



Local Agency Formation Commission
LAFCO of Napa County

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Agenda Item No. 7a
May 4, 2009 (Action)

April 22, 2009

TO: Local Agency Formation Commission

FROM: Keene Simonds, Executive Officer
Brendon Freeman, Analyst

SUBJECT: Authorization to Negotiate a Professional Services Agreement for Electronic Document Management System Design and Implementation

The Commission will consider authorizing the Executive Officer to negotiate a professional services agreement with Incrementum to design and implement an electronic document management system in an amount not-to-exceed \$25,000.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 authorizes Local Agency Formation Commissions (LAFCOs) to establish policies and procedures with respect to maintaining records. This includes designing and implementing a document management system to organize the storing and destruction of records consistent with national standards for governmental agencies.

A. Discussion

LAFCO of Napa County's ("Commission") current document management system consists of perpetually retaining records in their original paper form. The Commission retains nearly half of its records, which range from resolutions approving boundary changes to employee timesheets, in file cabinets located at its administrative office. The remaining records of the Commission are located at the County of Napa's storage facility.

At the June 4, 2008 meeting, the Commission adopted a final budget for 2008-2009. The final budget includes the allocation of \$25,000 to fund an electronic document management system to improve and formalize the management of agency records. The Commission directed staff to prepare and circulate a request for proposal (RFP) and return with a recommendation to approve a contract with a qualified consultant with respect to designing and implementing an electronic document management system consistent with the needs of the agency.

On February 4, 2009, staff prepared and circulated an RFP to design and implement a stand-alone electronic document management system to several local and national consulting firms. Staff also posted the RFP on the website. A total of 11 responses were received by the March 11, 2009 deadline. Staff reviewed each response and narrowed the list down to four finalists: AMI, ECS, Incrementum, and NEKO.

Juliana Inman, Vice Chair
Councilmember, City of Napa

Lewis Chilton, Commissioner
Councilmember, Town of Yountville

Joan Bennett, Alternate Commissioner
Councilmember, City of American Canyon

Bill Dodd, Commissioner
County of Napa Supervisor, 4th District

Brad Wagenknecht, Commissioner
County of Napa Supervisor, 1st District

Mark Luce, Alternate Commissioner
County of Napa Supervisor, 2nd District

Brian J. Kelly, Chair
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Keene Simonds
Executive Officer

On March 25, 2009, staff interviewed and ranked the four finalists based on the selection factors outlined in the RFP. These factors were weighted and included proposed scope of services (30%), implementation costs (25%), interviews (20%), annual maintenance costs (10%), experience (5%), references (5%), and responses to the questionnaires prepared by the County's Information Technology Services Department (5%).

B. Analysis

Based on the factors outlined in the preceding section, staff believes Incrementum is the most qualified firm to design and implement the Commission's new electronic document management system. Incrementum's proposal was the most complete of the four finalists and will provide the Commission the ability to efficiently capture (importing and exporting), index, search, retrieve, and distribute documents using Laserfiche software. Incrementum's proposal was also the only one of the four finalists to include a module to copy and transfer stored documents to compact discs with integrated search and viewing capabilities enabling access on computers without requiring Laserfiche software. Additionally, while not the lowest bid of the four finalists, Incrementum's proposed cost of \$20,500 is reasonable given its extended scope of services and falls within the budgeted amount appropriated for the project.¹

In discussing the project with Incrementum, staff believes it would be reasonable to authorize the expenditure of up to the full budgeted amount of \$25,000 to ensure adequate funds are available to cover sales tax, equipment shipping, and nominal service changes.

C. Recommendation

Staff recommends the Commission take the following actions:

- 1) Authorize the Executive Officer to negotiate a contract with Incrementum to design and implement an electronic document management system consistent with its submitted written proposal for an amount not to exceed \$25,000; and
- 2) Authorize the Chair to execute the contract upon Commission Counsel approval.

