



MEMORANDUM
FROM THE OFFICE
OF COUNTY COUNSEL

TO: BOARD OF SUPERVISORS

FROM: Gerald O. Carden, County Counsel

DATE: November 17, 2015

RE: Contract -Resources Law Group
Placer County Conservation Plan

ACTION REQUESTED:

Approve and authorize the Chairman to sign the attached contract for professional legal services with Resources Law Group, LLC, for the necessary legal services in an amount not to exceed one hundred thousand dollars (\$100,000) related to the preparation of the Placer County Conservation Plan.

BACKGROUND:

RLG has been under contract with the County since 1999 and continues to provide outside legal services for the preparation of the Placer County Conservation Plan (PCCP) including the County Aquatic Resources Program (CARP), as well as continued conservation strategy discussions with the Wildlife Agencies. The PCCP work program is entering a new phase, which will include RLG's assistance with drafting PCCP implementation documents, formation of the PCCP implementing entity, the in-lieu fee program, review of the EIR/EIS as well as continued representation in meetings and assistance with PCCP-related strategy.

On November 3, 2015, your Board authorized the Chairman to execute an amendment to RLG's original Contract No. 60615, approving an increase of \$4024.72 for a total contract amount to date of \$1,754,024.72. We are closing out Contract No. 60615 and proposing the attached new contract for a not to exceed amount of \$100,000. The new contract includes the scope of RLG's work to reflect the current work phase of the PCCP.

FISCAL IMPACT:

The contract is for a not to exceed amount of \$100,000 and will bring the total contract amount with RLG to \$1,854,024.72. Funds are included in our 2015-16 fiscal year budget, and there is no new net County cost.

Attachment A: Contract

GOC/lr

Description:

Contract No. _____

PROFESSIONAL SERVICES OF

Administering Agency:
COUNTY COUNSEL

RESOURCES LAW GROUP, LLP
555 Capitol Mall, Suite 1090
Sacramento, CA 95814

Tax I.D. # 94-3341193

(916) 442-4880

CBeale@resourceslawgroup.com

FAX (916) 442-4193

RE: **Placer County PCCP**

LEGAL SERVICES AGREEMENT

THIS AGREEMENT is made effective as of _____, 2015 ("Effective Date"), at Auburn, California, by and between the County of Placer, a political subdivision of the State of California ("County") and Resources Law Group, LLP a limited liability professional corporation ("RLG"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, RLG shall provide the services described in Exhibit A. RLG shall provide said services at the time, place, and in the manner specified in Exhibit A.
2. **Payment.** County shall pay RLG a not to exceed amount of one hundred thousand dollars (\$100,000.00) for services rendered pursuant to this Agreement.

RLG shall submit monthly invoices with itemized billing entries for services rendered, redacted (if requested by County) to protect attorney-client privilege. Each invoice shall be transmitted to the Placer County Counsel's Office for review and approval of payment. Payment for an approved invoice will occur within thirty (30) days of receipt by the Department. County Counsel may request additional information or documents to support any billing item prior to approval of the invoice for payment.

3. **Facilities, Equipment and Other Materials, and Obligations of County.** RLG 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.
4. **Exhibits.** All exhibits referred to herein will be attached hereto and by this reference incorporated herein.
5. **Independent Contractor.** At all times during the term of this Agreement, RLG shall be an independent contractor and shall not be an employee of the County. County shall have the right to control RLG only insofar as the scope of RLG's services rendered pursuant to this Agreement.

County shall not have the right to control the means by which RLG accomplishes services rendered pursuant to this Agreement.

6. **Licenses, Permits, Etc.** RLG represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for RLG to practice its profession. RLG represents and warrants to County that RLG 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 RLG to practice its profession at the time the services are performed. RLG represents that all individuals identified in Exhibit B who will perform legal services pursuant to this Agreement are licensed to practice law in the State of California and are in good standing with the California State Bar Association.
7. **Time.** Time is of the essence. RLG shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of RLG'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.
8. **HOLD HARMLESS AND INDEMNIFICATION**

RLG hereby agrees to protect, defend, indemnify, and hold the County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by the County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of RLG's performance pursuant to this Agreement. RLG agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of RLG. RLG also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against RLG or the County or to enlarge in any way the RLG'S liability but is intended solely to provide for indemnification of the County from liability for damages or injuries to third persons or property arising from RLG's performance pursuant to this Agreement. This provision shall not apply to any legal challenges to, or losses, claims, liens, demands or causes of action related to, the Placer County Conservation Program, the habitat conservation plan/natural community conservation plan, the County Aquatic Resources Program, the In Lieu Fee program, the Implementing Agreement, or any other agreement, regulatory or permitting document, or environmental analysis related to the PCCP.

