

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

**PROFESSIONAL SERVICES AGREEMENT
FOR
THE DESIGN AND IMPLEMENTATION OF AN ELECTRONIC DOCUMENT
MANAGEMENT SYSTEM**

LAFCO RESOLUTION L-2010-13

This Agreement is entered into this ____ day of _____, 2010, by and between the El Dorado County Local Agency Formation Commission ("LAFCO"), a political subdivision of the State of California organized under California Government Code Sections 56000 et seq., and Potentia dba Incrementum, a California Corporation (the "Consultant")(collectively referred to as the "Parties").

RECITALS

WHEREAS, Consultant desires to perform and assume responsibility for the provision of professional consultant services required by LAFCO for the design and implementation of an electronic document management system (the "Project") on the terms and conditions set forth in this Agreement; and,

WHEREAS, Consultant has presented a proposal for such services to LAFCO, dated August 9, 2010 (attached hereto and incorporated herein as Exhibits "A" and "B") and is duly licensed, qualified and experienced to perform those services; and,

WHEREAS, Consultant agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Agreement is based on such independent investigation and research; and,

WHEREAS, LAFCO desires to engage Consultant to render such services as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below LAFCO and Consultant hereby agree as follows:

AGREEMENT

1. SCOPE OF SERVICES.

1.1 General Scope of Services. Consultant promises and agrees to furnish to LAFCO all labor, materials, tools, equipment, services and incidental and customary work necessary to fully and adequately supply the necessary professional consultant services for the completion of the "Project" in a manner satisfactory to LAFCO and in accordance with all applicable Federal, State and local laws and regulations, and all terms and conditions set forth in this

Agreement. The Services required by this Agreement are more particularly described in Exhibits "A" and "B."

2. SCHEDULE OF SERVICES.

2.1 Schedule of Services. The Services of Consultant are to commence upon execution of this Agreement by LAFCO and shall be undertaken and completed in a prompt and timely manner, pursuant to the schedule outlined in the Scope of Work, more particularly described in Exhibits "A" and "B" including the following facets of the Project:

Facet 1: Design and Implementation of Laserfiche System (Not to Exceed Payment of \$14,100.00)

Facet 2: Annual Recurring Software Licensing and Assurance Plan (Payment of \$833.00 plus applicable sales tax, subject to change with advanced written notification to LAFCO)

Facet 3: Back File Conversion, subject to the following fee schedule:

<u>Description</u>	<u>Unit Cost</u>
Standard, Legal Size, Ledger Size Documents	\$0.11/page
Large format documents (maps & blueprints)	\$1.30/page
Per page cost includes Document Preparation (disassembly, sorting, reassembly), Scanning, Image Quality Control and Indexing	
Page is defined as one image. A double-sided document would be counted as two pages as it has two images.	
First Copy of CD	\$50.00/CD
Subsequent Copies of CD	\$25.00/CD
Creation:	
First Copy of DVD	\$75.00/DVD
Subsequent Copies of DVD	\$25.00/DVD
Search engine published on each individual CD or DVD for disaster recovery	
Transportation (one-way/per trip)	Waived

The Back File Conversion facet shall not consist of more than fifteen (15) boxes

2.2 Extension of Time. Consultant may, for good cause, request extensions of time to perform the Services required hereunder. Such extensions shall be authorized in advance by LAFCO in writing and shall be incorporated in written amendments to this Agreement.

3. FEES AND PAYMENTS.

3.1 Compensation. Consultant shall receive compensation for all Services rendered under this Agreement as specified in the following schedule:

Facet 1: Payment to be made in three installments: A) Purchaser will pay provider the sum of \$6,434.66 within 10 days following the effective date of this agreement. B) Purchaser will pay provider a not to exceed sum of \$6,434.66 following the satisfactory delivery of products and services described in Exhibits A. C) Purchaser will pay provider the sum of \$1,200.00 upon the completion of the Refresher Training described in Exhibit A. The total amount of this facet is not to exceed \$14,100.00.