Respectfully submitted,

Keene Simonds
Executive Officer

Brendon Freeman
Analyst

Attachments:

- 1) Request for Proposal, dated February 4, 2009
- 2) Proposal from Incrementum (Commissioners Only)
- 3) Proposal from AMI (Commissioners Only)
- 4) Proposal from ESC (Commissioners Only)
- 5) Proposal from NEKO (Commissioners Only)

¹ Incrementum's proposed annual maintenance cost is \$2,223, which is adequately budgeted in 2009-2010.

LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY

REQUEST FOR PROPOSAL (RFP)

ELECTRONIC DOCUMENT MANAGEMENT SYSTEM: DESIGN AND IMPLEMENTATION

RFP Circulation Date:
Wednesday, February 4, 2009

Proposal Submission Deadline:
Wednesday, March 11, 2009

LAFCO of Napa County
1700 Second Street, Suite 268
Napa, California 94559
<http://napa.lafco.ca.gov>

Committed to serving the citizens and government agencies of its jurisdiction by encouraging the preservation of agricultural lands and open-space and coordinating the efficient delivery of municipal services.

Brian J. Kelly, Chair, Public Member
Juliana Inman, Vice Chair, City Member
Bill Dodd, Commissioner, County Member
Jack Gingles, Commissioner, City Member
Brad Wagenknecht, Commissioner, County Member
Cindy Coffey, Alternate Commissioner, City Member
Mark Luce, Alternate Commissioner, County Member
Gregory Rodeno, Alternate Commissioner, Public Member

Keene Simonds, Executive Officer
Jacqueline Gong, Commission Counsel
Brendon Freeman, Analyst
Kathy Mabry, Commission Secretary



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I. AGENCY PROFILE

The Local Agency Formation Commission (LAFCO) of Napa County is a political subdivision of the State of California with regulatory and planning responsibilities to coordinate the formation and development of local governmental agencies and services. LAFCO's regulatory duties include managing governmental boundary lines by approving or disapproving proposals involving the formation, expansion, or dissolution of cities and special districts. LAFCO also conducts studies to evaluate the level and range of local governmental services to inform and direct its regulatory duties.

LAFCO annually generates and receives a considerable amount of documentation relating to its regulatory and planning responsibilities. This includes certificates and resolutions confirming governmental boundary changes, which must be retained in perpetuity for legal purposes. Additional documents, such as studies and staff reports, must also be retained for historical records. It has been the practice of LAFCO to retain documents in their original paper form in onsite and offsite storage facilities. This practice, however, has proven inefficient and ineffective given a number of documents have been accidentally misplaced, lost, or destroyed.

II. PROPOSAL DESCRIPTION

LAFCO is seeking proposals from qualified firms to design and implement an electronic document management system, hereinafter referred to as the "project." The scope of the project includes the (a) purchase, (b) set-up, and (c) training for all associated software and equipment necessary to support an electronic document management system.

III. PROPOSAL OBJECTIVE

The underlying objective of the project is to allow LAFCO to efficiently scan and import documents into a central repository. The electronic document management system should include the ability to store, index, search, retrieve, and distribute documents. The electronic document management system should also be user-friendly while providing an appropriate level of security to protect against unauthorized use. Additionally, the electronic document management system should have the ability to transmit and archive data on compact discs.

IV. PROPOSAL TIMELINE AND SELECTION PROCESS

All proposals must be submitted in writing to the LAFCO office no later than 5:00 P.M. on Wednesday, March 11, 2009. Proposals received after this date will not be considered. No changes or adjustments to the deadline shall be made without a written amendment to this RFP signed by the Executive Officer and circulated to all firms on the circulation list. Facsimile and e-mail proposals are not acceptable.