As used above, the term PLACER COUNTY or County means Placer County or its officers, agents, and employees.

9. **INSURANCE:**

RLG shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-VII showing.

A. WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

RLG shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand

This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer.

B. GENERAL LIABILITY INSURANCE

1. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of RLG, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

(a) Contractual liability insuring the obligations assumed by RLG in this Agreement.

2. One of the following forms is required:

- (a) Comprehensive General Liability;
- (b) Commercial General Liability (Occurrence); or
- (c) Commercial General Liability (Claims Made).

3. If RLG carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- One million dollars (\$1,000,000) each occurrence
- Two million dollars (\$2,000,000) aggregate

4. If RLG carries a Commercial General Liability (Occurrence) policy:

(a) The limits of liability shall not be less than:

- One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- One million dollars (\$1,000,000) for Products-Completed Operations
- Two million dollars (\$2,000,000) General Aggregate

(b) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

5. Special Claims Made Policy Form Provisions:

RLG shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of County, which consent, if given, shall be subject to the following conditions:

(a) The limits of liability shall not be less than:

→One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)

→One million dollars (\$1,000,000) aggregate for Products Completed Operations

→Two million dollars (\$2,000,000) General Aggregate

(b) The insurance coverage provided by RLG shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of policies be different.

C. ENDORSEMENTS

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

1. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."

2. "The insurance provided by the RLG, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."

3. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

D. AUTOMOBILE LIABILITY INSURANCE

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

E. PROFESSIONAL LIABILITY INSURANCE (ERRORS & OMISSIONS)

Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than \$1,000,000.

If RLG sub-contracts in support of RLG's work provided for in the agreement, Professional Liability Insurance for Errors shall be provided by the sub contractor in an amount not less than two million dollars (\$2,000,000) in aggregate.

The insurance coverage provided by the RLG shall contain language providing coverage up to one (1) year following completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

F. ADDITIONAL REQUIREMENTS

Premium Payments - The insurance companies shall have no recourse against the County and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles - RLG shall be responsible for all deductibles in all of the RLG's insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

RLG's Obligations - RLG's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Verification of Coverage - RLG shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the RLG'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.

Material Breach - Failure of the RLG to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

10. No Agency. Except as County may specify in writing RLG shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. RLG shall have no authority, express or implied pursuant to this Agreement to bind County to any obligation whatsoever.

11. Assignment Prohibited. RLG may not assign its rights and obligations under this Agreement.

12. Personnel.

A. The parties acknowledge and agree that the personnel identified in Exhibit B possess a particular legal knowledge that is central for the performance of the services identified in Exhibit

A. For this reason, RLG agrees that the personnel identified in Exhibit B shall be the only personnel authorized to perform services pursuant to this Agreement unless prior authorization is obtained from the County.

B. Reassignment or substitution of individuals identified in Exhibit B without the prior written consent of County shall be grounds for cancellation of the Agreement by County, and payment shall be made pursuant to Section 15 (Termination) of this Agreement only for that work performed by Project Team members.

C. Use of associates to perform the work of the partners identified in Exhibit B shall require prior written consent of the County.

D. In the event of conflicts of interest for any of the individual identified in Exhibit B, the parties shall consult prior to substitution of another attorney in order to ensure that the substitute attorney has the equivalent level of experience in the area of law identified in Exhibit A.

13. **Standard of Performance.** RLG 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 of law. All products of whatsoever nature which RLG delivers to County pursuant to this Agreement shall be prepared in a substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in RLG's profession.

14. **Termination.**

A. County shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to RLG. In the event County shall give notice of termination, RLG shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event County shall terminate this Agreement:

1) RLG shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, Photostatting, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

2) County shall have full ownership and control of all such writings delivered by RLG pursuant to this Agreement.

3) County shall pay RLG the reasonable value of services rendered by RLG to the date of termination pursuant to this Agreement not to exceed the amount documented by RLG and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the agreement specified in Exhibit A, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by RLG had RLG completed the services required by this Agreement. In this regard, RLG 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 RLG. The foregoing is cumulative and does not affect any right or remedy, which County may have in law or equity.

