



**Request for Proposals
County Counsel Services
For
Alpine County, California**

Closing Date September 16, 2022 @ noon (12 p.m.)

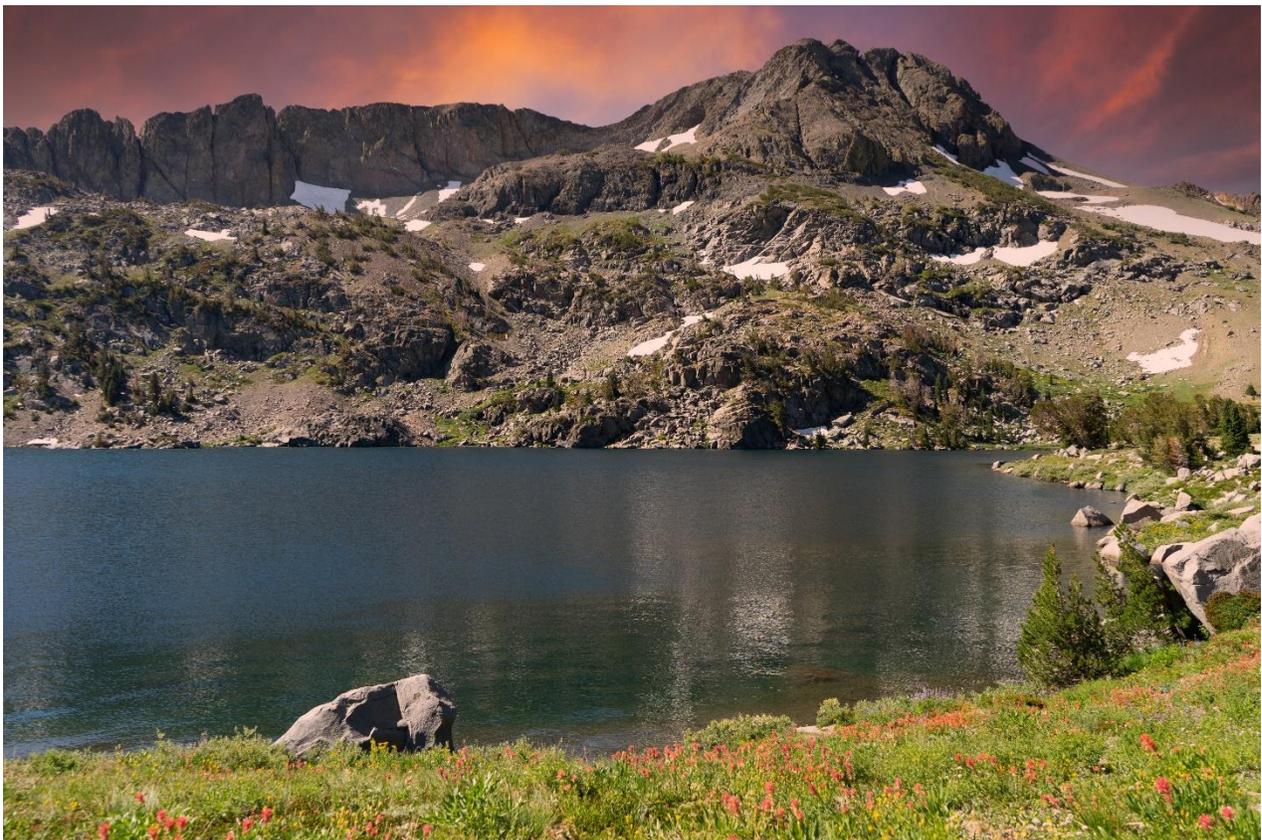


Photo Credit: Tim Streeper, Alpine County Public Health Program Manager, Winnemucca Lake

I. Introduction

The County of Alpine, a political subdivision of the State of California, is accepting proposals from attorneys at law or a law firm, licensed to practice in the state of California and Federal Courts, to provide County Counsel legal services to the Board of Supervisors, Elected and Appointed Officials, and County Department Heads.

Situated in the Sierra Nevada mountains between Lake Tahoe and the northern ridge of Yosemite, Alpine County is the smallest County in California. According to the 2020 Census, the total population of Alpine County was 1,159 residents. There are no incorporated cities or towns in Alpine County, with Markleeville as the County seat, as well as the other communities of Woodfords, Hung-a-lal-ti, Bear Valley and portions of Kirkwood. The attorney(s) serving as County Counsel needs to work both through telecommunications and in person.