Consultants may submit questions seeking clarification or additional information regarding this RFP. Questions may be submitted by e-mail and directed to Keene Simonds at ksimonds@napa.lafco.ca.gov. All questions must be received no later than 5:00 P.M. on Wednesday, February 18, 2009. Responses will be sent to all firms on the RFP circulation list and posted on the LAFCO website no later than 5:00 P.M. on Wednesday, February 25, 2009.

LAFCO staff will review all written proposals received. Staff will rank each firm based on the content and quality of their written proposal. Specific evaluation factors include (a) project approach, (b) relevant work experience, (c) reference checks, (d) schedule, and (e) cost. Based on its review, staff will identify the written proposal that best meets the needs of LAFCO and will negotiate a final scope of services along with price and schedule with the selected firm. It is anticipated a professional services agreement with the selected firm will be presented to the LAFCO Board for approval at its Monday, April, 6, 2009 meeting.

Please note LAFCO reserves the right to adjust this timeline as it deems necessary. Notification of any timeline adjustments will be sent to all firms on the RFP circulation list and posted on the LAFCO website.

V. TECHNICAL REQUIRMENTS

Nearly all documents imported by LAFCO are drawn from Microsoft Office applications, such as Word, Excel, and Outlook. The remaining imported documents are generally generated from ArcGIS and can be converted into a JPEG or TIFF.

Any electronic document management system must be compatible on PC-based client/server platform. The user interface must be programmed using Microsoft Windows standards and compatible with the following operating systems and technology:

- Windows 2003 Server
- Microsoft SQL Server 2005
- Windows XP, IE 6, or ID 7 on client PCs
- MS Exchange 2003 for e-mail service
- SMS management software
- Norton Enterprise Anti-virus software
- Veritas Backup Exec tape backup software.
- Product must be certified or in process for certification for MS Office

VI. PROPOSAL COST AND SCHEDULE

LAFCO has budgeted \$25,000 in 2008-2009 for the project. Additional funds may be allocated to the project if deemed appropriate and available. LAFCO would like to complete the project by the end of the fiscal year, June 30, 2009. As mentioned, the final project cost and schedule will be negotiated with the selected firm.

VII. PROPOSAL REQUIREMENTS

All proposals must be accompanied by a cover letter. The letter must identify the complete name of the firm submitting the proposal along with its federal identification number and designated contact person. The letter must summarize the proposed approach, cost, and schedule for the project. The letter must also include a statement acknowledging the firm has reviewed and accepted LAFCO's sample professional services agreement (Attachment A) with or without qualifications. If qualifications are involved, those items requiring adjustments must be identified along with suggested changes. If no qualifications are noted, LAFCO will assume the firm is capable of performing all normal managerial tasks and services without reservations or qualifications to the agreement.

As for the actual proposal, it should address the content sections presented below in narrative format. Information should be as concise as possible. Any supporting materials included with the proposal should be directly related to one of the content sections.

- **Firm Description and Summary of Qualifications**
Provide a description of the firm, including type of business, years in business, and office location(s). Identify the key staff members that would be assigned to the project. Summarize the firm's qualifications to design and implement an electronic document management system.
- **Related Work Experience and References**
Provide a summary of the firm's previous work experience in designing and implementing an electronic document management system. Provide a list of at least three (3) client references. The reference list must include the client name, location, and contact person with telephone number.
- **Proposed Scope of Services**
Provide a proposed scope of services for the design and implementation of the electronic document management system. The proposed scope of services should divide the project into major tasks.
- **Proposed Cost**
Identify a proposed not-to-exceed cost to complete the project. The proposed cost of the project should itemize each major task or product and include appropriate training for LAFCO staff. All hourly rates and fees should be clearly stated. Please identify additional post-project costs as appropriate, including annual licensing fees and technical support services.

- **Proposed Schedule**
Identify an overall project schedule, including the timing of major work tasks.

Please provide one unbounded and three bounded copies of the proposal.