- B. RLG may terminate its services under this Agreement upon thirty- (30) working days' advance written notice to the County.
15. **Non-Discrimination.** RLG shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex in contravention of the California Fair Employment and Housing Act, Government Code section 12900 et seq.
16. **Records.** RLG shall maintain, at all times, complete detailed records with regard to work performed under this agreement in a form acceptable to County, and County shall have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this agreement, no payments shall be made to RLG until County is satisfied that work of such value has been rendered pursuant to this agreement. However, County shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.
17. **Ownership of Information.** All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of County, and RLG agrees to deliver reproducible copies of such documents to County on completion of the services hereunder. The County agrees to indemnify and hold RLG harmless from any claim arising out of reuse of the information for other than this project.
18. **Waiver.** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.
19. **Conflict of Interest.** RLG certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this agreement. In addition, RLG agrees that no such person will be employed in the performance of this agreement without immediately notifying the County. RLG's statement of "Disclosures and Waivers of Existing Potential or Actual Conflicts is attached as Exhibit C.
20. **Entirety of Agreement.** This Agreement contains the entire agreement of County and RLG with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.
21. **Alteration.** No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing and signed by all parties, except as expressly provided in Section 15, Termination.
22. **Governing Law.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this agreement shall be brought under the jurisdiction of the Superior Court of

the County of Placer, State of California, and RLG hereby expressly waives those provisions in California Code of Civil Procedure §394 that may have allowed it to transfer venue to another jurisdiction.

23. **Notification.** Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, and addressed to the parties as follows:

COUNTY OF PLACER
County Counsel
175 Fulweiler Ave.
Auburn, CA 95603
Ph : 530-889-4044

Resources Law Group, LLP
Attn: Chris Beale
555 Capitol Mall, Suite 1090
Sacramento, CA 95814
Ph: 916-442-4880

Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

NOW THEREFORE, the parties execute this Agreement as of the date stated below:

COUNTY OF PLACER

By: _____
Chair, Board of Supervisors

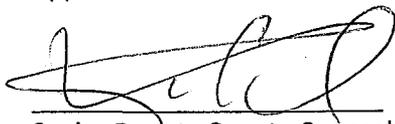
Date: _____

RESOURCES LAW GROUP, LLP

By: 
J. Christopher Beale
Partner

Date: 10/27/2015

Approved as to Form:


Senior Deputy County Counsel

Exhibits

- A. Scope of Work
- B. Attorney and Staff Billing Rates
- C. Disclosures and Waivers

EXHIBIT A

SCOPE OF LEGAL SERVICES

This scope of work applies to work by Resources Law Group, LLP, for Placer County related to the PCCP through the issuance of state and federal permits.

1. General legal advice and assistance to County, and participation in meetings, regarding PCCP-related matters. Provide written legal analysis, as needed.
2. Review, analyze, and revise draft PCCP.
 - a. Draft and finalize Chapter 8 ("Implementation")
 - b. Review, analyze and revise other draft chapters.
 - c. Assist in revisions to PCCP following public review and comment.
3. Draft and finalize implementing agreement.
 - a. Assist County in negotiations regarding same.
4. Draft templates for PCCP implementation
 - a. Conservation easement template
 - b. Agricultural easement template
 - c. Model implementing ordinance
 - d. Participating Special Entity agreement template
5. Review, analyze, and revise "nexus study" for PCCP fees.
6. Assist to develop CARP.
 - a. Review, analyze, and revise draft CARP documents.
 - b. Assist in application for programmatic general permit and programmatic 401 certification.
 - c. Assist in developing abbreviated "letter of permission" procedures
 - d. Draft and finalize MOU with USACE regarding integration of Clean Water Act (CWA) and Endangered Species Act compliance
7. Assist to develop "in lieu fee" (ILF) program for compensatory mitigation under Section 404 of the CWA.
 - a. Review, analyze and revise ILF program prospectus.
 - b. Draft and finalize ILF program "enabling instrument."
 - c. Review, analyze and revise draft compensation planning framework.
8. Assist to form and establish PCCP implementing entity.
 - a. Draft formation documents, such as joint exercise of powers agreement.
9. Assist in preparation of EIR/EIS.
 - a. Review, analyze, and revise draft EIR/EIS
 - b. Assist in revisions to EIR/EIS following public review and comment.
 - c. Assist in drafting responses to comments.
10. Address project-specific issues related to PCCP, CARP, and ILF program
 - a. Placer Vineyards Specific Plan
 - b. Placer Ranch
 - c. Amoruso Ranch
 - d. Regional University
 - e. Other projects that require special consideration regarding terms and conditions of coverage under the PCCP, CARP, or ILF program.
11. Participate in Biological Working Group meetings, as needed.