The need for legal services is approximately 120 hours per month, or approximately 30 hours per week, emphasizing certain weekdays such as Monday, Tuesday and Wednesday, but subject to mutual understandings to be defined in the contract, and negotiated with the County.

The County Counsel attends all Board of Supervisor meetings, with the regular monthly meetings occurring on the first and third Tuesday of each month. County Counsel attends other meetings as necessary for public entity representation and defense, such as, but not limited to Local Transportation Commission, Local Area Formation Commission and Board of Equalization. Additionally, it is expected that County Counsel will be available to meet with Department Head's as requested. In brief, County Counsel is appointed to assist the County with civil law, whereas the District Attorney is elected to prosecute criminal law.

II. Scope of Work

The County is accepting proposals to retain by contract a qualified attorney(s) or law firm for the provision of needed legal services. The Office of County Counsel is defined in Alpine County Code Section 2.25 *County Counsel* which may be viewed on the County's website

<https://www.codepublishing.com/CA/AlpineCounty/#!/AlpineCounty02/AlpineCounty0225.html#2.25>

The attorney(s) or law firm will receive general direction for the Alpine County Board of Supervisors. The selected attorney(s) or law firm will be expected to perform all services described below:

- Serves as legal advisor to the Board of Supervisors, county officers, county departments, their employees, boards and dependent special districts on their respective powers, duties, functions and obligations.
- Attends all Board of Supervisor's meetings, unless excused.
- Acts as attorney for the county, county agencies, county officers and county employees in civil actions instituted or brought against these entities or person when acting as or on behalf of the County.

- Studies, interprets and applies statutes, ordinances, court decisions and legal opinions in the preparation of opinions, pleadings and briefs.
- Makes recommendations to the Board of Supervisors and County staff concerning the advisability to prosecute, compromise or dismiss civil litigation.
- Appears before courts and at administrative proceedings to represent the County's interests as required. Prosecutes for civil remedies to enforce County ordinances, abate public nuisances, recover for damages to County property and condemn property for public purposes or other matters.
- Provides legal services to the Office of Public Guardian/Public Conservator.
- Provides legal services to Child Protective Services.
- Represents the County in mental health proceedings as established by law
- Responds to and resolves difficult and sensitive citizen inquiries and complaints.
- Directs, oversees and participates in the development of the department's work plan, assigns work activities, projects and programs, monitors work flow, reviews and evaluates work projects, methods and practices.
- Coordinates department activities with those of other departments and outside agencies and organizations.
- Prepares and submits reports and necessary correspondence as required.
- Attends and participates in professional groups and committees.
- Researches, prepare or review of all written opinions, ordinances, resolutions, agreements, leases, deed, contracts, and other documents of a legal nature necessary or requested by the Board of Supervisors.
- Represents the County in the administration of all claims and litigation filed by or against it; provided, however, special counsel may be retained to defend or prosecute actions requiring special expertise, further provided, that outside counsel shall be retained in the event of a conflict of interest which disqualifies the attorney(s) from such representation.
- Renders advice and assistance in the administration of the County's general liability risk management and insurance programs.
- Provides advice and assistance to the County on labor-relation matters, review memoranda of understanding or other labor agreements; provides legal advice to County Department Heads regarding employee discipline, including documents, and; and representation of the County before mediators or arbitrators on matters arising from memorandum of understanding or the County's personnel rules.
- Monitors activities of any special counsel retained by the County.
- Attends all staff meetings or committee meetings deemed necessary and appropriate, or as requested by the Board of Supervisors;
- Provides conflict of interest to the County and staff in seeking advice from the Fair Political Practices Commission.
- Provides guidance concerning requirements of the Brown Act, Conflict of Interest, the Political Reform Act, the Public Records Act, due process and other legal requirements imposed by statute and common law.

- Responds to all Public Records Act requests.
- Represents and/or advises the County in litigation not covered by the County's self-insured risk pool (which provides coverage for tort claims and worker's compensation claims) or otherwise being handled by outside counsel.
- Prepares an impartial analysis of county ballot measures showing the effect of the measure on the existing law and operation of the measure.
- Serves as a legal advisor to the Grand Jury with respect to civil matters.
- To discharge all duties vested by law in the District Attorney of the County other than those of a public prosecutor.

