include an endorsement that no cancellation or material change adversely affecting any coverage provided by the insurance may be made until twenty (20) days after written notice is delivered to COUNTY.

D.5.5 The insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY at its sole and absolute discretion. The amount of any deductible payable by the insured shall be subject to the prior approval of the COUNTY and the COUNTY, as a condition of its approval, may require such proof of the adequacy of CONTRACTOR's financial resources as it may see fit.

D.5.6 Prior to CONTRACTOR rendering services provided by this Agreement, and immediately upon acquiring additional insurance, CONTRACTOR shall deliver a certificate of insurance describing the insurance coverages and endorsements to:

County of Sierra
Auditor/Risk-Manager
P.O. Drawer 425
Downieville, CA 95936

D.5.7 CONTRACTOR shall not render services under the terms and conditions of this Agreement unless each type of insurance coverage and endorsement is in effect and CONTRACTOR has delivered the certificate(s) of insurance to COUNTY as previously described. If CONTRACTOR shall fail to procure and maintain said insurance, COUNTY may, but shall not be required to, procure and maintain the same, and the premiums of such insurance shall be paid by CONTRACTOR to COUNTY upon demand. The policies of insurance provided herein which are to be provided by CONTRACTOR shall be for a period of not less than one year, it being understood and agreed that twenty (20) days prior to the expiration of any policy of insurance, CONTRACTOR will deliver to COUNTY a renewal or new policy to take the place of the policy expiring.

D.5.8 COUNTY shall have the right to request such further coverages and/or endorsements on the insurance as COUNTY deems necessary, at CONTRACTOR's expense. The amounts, insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY in its sole and absolute discretion.

D.5.9 Any subcontractor(s), independent contractor(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of CONTRACTOR, as may be allowed by this Agreement (hereinafter referred to as the "SECONDARY PARTIES"), shall comply with each term and condition of this Section D.5 entitled "INSURANCE". Furthermore, CONTRACTOR shall be responsible for the SECONDARY PARTIES' acts and satisfactory performance of the terms and conditions of this Agreement.

D.6 INDEMNITY. CONTRACTOR shall defend, indemnify, and hold harmless COUNTY, its elected and appointed councils, boards, commissions, officers, agents, and employees from any liability for damage or claims for damage for any economic loss or personal injury, including death, as well as for property damage, which may arise from the intentional or negligent acts or omissions of CONTRACTOR in the performance of services rendered under this Agreement by CONTRACTOR, or any of CONTRACTOR's officers, agents, employees, contractors, or subcontractors.

D.7 CONTRACTOR NOT AGENT. Except as COUNTY may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of COUNTY in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this Agreement to bind COUNTY to any obligation whatsoever.

D.8 ASSIGNMENT PROHIBITED. CONTRACTOR may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.

D.9 PERSONNEL. CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that COUNTY, in its sole discretion at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving written notice from COUNTY of its desire for removal of such person or persons.

D.10 STANDARD OF PERFORMANCE. CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to COUNTY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession.

D.11 POSSESSORY INTEREST. The parties to this Agreement recognize that certain rights to property may create a "possessory interest", as those words are used in the *California Revenue and Taxation Code* (107). For all purposes of compliance by COUNTY with Section 107.6 of the *California Revenue and Taxation Code*, this recital shall be deemed full compliance by the COUNTY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties hereto. A taxable

possessory interest may be created by this, if created, and the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

D.12 TAXES. CONTRACTOR hereby grants to the COUNTY the authority to deduct from any payments to CONTRACTOR any COUNTY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONTRACTOR.

D.13 TERMINATION. COUNTY shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to CONTRACTOR. In the event COUNTY gives notice of termination, CONTRACTOR shall immediately cease rendering service upon receipt of such written notice and the following shall apply:

D.13.1.1 CONTRACTOR shall deliver to COUNTY copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, computer storage medium (tapes, disks, diskettes, etc.) and every other means of recording upon any tangible thing, and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

D.13.1.2 COUNTY shall pay CONTRACTOR the reasonable value of services rendered by CONTRACTOR to the date of termination pursuant to this Agreement not to exceed the amount documented by CONTRACTOR and approved by COUNTY as work accomplished to date; provided, however, that COUNTY shall not in any manner be liable for lost profits which might have been made by CONTRACTOR had CONTRACTOR completed the services required by this Agreement. In this regard, CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of the COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of the COUNTY shall be final. The foregoing is cumulative and does not affect any right or remedy which COUNTY may have in law or equity.

D.13.2 CONTRACTOR may terminate its services under this Agreement upon thirty (30) working days written notice to the COUNTY, without liability for damages, if CONTRACTOR is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY, provided that CONTRACTOR has first provided COUNTY with a written notice of any alleged breach, specifying the nature of the alleged breach and providing not less than ten (10) working days within which the COUNTY may cure the alleged breach.