VIII. OTHER PROPOSAL INFORMATION

The following information applies to this RFP:

- **Validation Period**
Price quotations and other time dependent information contained in any proposal shall remain firm for a minimum of 90 days from the proposal submission deadline.
- **Property of LAFCO**
All proposals received will become the property of LAFCO and will not be returned. LAFCO reserves the right to copy the materials for evaluation purposes.
- **Acknowledgement of Amendments**
Each firm receiving a copy of this RFP shall acknowledge receipt of any subsequent amendment from LAFCO with their completed proposal.
- **Collusion Among Respondents**
Each firm, by submitting a proposal, certifies it is not party to any collusive action relating to this RFP.
- **Exceptions**
A firm taking exception to any part of this RFP shall indicate such exceptions in a separate section of their submitted proposal. Failure to indicate any exception will be interpreted as the firm's intent to comply fully with the requirements of this RFP.
- **Expenses Incurred**
There is no expressed or implied obligation for LAFCO to reimburse firms for any expenses associated with this RFP.
- **Late Submissions**
Any proposal received after 5:00 P.M. on Wednesday, March 11, 2009 will not be considered.
- **Nonconforming Terms and Conditions**
Any proposal that includes terms and conditions that do not conform to this RFP is subject to rejection as non-responsive. LAFCO reserves the right to waive any informalities or minor irregularities in connection with proposals received. LAFCO reserves the right to permit a firm to withdraw non-conforming terms and conditions from their proposal prior to the Board taking action.

- **Withdrawal of Proposal**

Firms may withdraw all or portions of their proposal up to the ratification of a contract between LAFCO and the selected firm.

- **Withdrawal of RFP**

LAFCO retains the right to withdraw, modify, or amend this RFP at anytime.

- **Negotiated Contract**

A negotiated contract will be awarded to the consultant that best meets the proposed needs at a reasonable price. Although cost is a factor, LAFCO is under no obligation to award this project to the proposal that represents the lowest cost.

SAMPLE PROFESSIONAL SERVICES AGREEMENT

AGREEMENT NO. _____

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, _____, by and between the Local Agency Formation Commission of Napa LAFCO, a political subdivision of the State of California, hereinafter referred to as "LAFCO", and _____ **[TYPE IN LEGAL NAME OF CONTRACTOR; IF THE CONTRACTOR USES A FICTITIOUS BUSINESS NAME AS WELL, ADD "doing business as _____"; IF THE CONTRACTOR IS A CORPORATION, ADD THE STATE OF INCORPORATION BY SAYING, "a _____ corporation"]**, whose mailing [or business] address is _____, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, LAFCO wishes to obtain specialized services, as authorized by _____, in order to _____; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to LAFCO under the terms and conditions set forth herein;

TERMS

NOW, THEREFORE, LAFCO hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve LAFCO in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on _____, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to LAFCO shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention). **[IF THE TERM NEEDS TO ROLLOVER, ADD THE FOLLOWING]** The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. Such notice of nonrenewal may be given on behalf of LAFCO by the Napa LAFCO Executive Officer or designee thereof. For purposes of this Agreement, "fiscal year" shall mean

SAMPLE PROFESSIONAL SERVICES AGREEMENT

the period commencing on July 1 and ending on June 30.

2. **Scope of Services.** CONTRACTOR shall provide LAFCO those services set forth in Exhibit "A", attached hereto and incorporated by reference herein.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, LAFCO shall pay CONTRACTOR at the [rate of _____] **[OR, IF THERE IS MORE THAN A SINGLE RATE, USE THE FOLLOWING]** [at the rates set forth in Exhibit "B", attached hereto and incorporated by reference herein].

(b) Expenses. No travel or other expenses will be reimbursed by LAFCO. **[OR, USE THIS ALTERNATE LANGUAGE]** Travel and other expenses will be reimbursed by LAFCO upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the policy(s) set forth in Exhibit "B".

