

**Sierra County
Board of Supervisors'
Agenda Transmittal &
Record of Proceedings**

MEETING DATE: Ags. 4 th , 2020	TYPE OF AGENDA ITEM: <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Timed <input type="checkbox"/> Consent
---	---

DEPARTMENT: Auditor APPROVING PARTY: Van A. Maddox PHONE NUMBER: 530-289-3286
--

AGENDA ITEM: Approval of an agreement with Attorney Cunnan to defend the accused in a homicide trial.

SUPPORTIVE DOCUMENTS ATTACHED: Memo Resolution Agreement Other

BACKGROUND INFORMATION: The Courts contacted me Wednesday stating that the Judge had appointed attorney Jeff Cunnan to defend John Thomas Conway. The Court asked if we had a contract for the attorney and a rate per hour. I contacted County Counsel and she did some research and put together the attached agreement. There will be a budgeted amount in the final budget of a \$100,000. If more is needed a budget amendment will be submitted to the Board. All costs of trial to the county over \$87,000 should be reimbursed by the State. The additional \$13,000 in the budget is to cover any unreimbursed costs.

FUNDING SOURCE: GF and State
GENERAL FUND IMPACT: General Fund Impact
OTHER FUND:
AMOUNT: \$Unknown N/A

ARE ADDITIONAL PERSONNEL REQUIRED?

 Yes, -- --
 No

IS THIS ITEM ALLOCATED IN THE BUDGET? Yes No

IS A BUDGET TRANSFER REQUIRED? Yes No

SPACE BELOW FOR CLERK'S USE

<p>BOARD ACTION:</p> <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2020- _____ Agreement 2020- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
---	---	---

COMMENTS:

CLERK TO THE BOARD

DATE

**AGREEMENT FOR
PROFESSIONAL LEGAL
SERVICES**

THIS AGREEMENT for Professional Legal 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 ("the COUNTY"), and

Jeff Cunan (the ATTORNEY)

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:

FACTUAL BACKGROUND

- A. The Sierra County District Attorney filed charges in *People v. John Thomas Conway*.
- B. On July 3, 2020, the Sierra County Superior Court appointed ATTORNEY Jeff Cunan to represent John Thomas Conway.

OPERATIVE PROVISIONS

1. SERVICES.

The ATTORNEY shall provide those audit services described in Attachment "A", Provision A.1. ATTORNEY shall provide said services at the time, place and in the manner specified in Attachment "A", Provisions A.2 through A.3. The particular matters authorized under this Agreement are those set forth or as from time to time endorsed on Attachment F.

2. TERM.

Commencement Date: July 3, 2020

Termination Date: July 3, 2021

3. RENEWAL

This Agreement shall automatically renew on the annual anniversary of the Commencement Date set for in Section 2 above unless otherwise terminated by either party pursuant to the terms hereof, as permitted by law, or upon 30 days prior written notice. Nothing in this provision is intended to supercede the legal obligations related to attorney withdrawal from a pending legal matter.

4. PAYMENT.

COUNTY shall pay ATTORNEY 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 ATTORNEY for services rendered pursuant to this Agreement. ATTORNEY shall submit all billings for said services to COUNTY in the manner specified in Attachment "B".

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

ATTORNEY 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 ATTORNEY only those facilities, equipment, and other materials and shall perform those obligations listed in Attachment "A.4".

6. ADDITIONAL PROVISIONS.

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

7. 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.

8. DESIGNATED REPRESENTATIVES.

Sierra County Auditor is the designated representative of the COUNTY and will administer this Agreement for the COUNTY. Jeff Cunan is the authorized representative for ATTORNEY. Changes in designated representatives shall occur only by advance written notice to the other party.

9. 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 - Scope of Services
- Attachment F - Billing Information

10. AGREEMENT DATE. The Agreement Date is

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

"COUNTY"

"ATTORNEY"

COUNTY OF SIERRA

By _____
JIM BEARD

JEFF CUNAN

ATTEST:

APPROVED AS TO FORM:

HEATHER FOSTER
Clerk of the Board

DAVID PRENTICE
County Counsel

ATTACHMENT A

A.1 SCOPE OF SERVICES AND DUTIES.

ATTORNEY for this Agreement shall be Jeff Cunan. Any change in attorney shall be first authorized in writing by COUNTY.

ATTORNEY shall have full authority to act on all daily operational matters under this Agreement and shall serve as lead counsel for all law and motion appearances, pretrial and trial proceedings, settlement conferences or meetings of counsel for parties, depositions, document productions, and all court and other proceedings in which substantive rights of the parties may be determined. Designation of other counsel shall be subject to COUNTY'S written approval.

