



COUNTY OF PLACER
Community Development/Resource Agency

Michael J. Johnson, AICP
Agency Director

**PLANNING
SERVICES DIVISION**

E.J. Ivaldi, Deputy Director

MEMORANDUM

TO: Honorable Board of Supervisors

FROM: Michael J. Johnson, AICP
Agency Director

By: Catherine Donovan, Housing Specialist

DATE: October 21, 2014

SUBJECT: LEGAL SERVICES CONSULTANT CONTRACT WITH BURKE, WILLIAMS & SORENSEN, LLP.

ACTION REQUESTED

1. Approve a Blanket Purchase Order for \$20,000 with Burke, Williams & Sorensen, LLP for legal services, with no new net County cost, and
2. Authorize the Purchasing Manager to sign the Blanket Purchase Order.

BACKGROUND

Pursuant to the terms of the Disposition, Development and Loan Agreement ("DDA"), the Quartz Ridge Property is to be conveyed and a gap financing loan is to be made to Quartz Ridge Family Apartments, L.P. at the close of escrow once all conditions of the DDA are satisfied. The conditions include proof of financing, construction loan closing, sign-off of improvement plans, and payment of all development fees. The Quartz Ridge development team is nearing completion of all conditions and it is anticipated that close of escrow will occur on or about November 18, 2014.

Burke, Williams & Sorensen, LLP is an outside legal firm specializing in redevelopment law and procedures. Staff with the firm has served the former Placer County Redevelopment Agency who originated the DDA for this project. To facilitate the conveyance of land, and to assure all of the conditions of the DDA are met by the developer and the County, this legal firm's specialization and familiarity with the project will assure that the transfer of property and funds meets all of the conditions of the DDA as well as requirements of the Dissolution Act (AB1x26) which eliminated redevelopment agencies in California.

ENVIRONMENTAL

This is an administrative action, does not constitute a project, and is exempt from environmental review per California Environmental Quality Act Guidelines Section 15378(b)(5).

FISCAL IMPACT

The legal fees associated with the obligations of the DDA for the Quartz Ridge will be funded from housing bonds. Legal fees associated with other housing activities will be funded by housing program funds. There will be no general funds required for the contract expenses.

CONCLUSION

The Planning Division recommends the Board authorize the Purchasing Manager to sign the Blanket Purchase Order for legal services with Burke, Williams & Sorensen, LLP.

Attachment 1 – Consultant Services Agreement

cc: Karin Schwab

Administering Agency: Placer County – Community Development Resource Agency

Contract No.

Contract Description: Legal Services

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Auburn, California, as of _____, 2014, by and between the Placer County Community Development Resource Agency, ("County"), and Burke, Williams & Sorensen, LLP ("Contractor"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the services described in Exhibit A, and Contractor's response to said document. Contractor shall provide said services at the time, place, and in the manner specified by the County.
2. **Payment.** County shall pay Contractor for services rendered on a monthly basis. Payment for the term of the contract shall not exceed **Twenty Thousand Dollars (\$20,000)** unless approved in writing as an amendment to this agreement. Contractor shall submit all billings for said services to County in the manner specified by County.
3. **Term.** This Agreement shall commence on the Effective date and shall terminate on December 31, 2016.
4. **Facilities, Equipment and Other Materials, and Obligations of Agency.** Contractor shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.
5. **Exhibits.** All exhibits referred to herein will be attached hereto and by this reference incorporated herein.
6. **Time for Performance.** Time is of the essence. Failure of Contractor to perform any services within the time limits set forth in Exhibit A shall constitute material breach of this contract.
7. **Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent Contractor and shall not be an employee of the County. County shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. Agency shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement.
8. **Licenses, Permits, Etc.** Contractor represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Contractor to practice its profession. Contractor represents and warrants to County that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Contractor to practice its profession at the time the services are performed.
9. **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Contractor's obligations pursuant to this

Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

10. **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

The CONSULTANT hereby agrees to protect, defend, indemnify, and hold PLACER 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 PLACER 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, the contract or agreement. CONSULTANT agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the CONSULTANT. CONSULTANT 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 CONSULTANT or the COUNTY or to enlarge in any way the CONSULTANT'S liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from CONSULTANT'S performance pursuant to this contract or agreement.