Facet 2: Annually on or about November 29th

Facet 3: Upon completion of the project, not to exceed fifteen (15) boxes

Payment for any of these facets is subject to the condition that the specified facet is completed in a manner satisfactory to LAFCO, at the applicable rates set forth in Article 2.1 and in Exhibits "A" and "B." All reimbursements for expenses incurred by Consultant in the performance of the Agreement are included in the foregoing amounts.

3.2 Payment of Compensation. The payment for the first installment of Facet 1 shall be provided upon the execution of this contract. For all other facets, within thirty (30) days of the completion of each facet identified in Article 2.1 in a manner satisfactory to LAFCO, and in a manner consistent with the Scope of Work in Exhibits "A" and "B", Consultant shall submit to LAFCO an invoice which indicates work completed. LAFCO shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

4. CHANGES.

4.1 The Parties may, from time to time, request changes in the scope of the Project to be performed hereunder. Such changes, including any increase or decrease in the amount of Consultant's compensation and/or changes in the schedule must be authorized in advance by LAFCO in writing. Mutually agreed changes shall be incorporated in written amendments to the Agreement.

5. RESPONSIBILITIES OF CONSULTANT.

5.1 Independent Contractor; Control and Payment of Subordinates.

Consultant enters into this Agreement as an independent contractor and not as an employee of LAFCO. Consultant shall have no power or authority by this Agreement to bind LAFCO in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Consultant are employees, agents, contractors or subcontractors of the Consultant and not of LAFCO. LAFCO shall not be obligated in any way to pay any wage claims or other claims made against Consultant by any such employees, agents, contractors or subcontractors, or any other person resulting from performance of this Agreement.

5.2 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of LAFCO. Consultant further represents and agrees that it will perform said Project in a legally adequate manner in conformance with applicable federal, state and local laws and guidelines.

5.3 Project Manager. As a material and essential part of this Agreement, Consultant shall designate and assign Hedy Aref as its project manager for this Agreement, who at all times shall represent the Consultant before LAFCO on all matters relating to this Agreement. The project manager shall continue in such capacity unless and until such person is removed at the request of LAFCO, is no longer employed by Consultant or replaced with the written approval of LAFCO, which shall not be unreasonably withheld.

5.4 Coordination of Services. Consultant agrees to work closely with LAFCO staff in the performance of Services and shall be available to LAFCO staff, consultants and other staff at all reasonable times. LAFCO agrees to work closely with Consultant's staff in the performance of Services and shall be available to Consultant's staff at all reasonable times.

5.5 Warranty. Consultant agrees and represents that it is qualified to properly provide the Services set forth in Exhibits "A" and "B" in a manner which is consistent with the generally accepted standards of quality, practice and competence normally displayed in the Consultant's profession. Consultant further represents and agrees that it will perform said Services in a legally adequate manner in conformance with applicable Federal, State and local laws and guidelines.

5.6 Interest in Contract. Consultant covenants that neither it, nor any of its employees, agents, contractors, or subcontractors has any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Contract, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder.

Consultant shall make all disclosures required by LAFCO's conflict of interest policy in accordance with the category designated by LAFCO, unless the Executive Officer determines in writing that Consultant's duties are more limited

in scope than is warranted by the category designated by the conflict of interest policy of LAFCO and that a narrower disclosure category should apply. Consultant also agrees to make disclosure in compliance with LAFCO's conflict of interest policy if, at any time after the execution of this agreement, LAFCO determines and notifies Consultant in writing that Consultant's duties under this agreement warrant greater disclosure by Consultant than was originally contemplated. Consultant shall make disclosures in the time, place and manner set forth in the conflict of interest policy and as directed by LAFCO.

6. INSURANCE.

6.1 Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to LAFCO that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to LAFCO that the subconsultant has secured all insurance required under this section.

6.2 Types of Required Coverages. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Consultant in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance

6.2.1 Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least \$1,000,000 per occurrence. Defense costs shall be paid in addition to the limits.

6.2.2 The policy shall contain no endorsements or provisions limiting coverage for (1) products and completed operations; (2) contractual liability; (3) third party action over claims; or (4) cross liability exclusion for claims or suits by one insured against another.