The services provided by County Counsel shall be governed in accordance with all the laws of the State of California including but not limited to the special legal mandates described below:

Government Code Sections 27642, 27645, 27647, 26520, 26520.5, 26523, 26524, 26525, 26526, 26528, 26528.5, 26529

Welfare and Institutions Code 318.5

Elections Code 9313

Penal Code Section 934

IV. Qualifications

Alpine County seeks an attorney(s) or law firm, which has substantial experience in a broad range of County proceedings and the expertise necessary to meet all or most of the day to day specialized needs of the County. Statements of Qualification should identify the member of the firm who will be assigned to act as the County Counsel and identify the qualification, areas of expertise and prior experience of that individual. California. The final selection of County Counsel will be made by the Alpine County Board of Supervisors.

V. Submittal Requirements

Interested attorney(s) or law firms are requested to prepare qualifications using the following guidelines. Submittals should be sent electronically and as a hard copy.

1. Cover letter of interest, signed by an authorized representative committing to provide the legal services described above.
2. Resumes: Provide complete resumes of the person(s) designated to provide County Counsel services. Please include the following:
 - a. Certificates, licenses, including State Bar of California number.
 - b. Description of education (including name of educational institutions, degrees conferred and year of each degree).
 - c. Professional background and professional associations.
 - d. Any disciplinary action taken by the State Bar or any malpractice claims against any member of the firm in the last 10 years.

Firm qualifications: in addition to the above outlined individual(s) proposed for designation of County Counsel requirements also provide professional experience and qualifications of the firm and the designated individuals to provide the services specified in the Request for Proposals.

3. References: Provide contact information for at least three (3) municipal, public agency and/or key clients for which legal services have been provided in the last three years. Please include the contact person's name, address, phone number and email address.
4. Clients/Potential Conflicts of Interest
 - a. Identify any foreseeable or potential conflicts of interest with public clients you serve and the manner in which you would propose to resolve these conflicts.
 - b. For the person to be designated as County Counsel, list all public clients that he/she currently represents as general counsel, along with the meeting dates and time for each governing body.
 - c. List all parties, including private clients, relatives or any other individual or entities that could potentially pose a conflict of interest with your representation of the County of Alpine.
5. If the proposal is for a solo practitioner to act as County Counsel, please describe how services will be provided during absences (illness and vacation).

VI. Compensation

Proposals shall describe how the attorney(s) or firm proposes to bill for legal services provided, either on a flat monthly retainer, or on a different basis. If it is proposed that general services will be paid for through a retainer with additional charges for special services, the proposals should clearly define what would be considered to be within the scope of general services covered by the retainer and what services would be considered special services subject to additional charges, and the rates that would be charged for those special services. If hourly billing rates would be charged and those rates would vary for different types of work, such as litigation, indicate what rates will be charged for each type of service.

General advisory services for employment and land use matters should be included within the scope of any retainer proposal for general county services, or included within the hourly rate applicable to general county services, if hourly rates are proposed.

Proposals shall identify what charges, if any, the attorney(s) or firm will impose for travel time. It is expected that the scope of work performed and the rates charged there fore will be reviewed and evaluated by the parties sixty (60) days prior to the end of the agreed term and be subject to modification at that time based on the review. The respondent is expected to propose a term of the contract in the response to this request and will be negotiated with the Board of Supervisors in the final selection.

VI. Selection Process

The Board of Supervisors will determine the process by which the proposals are reviewed, although it is anticipated that the material provided in the Letter of Interest, Statements of Qualification and Proposals, interviews with the attorney(s) or firms, and references will be determinative factors in making a selection. It is anticipated that the interviews will occur in Markleeville on October 4, 2022 at 1 p.m.

The Board of Supervisors reserves the rights and options to:

- Reject any or all the submittals.
- Waive any of the provisions in the Request for Proposals.
- Issue subsequent Requests for Proposals.
- Cancel the Request for Proposal process.
- Waive any technical error in the responses it receives.
- Negotiate with any, all or none of the respondents to the Request for Proposals concerning costs or to further refine the scope of services to be provided.
- Award a contract or contracts to more than one firm for different services.

All costs of preparing and submitting the proposals are to be borne by the submitter and not the County of Alpine.