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

11. **INSURANCE:**

CONSULTANT 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.

12. **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.

If there is an exposure of injury to CONSULTANT'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "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".

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the CONSULTANT.

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

13. GENERAL LIABILITY INSURANCE:

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

(1) Contractual liability insuring the obligations assumed by CONSULTANT in this Agreement.

B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

C. If CONSULTANT 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

D. If CONSULTANT carries a Commercial General Liability (Occurrence) policy:

- (1) 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

- (2) 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).

E. Special Claims Made Policy Form Provisions:

CONSULTANT 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:

- (1) 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
- (2) The insurance coverage provided by CONSULTANT 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.

14. ENDORSEMENTS:

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

- A. "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."
- B. "The insurance provided by the Consultant, 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."
- C. "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."

15. 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.

16. PROFESSIONAL LIABILITY INSURANCE (ERRORS & OMISSIONS):

Professional Liability Insurance for Errors and Omissions coverage shall be provided in the amount of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate.

The insurance coverage provided by the consultant 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.

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

CONSULTANT's Obligations - CONSULTANT'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 - CONSULTANT 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 CONSULTANT'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 CONSULTANT 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.

18. Indemnity. Contractor 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 Agency arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the Agency) 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 this contract or agreement. Contractor agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Contractor. Contractor 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 Contractor or the Agency or to enlarge, in any way, the Contractor's liability but is intended solely to provide for indemnification of the Agency from liability for damages or injuries to third persons or property arising from Contractor's performance pursuant to this contract or agreement.

As used above, the term "County" means the County of Placer, its officers, agents, employees and volunteers.

19. **Contractor Not Agent.** Except as County may specify in writing Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied pursuant to this Agreement to Bind Agency to any obligation whatsoever.
20. **Assignment Prohibited.** Contractor may assign its rights and obligations under this Agreement only upon the prior written approval of County, said approval to be in the sole discretion of County.
21. **Personnel.**
 - A. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Contractor to perform services pursuant to this Agreement, including those members of the Project Team as explained below, Contractor shall remove any such person immediately upon receiving notice from County of the desire of County for removal of such person or persons.
 - B. Notwithstanding the foregoing, if specific persons are designated as the "Project Team" in Exhibit A or B, Contractor agrees to perform the work under this agreement with those individuals identified. Reassignment or substitution of individuals or subcontractors named in the Project Team by Contractor without the prior written consent of Agency 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.
22. **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession. All products of whatsoever nature which Contractor 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 Contractor's profession.
23. **Termination.**
 - A. County shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Contractor. In the event County shall give notice of termination, Contractor shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event County shall terminate this Agreement:
 - 1) Contractor 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 Contractor pursuant to this Agreement.
- 3) County shall pay Contractor the reasonable value of services rendered by Contractor to the date of termination pursuant to this Agreement not to exceed the amount documented by Contractor and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the agreement specified in Exhibit B, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by Contractor had Contractor completed the services required by this Agreement. In this regard, Contractor shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by Contractor. The foregoing is cumulative and does not affect any right or remedy, which County may have in law or equity.

B. Contractor may terminate its services under this Agreement upon thirty- (30) working days' advance written notice to the County.

24. **Non-Discrimination.** Contractor 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.
25. **Records.** Contractor 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 Contractor 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.
26. **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 Contractor agrees to deliver reproducible copies of such documents to County on completion of the services hereunder. The County agrees to indemnify and hold Contractor harmless from any claim arising out of reuse of the information for other than this project.
27. **Hiring of Others.** Unless consultants, specialists, experts or other third parties are listed in the Scope of Work, Contractor must not employ any of them or incur any obligation to pay any of them for services performed under this Contract without the prior written approval of County. County's written approval shall not create any obligation of the County with regard to any such third party. Contractor has no authority to, and must not purport to, employ, hire or contract with any such third party as agent of the County or otherwise on behalf of County.
28. **Subcontracting.** Contractor must not enter into any subcontract for performance of the services covered by this Contract without the prior written consent of County. In any event, Contractor shall be as fully responsible to County for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. In any event, Contractor must insert in each subcontract appropriate provisions requiring compliance with the labor standards provisions, insurance and other relevant provisions of this contract.