EXHIBIT B

**ATTORNEY AND STAFF HOURLY BILLING RATES,
COSTS AND OTHER CHARGES**

- Chris Beale, lead attorney: \$400/hr.
- Michael Mantell, attorney: \$450/hr.
- Julie Turrini, attorney: \$375/hr.
- Jocelyn Garavoy, attorney: \$325/hr.
- Wendy Chenkovich, paralegal: \$150/hr.

EXHIBIT C

DISCLOSURES AND WAIVERS OF EXISTING POTENTIAL OR ACTUAL CONFLICTS

This section describes existing potential or actual conflicts that may arise with RLG's representation of former, current or future clients as a result of RLG's representation of County. The execution of the Agreement, including this conflicts statement, is intended to constitute any written disclosure required by RLG and to constitute the informed written consent and/or waiver, if any is required, by County.

The David and Lucile Packard Foundation, Resources Legacy Fund ("RLF") and Resources Legacy Fund Foundation (collectively "RLF/F"), and other philanthropists and philanthropic foundations have retained RLG to provide strategic advice on their conservation grant and loan programs and to evaluate grant proposals. Some RLG attorneys have taken positions with RLF/F to continue that work, and RLG contracts for the services of former RLG attorneys that have moved to RLF.

Under the California Rules of Professional Conduct, when a grant applicant applies for grant funding from a philanthropic grantor, the grantor and grant applicant are considered to have "adverse" interests, even though they may share the same goals regarding the grant and may desire the same conservation outcome. A philanthropic grantor and a grant applicant are, in effect, on opposite sides of a financial transaction.

County may at some time apply to one of RLG's philanthropic clients, or to RLF/F, for grant funds, or one of RLG's clients or RLF/F may otherwise decide to provide a grant to you. In that sense, there is a potential conflict between County's interests and that of our philanthropic clients or RLF/F. RLG may also at times make grant or loan recommendations or give advice to our philanthropic clients that could be adverse to County's interests.

The following explains the facts, circumstances, and effect of potential conflicts of interest that could result from our Agreement and in-house attorneys' work with RLF/F, and RLG's work as a loan or grant administrator or program advisor for these philanthropic clients, to inform County's written consent to represent it notwithstanding these potential conflicts. Possible conflict-of-interest scenarios that may arise include, but are not limited to:

- i. County applies for a grant or loan from RLF/F or a philanthropy for which RLG recommends, based on the philanthropy's criteria for selection, that County's application be denied;
- ii. RLG recommends to RLF/F or other philanthropy that it provide loan or grant funding to an applicant that meets the philanthropy's criteria, even though RLG knows that the applicant will use the funds to promote governmental policies to take other actions that may be adverse to County's interests; or

- iii. RLG recommends to RLF/F or other philanthropy that it deny loan or grant funding to an applicant that was intending to use the funds to buy land from County or take other actions that would benefit County.

RLG has made, and in the future may make, recommendations to its philanthropic clients regarding grant proposals submitted by The Nature Conservancy, the Audubon Society, Defenders of Wildlife, the Trust for Public Lands, the Planning and Conservation League, the California Wilderness Coalition, and other non-profit organizations that are or may become involved in matters that affect County's interests. Each of these identified groups has received a grant from RLF/F or one or more of RLG's philanthropic clients through grant programs administered by RLG. None of these groups is an RLG client.

This description discloses the facts, circumstances, and effect of possible conflicts of interest that could result from RLG's work as a grants administrator, and documents County's advanced informed written consent to representation by RLG notwithstanding these potential conflicts. By signing the Agreement, County confirms that it understands that RLG, in its role as a grants administrator, might be called upon to make recommendations that are adverse to County's interests as described above. County further understands that RLG will not give any preference to County or its interests when serving as program advisor for any philanthropy.

If, at any time, these possible conflicts of interest become actual conflicts of interest, RLG will make written disclosure to County immediately of that fact and request County's informed written consent to continue representing it.