V. Alpine County Contract Template with Insurance Requirements (Attachment A)

VI. Submittal Deadline

Interested firms should submit one unbound original, five bound and. copies of the proposal in a sealed envelope an electronic copy on a USB stick, marked on the outside as “Response to Request for Proposals – County Counsel” by September 16, 2022 at noon to:

USPS

County Clerk
P.O. Box 158
Markleeville, CA 96120

UPS/Fed. Ex./or other carriers

County Clerk
99 Water St.
Markleeville, CA 96120

Attachment A
STANDARD FORM PERSONAL SERVICES CONTRACT
COUNTY OF ALPINE

AND

(CONTRACTOR)

THIS AGREEMENT is made and entered into this _____ day of _____ 20____, by and between the COUNTY OF ALPINE, hereinafter referred to as "County," and **(NAME OF CONTRACTOR AND TYPE OF ENTITY THE PARTY IS, IE: sole proprietor, partnership, corporation)** hereinafter referred to as "Contractor".

RECITALS:

WHEREAS, County desires to retain a person or firm to provide the following services:

_____;

WHEREAS, Contractor warrants that it is qualified and agreeable to render the aforesaid services.

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by County, the parties agree to the following:

- I. SCOPE OF SERVICES: Contractor agrees to provide all of the services described in Exhibit "A" attached hereto and by this reference made a part hereof.
- II. ADDITIONAL SERVICES: The County may desire services to be performed which are relevant to this contract or services but have not been included in the scope of the services listed in Paragraph I above and Contractor agrees to perform said services upon the written request of County. These additional services could include, but are not limited to, any of the following:
 - A. Serving as an expert witness for the County in any litigation or other proceedings involving the project or services.

B. Services of the same nature as provided herein which are required as a result of events unforeseen on the date of this contract.

III. COUNTY FURNISHED SERVICES: The County agrees to:

A. Facilitate access to and make provisions for the Contractor to enter upon public and private lands as required to perform their work.

B. Make available to Contractor those services, supplies, equipment and staff that are normally provided for the services required by the type of services rendered by Contractor and as set forth in Exhibit "A".

C. Make available all pertinent data and records for review.

IV. FEES: The fees for furnishing services under this Contract shall be based on the rate schedule which is attached hereto as Exhibit "B" and by this reference incorporated herein. Said fees shall remain in effect for the entire term of this contract.

V. MAXIMUM COST TO COUNTY: Notwithstanding any other provision of this contract, in no event will the cost to County for the services to be provided herein exceed the maximum sum of \$_____, including direct non-salary expenses.

VI. PAYMENT: The fees for services under this Contract shall be due within 60 calendar days after receipt by County of an invoice covering the service(s) rendered to date.

For any services involving a public works or construction project the County shall retain 10 percent of each monthly progress payment, which shall be due upon completion and acceptance by County of the work or termination of this Contract.

With respect to any additional services provided under this Contract as specified in paragraph II hereof, Contractor shall not be paid unless Contractor has received written authorization from County for the additional services prior to incurring the costs associated therewith. Said additional services shall be charged at the rates set forth on Exhibit "B".

Invoices or applications for payment to the County shall be detailed and shall contain full documentation of all work performed and all reimbursable expenses incurred. Where the scope of work on the contract is divided into various tasks,

invoices shall detail the related expenditures accordingly. Labor expenditures need documentation to support time, subsistence, travel and field expenses. No expense will be reimbursed without adequate documentation. This documentation will include, but not be limited to, receipts for material purchases, rental equipment and subcontractor work.

Notwithstanding any other provision herein, payment may be delayed, without penalty for any period in which the State or Federal Government has delayed distribution of funds that are intended to be used by the County for funding payment to contractor.

VII. CONTRACT PERFORMANCE TIME: All the work required by this contract shall be completed and ready for acceptance no later than _____. Time is of the essence with respect to this Contract.

VIII. INSURANCE:

Minimum Scope and Limit of Insurance

A. The Contractor shall maintain a commercial general liability (CGL) insurance policy [Insurance Services Office Form CG 00 01] covering CGL on an occurrence basis, including products and completed operations, property damage bodily injury and personal & advertising injury with limits in the amount of \$ 2,000,000, and a general aggregate limit of \$4,000,000.

The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. Additional insured should read as follows:

Alpine County
PO Box 158
Markleeville, CA 96120

B. Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of \$1,000,000 per accident for bodily injury and property damage. Coverage shall be at least as broad as ISO Form

Attachment A

CA0001 (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9).