ATTORNEY shall perform the services of defense counsel in the case of *People v. John Thomas Conway*, filed in Sierra County Superior Court.

A.2. TIME SERVICES RENDERED.

Work will begin no later than the date the Court appointed ATTORNEY as defense counsel, unless another date is arranged between the parties in advance. Thereafter, ATTORNEY shall perform services in a diligently and timely manner. Reports are to be issued within six months of the end of the fiscal's close unless other arrangements have been agreed to.

A.3. MANNER SERVICES ARE TO BE PERFORMED.

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

ATTACHMENT B

PAYMENT

COUNTY shall pay ATTORNEY as follows:

B.1 BASE CONTRACT FEE. The County shall pay the ATTORNEY a base rate hourly fee of \$70.00/hour for all services rendered under this Agreement.

B.2 MILEAGE: COUNTY shall reimburse ATTORNEY for travel by private vehicle as required by this Agreement at the standard mileage rate allow by the COUNTY to reimburse COUNTY staff or the amount reimbursed pursuant California Government Code sections 15200-15204, whichever is less.

B.3 TRAVEL COSTS: COUNTY shall not pay ATTORNEY for meals, lodging or other travel costs not included in this Agreement unless said costs are approved in advance by the COUNTY Auditor, and then the COUNTY shall pay COUNTY per diem rates in effect on the date of the invoice upon presentation of invoices. Irrespective of any prior approvals, the total of such travel cost reimbursements shall not exceed those amounts reimbursed to the COUNTY pursuant to California Government Code sections 15200-15204, nor will any claims for expense reimbursement be approved and/or paid for categories of expenses not authorized for reimbursement under California Government Code sections 15200-15204.

B.4 AUTHORIZATION REQUIRED. Services performed by ATTORNEY and not authorized in this Agreement shall not be paid for by COUNTY. Payment for additional services shall be made to ATTORNEY by COUNTY if, and only if, this Agreement is amended in writing by both parties in advance of performing additional services.

B.5 SPECIAL CIRCUMSTANCES. None.

B.6 MAXIMUM CONTRACT AMOUNT. The maximum amount payable to ATTORNEY under this Agreement shall not exceed the following: Twenty-five Thousand Dollars (\$25,000.00.) The parties agree that this amount may be renegotiated, subject to approval by the Board of Supervisors, when the amount paid under this contract reaches 95% of the maximum contract amount.

ATTACHMENT B-2 - Page 1 of 1
ATTACHMENT C

ADDITIONAL PROVISIONS

[NONE]

**ATTACHMENT D
GENERAL PROVISIONS**

D.1 INDEPENDENT ATTORNEY. For all purposes arising out of this Agreement, ATTORNEY shall be an independent contractor and each and every employee, agent, servant, partner, and shareholder of ATTORNEY (collectively referred to as "The ATTORNEY") 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 ATTORNEY, the following shall apply:

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

D.1.2 ATTORNEY 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 ATTORNEY in fulfillment of the requirements of this Agreement.

D.1.3 ATTORNEY 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 ATTORNEY is not, and shall not be, entitled to receive from or through COUNTY, and COUNTY shall not provide or be obligated to provide the ATTORNEY 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 ATTORNEY shall not be entitled to have COUNTY withhold or pay, and COUNTY shall not withhold or pay, on behalf of the ATTORNEY 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 ATTORNEY 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 ATTORNEY any federal, state or local tax including, but not limited to, any personal income tax owed by ATTORNEY.

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

D.1.9 ATTORNEY 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. ATTORNEY represents and warrants to COUNTY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for ATTORNEY to practice its profession. ATTORNEY represents and warrants to COUNTY that ATTORNEY 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 ATTORNEY 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. ATTORNEY shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of ATTORNEY'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, ATTORNEY 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 ATTORNEYS 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 (\$3,000,000) aggregate; ATTORNEY shall insure both COUNTY and ATTORNEY against any liability arising under or related to this Agreement.

D.5.1.2 During the term of this Agreement, ATTORNEY 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 (\$3,000,000) annual aggregate, with deductible or self-insured portion not to exceed Two Thousand Five Hundred Dollars (\$10,000).