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement **[ADD "per fiscal year" IF PARAGRAPH 1 HAS AN AUTOMATIC ROLLOVER]** shall be a total of _____ (\$_____) for professional services and _____ (\$_____) for expenses; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and expenses actually incurred. **[DELETE THE TWO REFERENCES TO EXPENSES IF (b) SAYS NO EXPENSES WILL BE REIMBURSED]**

4. **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to LAFCO of an itemized billing invoice in a form acceptable to the LAFCO Executive Director which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. Requests for reimbursement shall also describe the nature and cost of the expense and the date incurred. CONTRACTOR shall submit invoices not more often than _____ to the

_____ **[INSERT POSITION TITLE]** who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. **[DELETE ALL SENTENCES AND PHRASES IN THIS SUBPARAGRAPH WHICH REFER TO EXPENSES IF PARAGRAPH 3(b) DOES NOT PROVIDE FOR EXPENSE REIMBURSEMENT]**

(b) Legal status. So that LAFCO may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the **[INSERT POSITION TITLE]** upon request in a form satisfactory to the LAFCO Executive Director. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by

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CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, LAFCO employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that LAFCO may monitor the work performed by CONTRACTOR. LAFCO shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, LAFCO, in addition to any other rights or remedies which LAFCO may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide LAFCO with certification of all such coverages upon request by LAFCO's Risk Manager.

(b) Liability insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better or equivalent self-insurance:

1. General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

[COMMENT: IF THIS IS A CONSTRUCTION CONTRACT, THE AGGREGATE LIMIT SHALL BE NO LESS THAN FIVE MILLION DOLLARS OR, IF CRANES ARE INVOLVED, NO LESS THAN TEN MILLION DOLLARS. CHECK WITH THE

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LAFCO'S RISK MANAGER FOR THE CORRECT AGGREGATE AMOUNT, BEFORE LETTING BIDS BECAUSE THE AMOUNTS MUST BE STATED IN THE BID SOLICITATION, NOT JUST IN THE EVENTUAL CONTRACT DOCUMENT]

2. Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim. **[NOTE: CONTACT LAFCO'S RISK MANAGER ABOUT WHETHER THIS TYPE AND AMOUNT OF INSURANCE IS RELEVANT TO THE SERVICES BEING PROVIDED. IF IT IS NOT, DELETE THE TEXT OF THIS SUBPARAGRAPH (2) AND ADD "[RESERVED]" NEXT TO THE NUMBER AND SUBHEADING. PROFESSIONAL LIABILITY INSURANCE IS GENERALLY ONLY REQUIRED WHERE CONTRACTOR PROVIDES LICENSED PROFESSIONAL SERVICES, WHEREAS ERRORS AND OMISSIONS INSURANCE MAY BE REQUIRED FOR CLAIMS ADJUSTMENT SERVICES AND CERTAIN OTHER SPECIALTIES.]**

3. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of LAFCO's Risk Manager, demonstrated by other evidence of coverage acceptable to LAFCO's Risk Manager, which shall be filed by CONTRACTOR with the **[INSERT NAME OF LAFCO DEPARTMENT MANAGING THE AGREEMENT]** prior to commencement of performance of any of CONTRACTOR's duties; shall reference this Agreement by its LAFCO number or title and department; shall be kept current during the term of this Agreement; shall provide that LAFCO shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the commercial general liability insurance coverage referenced in 7(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming LAFCO, its officers, employees, agents and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of LAFCO shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to LAFCO with respect to any insurance or self-insurance programs maintained by LAFCO. The additional insured endorsements for the general liability coverage shall use Insurance Services

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Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by LAFCO's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, LAFCO's Risk Manager, which approval shall not be denied unless the LAFCO's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by LAFCO's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects LAFCO, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

8. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify LAFCO and the officers, agents, employees and volunteers of LAFCO from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, including any patent or copyright infringements, but excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of LAFCO or its officers, agents, employees, volunteers, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold LAFCO and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within _____ () days of receipt of written notice from the other party

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describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving _____ (__) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). LAFCO hereby authorizes the LAFCO Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of LAFCO for cause.