The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the Automobile Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. Additional insured should read as follows:

Alpine County

PO Box 158

Markleeville, CA 96120

- C. The Contractor shall be required to carry Professional/ Malpractice/ Errors & Omissions coverage in the amount of \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. Technology Professional Liability \$2,000,000 per occurrence, \$2,000,000 aggregate

The insurer shall supply a Certificate of Insurance and endorsements signed by the insurer evidencing such insurance to County prior to commencement of work. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the

County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

- IX. **WORKER'S COMPENSATION:** The Contractor acknowledges that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code and it certifies that it will comply with such provisions before commencing the performance of the work of this Contract. A copy of the certificates evidencing such insurance with policy limits of at least \$1,000,000 per accident for bodily injury or disease, shall be provided to County prior to commencement of work, or a signed County Workers' Compensation Exemption form.

- X. **NONDISCRIMINATORY EMPLOYMENT:** In connection with the execution of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, political affiliation, ancestry, marital status or disability. This policy does not require the employment of unqualified persons.

- XI. **INTEREST OF PUBLIC OFFICIALS:** No officer, agent or employee of the County during their tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

- XII. **SUBCONTRACTING AND ASSIGNMENT:** The rights, responsibilities and duties under this Contract are personal to the Contractor and may not be subcontracted, transferred or assigned without the express prior written consent of the County.

- XIII. **LICENSING AND PERMITS:** The Contractor shall maintain the appropriate licenses throughout the life of this Contract. Contractor shall also obtain any and all permits which might be required by the work to be performed herein.

- XIV. **BOOKS OF RECORD AND AUDIT PROVISION:** Contractor shall maintain on a current basis complete books and records relating to this contract. Such records

Attachment A

shall include, but not be limited to, documents supporting all bids and all expenditures for which any reimbursement is sought. The books and records shall be original entry books. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items for which any reimbursement is sought. These documents and records shall be retained for at least five years from the completion of this contract. Contractor will permit County to audit all books, accounts or records relating to this contract or all books, accounts or records of any business entities controlled by Contractor who participated in this contract in any way. Any audit may be conducted on Contractor's premises or, at County's option, Contractor shall provide all books and records within a maximum of 15 days upon receipt of written notice from County. Contractor shall refund any moneys erroneously charged. If County ascertains that it has been billed erroneously by Contractor for an amount equaling 5% or more of the original bid, Contractor shall be liable for the costs of the audit in addition to any other penalty to be imposed. This paragraph applies to any contract which provides for reimbursement of expenses.

- XV. TERM OF AGREEMENT: This Agreement shall commence on _____ and shall terminate on _____.
- XVI. CONFIDENTIALITY: All information and records obtained in the course of providing services under this agreement shall be confidential and shall not be open to examination for any purpose not directly connected to the administration of this program. Both parties shall comply with State and Federal requirements regarding confidential information.
- XVII. TITLE: It is understood that any and all documents, information, computer disk, and reports concerning this project prepared by and/or submitted to the Contractor, shall be the property of the County. The Contractor may retain reproducible copies of drawings and copies of other documents. In the event of the termination of this Contract, for any reason whatever, Contractor shall promptly turn over all information, writing, computer disk, and documents to County without exception or reservation. Contractor shall transfer from computer hard drive to disk any information or documents stored on hard drive and provide County with said disk.
- XVIII. TERMINATION:
- A. If the Contractor fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, the County may terminate this Contract by giving five calendar days written notice to the party involved.

- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
 - C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of Termination shall be by written notice to the other parties and be sent by registered mail.
 - D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract.
- XIX. RELATIONSHIP BETWEEN THE PARTIES: It is expressly understood that in the performances of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of the County.
- XX. AMENDMENT: This Contract may be amended or modified only by written agreement of all parties.
- XXI. ASSIGNMENT OF PERSONNEL: The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to County, as evidenced in writing.
- XXII. JURISDICTION AND VENUE: This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in ALPINE County, California.
- XXIII. INDEMNIFICATION: Contractor agrees to indemnify, defend at its own expense, and hold County harmless from any and all liabilities, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions to act of Contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liabilities, claims, losses, damages, or expenses arising from County's sole negligence or willful acts.
- XXIV. COMPLIANCE WITH APPLICABLE LAWS: The Contractor shall comply with any and all federal, state and local laws affecting the services covered by this Contract.

