

AGREEMENT FOR SPECIAL LEGAL SERVICES
BETWEEN LAKE COUNTY AND EWING & ASSOCIATES

THIS AGREEMENT, is made and entered into as of March 7, 2017, by and between Lake County, a political subdivision of the State of California (hereafter "COUNTY") and the law firm of EWING AND ASSOCIATES with an office at 995 S. Main Street, Lakeport, CA, (hereafter "ATTORNEY").

RECITALS:

WHEREAS, the Lake County Board of Supervisors has determined it is necessary for COUNTY to contract for special legal services for Lake County Sheriff Brian Martin in order to provide for his representation in defending against a COMPLAINT FOR BREACH OF CONTRACT filed against Sheriff Martin and the County by the Lake County Correctional Officer's Association (Lake County Superior Court Case Number CV 416887); and

WHEREAS, there exists a conflict of interest between the Office of the Sheriff and the COUNTY in the matter under litigation; and

WHEREAS, the Sheriff has requested the COUNTY to retain and employ independent counsel to assist him in the performance of his duties; and

WHEREAS, Government Code Section 31000.6 requires such independent representation to be provided when such conditions exist; and

WHEREAS, pursuant to an opinion of the California Attorney General, Sheriff Martin may select his own counsel for the above-described purpose; and

WHEREAS, ATTORNEY is specially trained, experienced, expert, competent, and licensed to perform such services; and

WHEREAS, the COUNTY and the Sheriff both recognize their responsibilities to be maintain stewardship of taxpayer monies.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

AGREEMENT:

1. SCOPE OF SERVICES

A. ATTORNEY shall provide adequate legal services in a competent and professional manner to COUNTY on behalf of Sheriff Brian Martin for Sheriff Martin's representation in the matter of Lake County Correctional Officers' Association vs. County of Lake and Brian Martin et. al (CV 416887).

B. COUNTY and ATTORNEY understand and agree that ATTORNEY'S fiduciary and ethical loyalties and responsibilities are to Sheriff Brian Martin and that COUNTY shall not try to dictate the manner in which such representation will be done. Any billing reports or invoices from ATTORNEY to COUNTY may be redacted to eliminate any privileged attorney-client communications.

C. Legal services shall include all activities of ATTORNEY necessary and reasonable in performance of the scope of services herein described.

2. TERM

The term of this Agreement shall commence upon February 8, 2017 and shall continue until either the completion or satisfaction of the terms and conditions of this Agreement.

Either party to this Agreement may terminate the Agreement at any time upon reasonable notice to the other.

3. COMPENSATION

A. HOURLY FEE: COUNTY agrees to pay ATTORNEY the following hourly rates, which shall be in effect for the duration of this Agreement unless otherwise agreed to by an amendment to this Agreement: Mike Ewing - \$200.00 per hour; Andre M. Ross - \$200.00 per hour; and paralegal time - \$60.00 per hour. Attorneys will charge for time spent on telephone calls, including calls with Client, opposing counsel, or Court personnel. Attorneys will charge for waiting time in Court and elsewhere and for travel time out of town.

In addition to paying legal fees, Client shall reimburse Attorneys for all costs and expenses incurred by Attorneys, including, but not limited to, process servers' fees, fees fixed by law or assessed by courts or other agencies, court reporters' fees, messenger and other delivery fees, postage, in-office photocopying at \$.25 per page, parking, mileage at \$.50 per mile, investigation expenses, consultants' fees, expert witness fees and other similar items. Client authorizes Attorneys to incur all reasonable costs and to hire any investigators, consultants or expert witnesses reasonably necessary in Attorneys' judgment.

The above rates shall be based upon ATTORNEY'S actual time expended in rendering the required legal services under this Agreement. In no event shall the amount of compensation due to ATTORNEY under this Agreement exceed thirty thousand dollars (\$30,000).

B. MODIFICATION OF MAXIMUM COMPENSATION: the parties acknowledge and agree that the maximum amount payable under the terms of this Agreement may be subject to change as dictated by the reasonable attorney fees necessary to fully defend Sheriff Martin in the above-described matter. ATTORNEY shall provide written notice to COUNTY as soon as it becomes known to ATTORNEY that the costs of its representation of Sheriff Martin shall exceed the Agreement amount. ATTORNEY shall make every reasonable effort to issue said notice no later than thirty (30) days prior to exhaustion of the maximum amount of compensation allowed

under this Agreement. ATTORNEY shall include in said notice an estimate of additional costs necessary to complete the representation of Sheriff Martin.