[NOTE: THE TOTAL OF THE TIME PERIODS IN PARAGRAPH 9 MUST BE SHORTER THAN THE TIME PERIOD IN PARAGRAPH 10 OR ELSE THE TEXT IN PARAGRAPH 9 SHOULD BE DELETED AND “[reserved]” INSERTED AFTER THE HEADING. FOR INSTANCE, IN PARAGRAPH 9, 10 DAYS TO CURE PLUS 5 DAYS NOTICE OF DEFAULT IS TYPICAL; IN PARAGRAPH 10, 30 DAYS IS USUAL, BUT THE PERIOD MAY NEGOTIATED TO BE LONGER IF, FOR EXAMPLE, CONTRACTOR HAS HAD TO HIRE SPECIFIC STAFF FOR THE PROJECT AND NEEDS TIME FOR LAYOFF OR REASSIGNMENT PROCEDURES]

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least _____ days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by LAFCO unless an opportunity for consultation is provided prior to the effective date of the termination. LAFCO hereby authorizes the LAFCO Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of LAFCO for the convenience of LAFCO.

11. **Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration or termination of this Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of LAFCO, the property of and shall be promptly returned to LAFCO, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a “work made for hire” for purposes of copyright or patent law and only LAFCO shall be entitled to claim or apply for the copyright or patent thereof. **[ADD THE FOLLOWING LANGUAGE ONLY IF THE SERVICES INVOLVE DEVELOPMENT OF PREVIOUSLY PATENTED INVENTIONS OR PREVIOUSLY COPYRIGHTED SOFTWARE]** Notwithstanding the foregoing, upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that LAFCO shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which LAFCO is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to LAFCO or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by LAFCO for the sole purpose of maintaining and updating the system dependent upon such

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code when such use is necessary to prevent loss of service to LAFCO.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to receipt of the notice of termination or commenced prior to receipt of the notice and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to LAFCO for damages sustained by LAFCO by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was otherwise terminated, and LAFCO may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to LAFCO from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

LAFCO

CONTRACTOR

[Name]

[Name]

[Address]

[Address]

14. **Reserved.**

15. **Confidentiality.** Confidential information is defined as all information disclosed to CONTRACTOR which relates to LAFCO's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of LAFCO, expressed through its _____ **[INSERT POSITION TITLE]**. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to LAFCO all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by LAFCO.

16. **No Assignments or Subcontracts.**

(a) **In general.** A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of LAFCO, which shall not be unreasonably withheld. The inability of the

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assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for LAFCO to withhold its consent to assignment. For purposes of this subparagraph, the consent of LAFCO may be given by the _____ **[INSERT POSITION TITLE]**.

(b) **Effect of Change in Status.** If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. In particular, only LAFCO, through its Commission in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed by Exhibit "A". Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) **Interpretation.** The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) **Venue.** This Agreement is made in Napa LAFCO, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, LAFCO of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa LAFCO, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) **Non-Discrimination.** During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for

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employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS), use of family care leave or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of LAFCO by the State of California pursuant to agreement between LAFCO and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to LAFCO for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph in all such subcontracts as obligations of the subcontractor.

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold LAFCO harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that LAFCO is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish LAFCO with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** LAFCO, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the

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subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after LAFCO makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and LAFCO each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to LAFCO and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as LAFCO may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of LAFCO relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, LAFCO may terminate this Agreement immediately upon giving written notice without further obligation by LAFCO to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that LAFCO has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa LAFCO Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

By authorizing its Chair to execute this Agreement on its behalf, LAFCO's Commission hereby determines in writing on behalf of LAFCO that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure obligation.

24. **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party's job openings where such publication or distribution is directed to the public generally.

25. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

26. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

27. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

28. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

29. **Year 2000 Warranties and Assurances.**

[USE THIS PARAGRAPH ONLY IF THE CONTRACTOR WILL BE WORKING ON, SUPPLYING OR RECOMMENDING ACQUISITION OF ANY SOFTWARE SYSTEMS OR EQUIPMENT CONTAINING OR SUSPECTED OF CONTAINING CLOCKS OR EMBEDDED CHIPS FUNCTIONING AS OR DEPENDENT UPON THE USE OF CLOCKS OR CALENDARS.]

(a) CONTRACTOR warrants and represents to LAFCO that any property (including any software, firmware, hardware, equipment and systems, hereinafter referred to collectively as Systems) which is developed, purchased and/or installed based upon CONTRACTOR's recommendation, or programmed by or under the direction and control of CONTRACTOR or its officers, agents, or employees as part of the provision of the services required of CONTRACTOR under this Agreement shall be Year 2000 compliant in that:

- the Systems shall be designed to be used prior to, during, and after the calendar year 2000 A.D.
- the Systems shall operate consistently, predictably and accurately, without interruption or manual intervention, and in accordance with all requirements of this Agreement, including without limitation all specification and/or functionality and performance requirements, during each such time period, and transitions between them, in relation to dates the Systems encounter or process
- all date recognition and processing by the Systems shall include the four-digit-year format and shall correctly recognize and process the date of February 29, and any related data, during any Leap Years;
- all date sorting by the Systems that includes a "year category" shall be done based on the four-digit-year format
- to the extent that the Systems will accept data from other systems and sources that are not Year 2000 compliant, the Systems shall properly recognize, calculate, sort, store, output and otherwise process such data in a manner that eliminates any

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century ambiguity so that the Systems remain Year 2000 compliant.

(b) CONTRACTOR hereby expressly agrees that upon notification in writing by LAFCO of the failure of the Systems or any portion thereof to comply with the requirements set forth in (a) of this Paragraph, CONTRACTOR shall, with 60 days and at no cost to LAFCO, replace or correct the non-complying Systems or portion thereof with software, firmware, hardware, equipment or systems that comply with such requirements as well as with all other requirements of this Agreement.

(c) The warranties set forth in this Paragraph shall not be subject to any disclaimer or exclusion of warranties or to any limitation of CONTRACTOR's liability under any other provision of this Agreement; provided, however, that these warranties shall not apply if the licensing rights of third parties in the Systems prohibit LAFCO or CONTRACTOR from reprogramming the Systems in such a manner as to correct any identified Year 2000 compliance problems and if CONTRACTOR, upon detection of a Year 2000 non-compliance problem notifies LAFCO of such prohibition immediately following detection.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the

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date first above written.

TYPE IN LEGAL NAME OF CONTRACTOR; IF THE CONTRACTOR USES A FICTITIOUS BUSINESS NAME AS WELL, ADD "doing business as _____" FOLLOWED BY THE FICTITIOUS BUSINESS NAME]

By _____
[NAME] , [Title]

[IF CONTRACTOR IS A CORPORATION, EITHER ADD A SECOND SIGNATURE LINE AND MAKE SURE THAT ONE SIGNATURE IS BY THE CORPORATION'S PRESIDENT, VICE-PRESIDENT OR CHAIRMAN AND THE OTHER IS BY THE SECRETARY, TREASURER OR CHIEF FINANCIAL OFFICER OR OBTAIN AUTHORIZATION FROM THE CORPORATION FOR A SINGLE PERSON OR POSITION TO SIGN THE CORPORATION'S CONTRACTS]

By _____
[NAME] , [Title]

"CONTRACTOR"

Local Agency Formation Commission of Napa County, a political subdivision of the State of California

By _____
 , Commission Chair

"LAFCO"

ATTEST: Clerk of LAFCO

By: _____

APPROVED AS TO FORM
Commission Counsel
By: _____
Date: _____

APPROVED BY LAFCO
Date: _____
Processed by:

Clerk of LAFCO