D.5.1.3 Comprehensive automobile liability insurance with minimum coverage of One Hundred Thousand Dollars (\$300,000) per occurrence and with not less than One Hundred Thousand Dollars (\$300,000) 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 ATTORNEY employees and other persons for whom ATTORNEY 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 ATTORNEY 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 ATTORNEY's financial resources as it may see fit.

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

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

D.5.7 ATTORNEY shall not render services under the terms and conditions of this Agreement unless each type of insurance coverage and endorsement is in effect and ATTORNEY has delivered the certificate(s) of insurance to COUNTY as previously described. If ATTORNEY 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 ATTORNEY to COUNTY upon demand. The policies of insurance provided herein which are to be provided by ATTORNEY 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, ATTORNEY 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 coverage and/or endorsements on the insurance as COUNTY deems necessary, at ATTORNEY'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 ATTORNEY(s), independent ATTORNEY(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of ATTORNEY, 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, ATTORNEY shall be responsible for the SECONDARY PARTIES' acts and satisfactory performance of the terms and conditions of this Agreement.

D.6 INDEMNITY. ATTORNEY 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 ATTORNEY in the performance of services rendered under this Agreement by ATTORNEY, or any of ATTORNEY's officers, agents, and/or employees.

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

D.8 ASSIGNMENT PROHIBITED. ATTORNEY 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. ATTORNEY 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 ATTORNEY to perform services pursuant to this Agreement, ATTORNEY 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. ATTORNEY 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 ATTORNEY is engaged. All products of whatsoever nature which ATTORNEY 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 ATTORNEY'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. ATTORNEY hereby grants to the COUNTY the authority to deduct from any payments to ATTORNEY any COUNTY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to ATTORNEY.

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

D.13.1 ATTORNEY 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, photo stating, photographing, computer storage medium (tapes, CD, DVD, 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 COUNTY shall pay ATTORNEY the reasonable value of services rendered by ATTORNEY to the date of termination pursuant to this Agreement not to exceed the amount documented by ATTORNEY and approved by COUNTY as work accomplished to date, however, that in no event shall any payment under this provision exceed Five Thousand Dollars (\$5,000.00). Further, COUNTY shall not in any manner be liable for lost profits which might have been made by ATTORNEY had ATTORNEY completed the services required by this Agreement. In this regard, ATTORNEY 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 ATTORNEY. In the event of a dispute as to the reasonable value of the services rendered by ATTORNEY, 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.13.3 ATTORNEY may terminate its services under this Agreement upon thirty (30) working days written notice to the COUNTY, without liability for damages, if ATTORNEY is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY, provided that ATTORNEY 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. ATTORNEY is solely responsible for complying with State law and the Rules of Professional Conduct related to withdrawal.

D.13.4 ATTORNEY shall provide a closing report upon termination which shall include the following:

1. A brief description of the case facts.
2. A discussion of applicable law.
3. A list and description of all future scheduled court appearances and outstanding discovery matters.

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 ATTORNEY agrees to deliver reproducible copies of such documents to COUNTY on completion of the services hereunder. The COUNTY agrees to indemnify and hold ATTORNEY 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 ATTORNEY 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 ATTORNEY 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 ATTORNEY is a corporation, ATTORNEY 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. ATTORNEY 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. ATTORNEY 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, ATTORNEY 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 ATTORNEY 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 ATTORNEY or any business firm in which ATTORNEY has an interest of any type, with certain narrow exceptions.

D.34 NONDISCRIMINATION. During the performance of this Agreement, ATTORNEY shall not unlawfully discriminate against any employee of the ATTORNEY 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. ATTORNEY 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. ATTORNEY 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. ATTORNEY 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. ATTORNEY shall give written notice of its obligations under this clause to any labor agreement. ATTORNEY 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 ATTORNEY pursuant to this Agreement until ATTORNEY supplies the latter's Taxpayer I.D. Number or Social Security Number (as required on the line under ATTORNEY'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":

Auditor/Treasurer-Tax Collector
County of Sierra
Post Office Box 425
Downieville, CA 95936

With a copy to:
County Counsel
County of Sierra
Post Office Drawn D
Downieville, CA 95936

If to "ATTORNEY":

Jeff Cunan
Need Address

ATTACHMENT D - PAGE 7 OF 7
Jeff Cunan

(Taxpayers I.D. or Social Security No.)

County of Sierra
Auditor's Office
Post Office Box 425
Downieville, California 95936

Our File No. _____

Re: _____

STATEMENT OF ACCOUNT FOR

BALANCE FORWARD

\$

TOTAL CURRENT CHARGES:

Total \$ _____

ATTACHMENT F

NONE