29. **Interests of Officials.** No member of the governing body of County, and no other officer, employee or agent of County who exercises any functions or responsibilities in connection with the carrying out of the project to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract. No member of the governing body of the locality in which the project is situated, and no other public official of such locality, who exercises any functions or responsibilities in review or approval of the carrying out of the project to which this Contract pertains, shall have any personal interest, direct or indirect, in this contract. If federal funds are expended by the County for this contract, no member of or delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Contract or any benefit arising from this Contract. Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in any portion of the project to which this contract pertains, or any other interest which would conflict in any manner or degree with the performance of his services under this Contract. Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed by Contractor.
30. **Monitoring and Reporting.** County may monitor the adequacy of Contractor's performance in any manner which County deems most effective. Contractor must cooperate with County in such monitoring. If requested by the County staff, in writing, Contractor must provide County with detailed reports outlining the most current status involving all County activities and projects being handled by Contractor. Such reports may be required no more often than monthly. County shall have the right to audit such reports, including the right to review all records of Contractor related to such reports.
31. **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.
32. **Conflict of Interest.** Contractor shall, upon Agency request, complete and submit a conflict of interest statement to the County in form approved by the County.
- Contractor 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, Contractor agrees that no such person will be employed in the performance of this agreement without immediately notifying the County.
33. **Entirety of Agreement.** This Agreement contains the entire agreement of County and Contractor 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.
34. **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.
35. **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 Agency of Placer, State of California, and Contractor hereby expressly waives those provisions in California Code of Civil Procedure §394 that may have allowed it to transfer venue to another jurisdiction.
36. **Confidentiality.** All information prepared or assembled by the Contractor under this Contract is confidential. Contractor must not make this information available to any individual or organization without the prior written approval of County. Contractor must immediately forward to County all

requests for information related to this Contract made by a third party to Contractor. Contractor must not disclose or permit the disclosure of any confidential information of the County except to its agents, employees and other consultants, approved by County, who need such confidential information for the proper performance of their duties related to this Contract or on behalf of the County.

37. **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:	Placer County – Community Development Resource Agency Attn: Michael Johnson, Director 3091 County Center Drive Auburn, CA 95603 (530) 745-3099
CONTRACTOR:	Burke Williams & Sorensen, LLP Attn: Susan Bloch 1901 Harrison Street, Suite 900 Oakland, CA 94612 (510) 273-8780

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.

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Executed as of the day first above stated:

PLACER COUNTY

By: _____

Purchasing Manager

APPROVED AS TO FORM – Agency Counsel:

By: _____

Karin Schwab, County Counsel

BURKE WILLIAMS & SORENSEN, LLP

By: _____

Name:

Title: Managing Partner

By: _____

Name:

Title:

**If a corporation, agreement must be signed by two corporate officers; one must be the secretary of the corporation, and the other may be either the President or Vice President, unless an authenticated corporate resolution is attached delegating authority to a single officer to bind the corporation.*

EXHIBIT A
SCOPE OF SERVICES

Burke Williams & Sorensen will be required to perform the following task:

Legal Services to Placer County

As requested, and in coordination with County Counsel, provide advice and assistance regarding:

- a. Interpretation of existing and future agreements, State and Federal Grant and loan agreements and regulations
- b. Preparation and review of required documents/agreements, and amendments to existing agreements, Quartz Ridge, etc.
- c. Implementation of contractual obligations and remedies for defaults
- d. Negotiations and presentations to Placer County Board and state agencies
- e. Maintenance and Disposition of assets
- f. Response to audits/monitoring
- g. Interpretation of applicable law
- h. Communication with Placer County Boards, County Counsel and state agencies
- i. Other related subject matters, as needed.

EXHIBIT B

PAYMENT FOR SERVICES RENDERED

Attorney and Staff Billing Rates

Susan E. Bloch/Firm Partners \$285 per hour

Firm Associates \$250 per hour

Paralegals \$150 per hour

8% administrative charge added to each monthly invoice.