D.14 OWNERSHIP OF INFORMATION. All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become and/or remain the property of COUNTY, and CONTRACTOR agrees to deliver reproducible copies of such documents to COUNTY on completion of the services hereunder. The COUNTY agrees to indemnify and hold CONTRACTOR harmless from any claim arising out of reuse of the information for other than this project.

D.15 WAIVER. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

D.16 COMPLETENESS OF INSTRUMENT. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made, express or implied.

D.17 SUPERSEDES PRIOR AGREEMENTS. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

D.18 MINOR AUDITOR REVISION. In the event the Sierra County Auditor's office finds a mathematical discrepancy between the terms of the Agreement and actual invoices or payments, provided that such discrepancy does not exceed 1% of the Agreement amount, the Auditor's office may make the adjustment in any payment or payments without requiring an amendment to the Agreement to provide for such adjustment. Should the COUNTY or the CONTRACTOR disagree with such adjustment, they reserve the right to contest such adjustment and/or to request corrective amendment.

D.19 CAPTIONS. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

D.20 DEFINITIONS. Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

D.20.1 NUMBER AND GENDER. In this Agreement, the neuter gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

D.20.2 MANDATORY AND PERMISSIVE. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

D.21 TERM INCLUDES EXTENSIONS. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

D.22 SUCCESSORS AND ASSIGNS. All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

D.23 MODIFICATION. No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

D.24 COUNTERPARTS. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

D.25 OTHER DOCUMENTS. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

D.26 PARTIAL INVALIDITY. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

D.27 VENUE. It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Sierra, State of California.

D.28 CONTROLLING LAW. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

D.29 CALIFORNIA TORT CLAIMS ACT. Notwithstanding any term or condition of the Agreement, the provisions, and related provisions, of the California Tort Claims Act, Division 3.6 of the *Government Code*, are not waived by COUNTY and shall apply to any claim against COUNTY arising out of any acts or conduct under the terms and conditions of this Agreement.

D.30 TIME IS OF THE ESSENCE. Time is of the essence of this Agreement and each covenant and term herein.

D.31 AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement are in full compliance. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

D.32 CORPORATE AUTHORITY. If CONTRACTOR is a corporation or public agency, each individual executing this Agreement on behalf of said corporation or public agency represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the bylaws of said corporation or Board or Commission of said public agency, and that this Agreement is binding upon said corporation or public entity in accordance with its terms. If CONTRACTOR is a corporation, CONTRACTOR shall, within thirty (30) days after execution of this Agreement, deliver to COUNTY a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Agreement.

D.33 CONFLICT OF INTEREST.

D.33.1 LEGAL COMPLIANCE. CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the *California Government Code*, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100, including regulations promulgated by the California Fair Political Practices Commission.

D.33.2 ADVISEMENT. CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of this law, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of the question.

D.33.3 ADMONITION. Without limitation of the covenants in subparagraphs D.34.1 and D.34.2, CONTRACTOR is admonished hereby as follows:

The statutes, regulations and laws referenced in this provision D.34 include, but are not limited to, a prohibition against any public officer, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer has a direct or indirect financial interest. A violation occurs if the public officer influences or participates in any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest of any type, with certain narrow exceptions.

D.34 NONDISCRIMINATION. During the performance of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR or of the COUNTY or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex. CONTRACTOR shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (*Government Code* Section 12900 et seq.). The applicable regulations of the Fair Employment Housing Commission implementing *Government Code* Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the *California Administrative Code* are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulation issued pursuant to said Act. CONTRACTOR shall give written notice of its obligations under this clause to any labor agreement. CONTRACTOR shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

D.35 JOINT AND SEVERAL LIABILITY. If any party consists of more than one person or entity, the liability of each person or entity signing this Agreement shall be joint and several.

D.36 TAXPAYER I.D. NUMBER. The COUNTY shall not disburse any payments to CONTRACTOR pursuant to this Agreement until CONTRACTOR supplies the latter's Taxpayer I.D. Number or Social Security Number (as required on the line under CONTRACTOR's signature on page 2 of this Agreement).

D.37 NOTICES. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "COUNTY":

County of Sierra
Tim H. Beals
P.O. Drawer 530
Downieville, CA 95936

If to "CONTRACTOR":

Jim Harnish, Planning Consultants
1415 20th Street
Sacramento, CA 95811

ATTACHMENT E
FORM OF INVOICE

Mintier Harnish

Project Name

Invoice

DATE OF SERVICES

Work Completed:

- Description, date, task number

Deliverables:

- Description

Payment Request (per schedule for deliverables)

Total \$ _____