4. TERMS OF PAYMENT

A. Payment for full and complete satisfactory performance of such services prescribed in this Agreement shall be paid to ATTORNEY within thirty (30) days of COUNTY's receipt of properly itemized invoice to COUNTY by ATTORNEY. Each itemized invoice shall itemize each task performed and the corresponding date with an adequate description of the work done.

B. In the event that ATTORNEY is relieved as attorney under this Agreement, ATTORNEY shall present a final bill to COUNTY within 30 days.

5. REPRESENTATIONS BY ATTORNEY

A. ATTORNEY represents that each attorney providing legal services is an attorney at law admitted to practice in the State of California in good standing.

B. ATTORNEY states that this Agreement reasonably compensates ATTORNEY for all foreseeable fees, costs and expenses to be expended in the proper competent provision of legal services.

6. INDEPENDENT CONTRACTOR

A. In the performance of the work, duties and obligations provided under the terms of this Agreement, it is mutually understood and agreed that ATTORNEY is an independent contractor.

B. It is mutually understood and agreed that no employer – employee relationship is created and ATTORNEY shall hold COUNTY harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes, contributions or premiums imposed or required by workers compensation, unemployment insurance, social security, income tax, other statutes or codes applying to ATTORNEY or his agents and employees, if any.

C. It is mutually agreed and understood that ATTORNEY, his agents and employees, if any, shall have no claim under this Agreement or otherwise against COUNTY for vacation pay, sick leave, retirement or Social Security benefits; occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

7. RECORDS

ATTORNEY shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of four (4) years after the furnishing of all such services.

8. COMPLETENESS OF AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of the Agreement or any part thereof shall have any validity or bind any of the parties hereto.

9. COUNTY NOT OBLIGATED TO THIRD PARTIES

COUNTY shall not be obligated or liable hereunder to any party other than ATTORNEY.

10. AMENDMENTS TO AGREEMENT

This Agreement may not be modified, changed, or amended, except by written agreement properly executed by COUNTY and ATTORNEY.

11. STANDARDS OF PRACTICE

Standards of practice of ATTORNEY shall be determined by all applicable provisions of law and other rules and regulations of any and all governmental authorities relating to provision of services as defined in the Agreement.

12. NOTICES

Any notices herein provided to be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid or by giving such notice by personal service addressed as follows:

Lake County
Lake County Counsel
255 N. Forbes Street
Lakeport, CA 95453

Attorney
Ewing and Associates
995 S. Main Street
Lakeport, CA 95453

13. ASSIGNMENT PROHIBITED

ATTORNEY shall not subcontract or assign this Agreement, or any part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any person or entity without the express written approval of COUNTY.

14. CONFLICTS OF INTEREST

ATTORNEY warrants and covenants that no official or employee of COUNTY, nor any business entity in which an official of COUNTY has an interest has been employed or retained to solicit or aid in the procuring of the Agreement, nor that any such person will be employed in the performance of such Agreement without immediate divulgence of such fact to COUNTY.

15 INDEMNITY

ATTORNEY shall indemnify, defend, and save harmless COUNTY, its agents, officers and employees from and against any and all liability (including defense costs and reasonable attorney fees) and claims for damages of any nature whatsoever, including, but not limited to ATTORNEY'S negligent acts or omissions, arising out of the performance of this Agreement, except liabilities and claims for damages (including reasonable attorney fees) resulting from ATTORNEY'S professional negligence which may be covered by ATTORNEY'S professional liability insurance and except for any liabilities and claims for damages (including reasonable attorney fees) caused by COUNTY'S negligence or willful misconduct.

16. INSURANCE

Without limiting the COUNTY'S rights under paragraph 17 of this Agreement, or against any third parties, ATTORNEY, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the entire term of this Agreement:

- A. One or more policies of professional liability insurance with limits of coverage of not less than \$500,000 per claim with an annual aggregate of one million dollars (\$1,000,000); and
- B. A policy of general liability insurance with limits of coverage of not less than one million dollars (\$1,000,000) per occurrence within annual aggregate of one million dollars (\$1,000,000); and
- C. A policy of workers compensation insurance as is required by the California Labor Code, providing full statutory coverage.

17. CAPTIONS

The captions of each paragraph in the Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of the Agreement or in any way affect it.

"COUNTY"

Lake County, State of California

"ATTORNEY"

Ewing and Associates

By: _____

Lake County Board of Supervisors

By: _____

DATE

February 8, 2017

APPROVED AS TO LEGAL FORM:
COUNTY COUNSEL

By: _____