XXV. **ATTORNEY'S FEES:** If any party hereto employs an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearing, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all attorneys' fees and all costs, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees, and the cost of any bonds, whether taxable or not. If any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

XXVI. **NOTICES:** Notices to terminate, change or otherwise provide notice as provided in the contract shall be given to County at the following location:

**County Administrative Officer
Alpine County Administration
75C Diamond Valley Rd.
Markleeville, CA 96120**

Notices shall be given to Contractor at the following address:

**(CONTACT NAME)
(NAME OF BUSINESS/CONTRACTOR)
(ADDRESS)
(ADDRESS)
(PHONE AND/OR EMAIL)**

IN WITNESS WHEREOF, the parties hereunto have executed this Contract on the date written below.

COUNTY OF ALPINE:

CONTRACTOR:

By _____

By _____

, Chairman

Name: _____

ALPINE County Board of Supervisors

Title.: _____

Date: _____

Date: _____

Attest:

Approved as to form:

Teola Tremayne, County Clerk and ex-officio Clerk to the Board of Supervisors
By: Patricia Griffin, Asst. County Clerk

Jim Jones,
Interim County Counsel

EXHIBIT "A"

SERVICES TO PROVIDED TO CONTRACTOR
PROPOSAL TO BE ATTACHED

EXHIBIT "B"

COMPENSATION OR FEES TO BE PAID TO CONTRACTOR

EXHIBIT "C"
HEALTH INSURANCE PORTABILITY
AND ACCOUNTABILITY ACT SUPPLEMENT

Definitions:

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

- a. Business Associate. "Business Associate" shall mean the Contractor named in the first paragraph of this agreement.
- b. Covered Entity. "Covered Entity" shall mean the County of ALPINE.
- c. Designated Record Set. "Designated Record Set" shall mean:
 - (1) A group of records maintained by or for a covered entity that is:
 - a. The medical records and billing records about individuals maintained by or for a covered health care provider;
 - b. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
 - c. Used, in whole or in part, by or for the covered entity to make decisions about individuals.
 - (2) For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.
- d. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- e. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- f. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- g. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- h. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- i. Electronic Protected Health Information. "Electronic Protected Health Information" ("EPHI") means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- j. Security Incident. "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, "pings", or unsuccessful random attempts to penetrate computer networks or servers

maintained by Business Associate.

- k. Security Rule. "Security Rule" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

Obligations of Business Associate

Business Associate shall:

- a. Not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- b. Use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement
- d. Report to Covered Entity any use or disclosure of the Protected Health Information in violation of the requirements of this Agreement of which it becomes aware.
- e. Ensure that any agent, including a subcontractor, to whom it provides or receives Protected Health Information agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- g. Provide to Covered Entity or an Individual, in time and manner agreed to between the parties, information collected pursuant to this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- h. Provide access, at the request of Covered Entity, and in the time and manner agreed to by the parties, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.
- i. Make any amendment(s) to Protected Health Information in a Designated Record set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner agreed to between the parties.
- j. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.
- k. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.

- l. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- m. Business Associate shall report to Covered Entity any Security Incident within 5 business days of becoming aware of such incident.
- n. Business Associate shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at Covered Entity's request, to the Covered Entity for purposes of the Secretary determining Covered Entity's compliance with the HIPAA privacy and security regulations.

Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Services Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

Obligations of Covered Entity

Covered Entity shall notify Business Associate of any:

- a. Limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. Changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c. Restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

Term and Termination

- a. Term. The Term of these provisions shall be concurrent with the term of the Services Agreement, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - b. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - c. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
- c. Effect of Termination.
 - a. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - b. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon determination that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Reservation of Right to Monitor Activities.

Covered Entity reserves the right to monitor the security policies and procedures of Business Associate.

Specific Provisions for Use and Disclosures by Business Associate of PHI Subject to 42 CFR Part 2.

(a) Covered Entity operates a program for treatment of alcohol or drug abuse, receives federal financial assistance in the operation of that program, and is required to comply with 42 CFR Part 2 pertaining to use and disclosure of patient information and patient records.

(b) Business Associate is a "Qualified Service Organization" as that term is defined at 42 CFR 2.11.

(c) Business Associate acknowledges that it will have access to records that are covered by 42 CFR Part 2. Business Associate agrees that it is fully bound by the provisions of 42 CFR Part 2, and will only use and disclose protected health information as permitted

by those regulations. Business Associate will, if necessary, resist in judicial proceedings any effort to obtain access to patient records not permitted by 42 CFR Part 2.

Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.