6.2.3 Automobile Liability: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.

6.2.4 Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

6.2.4 Professional Liability: Professional Liability insurance for errors and omissions with minimum limits of \$1,000,000. Covered

Professional Services shall specifically include all work to be performed under the Agreement.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

6.3 Endorsements.

6.3.1 The policy or policies of insurance required by Sections 6.2.1 Commercial General Liability and 6.2.2 Automobile Liability shall be endorsed to provide the following:

6.3.1.1 Additional Insured: The indemnified parties shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.

6.3.1.2 Primary Insurance and Non-Contributing Insurance: This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance.

6.3.1.3 Severability: In the event of one insured, whether named or additional, incurs liability to any other of the insureds, whether named or additional, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.

6.3.1.4 Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon LAFCO except ten (10) days prior written notice shall be allowed for non-payment of premium.

6.3.1.5 Duties: Any failure by the named insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the

indemnified parties.

- 6.3.1.6 Applicability: That the coverage provided therein shall apply to the obligations assumed by the Consultant under the indemnity provisions of the Agreement, unless the policy or policies contain a blanket form of contractual liability coverage.
- 6.3.2 The policy or policies of insurance required by Section 6.2.3 Workers' Compensation shall be endorsed, as follows:
 - 6.3.2.1 Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.
 - 6.3.2.2 Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon LAFCO except ten (10) days prior written notice shall be allowed for non-payment of premium.
- 6.3.3 The policy or policies of insurance required by Section 6.2.4 Professional Liability shall be endorsed, as follows:
 - 6.3.3.1 Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon LAFCO except ten (10) days prior written notice shall be allowed for non-payment of premium.
- 6.4 Deductible. Any deductible or self-insured retention must be approved in writing by LAFCO and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.
- 6.5 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by LAFCO. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with LAFCO. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with LAFCO

evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

- 6.6 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time if the required insurance coverage is not in effect and evidence of insurance has not been furnished to LAFCO. LAFCO shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

- 6.7 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.
- 6.8 Insurance for Subconsultants. All subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of this Agreement, including adding LAFCO as an Additional Insured to the subconsultant's policies.

7. OWNERSHIP OF MATERIALS AND CONFIDENTIALITY.

- 7.1 Software and Hardware. Subject to LAFCO's obligation to pay annual license fees for Laserfiche software, LAFCO shall own, or Consultant shall provide LAFCO the license to use, any equipment, software and/or hardware that must be purchased during the delivery of any of the services listed in this Agreement and its use is limited solely by applicable Federal, State and local laws regarding copyright privileges and by any software end user agreements.
- 7.2 Documents & Data; Licensing of Intellectual Property. LAFCO shall own all documents and data prepared by Consultant or subconsultant. Consultant shall not prepare or cause to be prepared documents and data prepared by Consultant or subconsultants or design professionals embodied in computer network plans, hardware/software specifications, web site content, drawings, estimates and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded.

on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement.

With the exception of the Laserfiche software and license payments described herein, Consultant shall have no authority to, and shall not, obligate LAFCO to purchase or license any software. LAFCO shall not be limited in any way in its use or modification of documents and data at any time.

- 7.3 Confidentiality. All Documents & Data are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of LAFCO, except by court order.

8. ACCOUNTING RECORDS.

- 8.1 Maintenance and Inspection. Consultant shall maintain and make available for inspection by LAFCO and its auditor's accurate records of all its costs, disbursements and receipts with respect to any work under this Agreement. Such inspections may be made during regular office hours at any time until one (1) year after the final payments under this Agreement are made to the Consultant.

9. SUBCONTRACTING.

- 9.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of LAFCO. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

10. TERMINATION OF AGREEMENT.

- 10.1 Grounds for Termination. LAFCO may, by written notice to Consultant, terminate all or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to LAFCO, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.
- 10.2 Effect of Termination. If this Agreement is terminated as provided herein, LAFCO may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

10.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, LAFCO may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.**11. GENERAL PROVISIONS.**

11.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

LAFCO: El Dorado County LAFCO
550 Main Street, Suite E
Placerville, CA 95667
Attn: José C. Henriquez, Executive Officer

Consultant: Incrementum
3272 Motor Avenue, Unit D
Los Angeles, CA 90034
Attn: Hedy Aref, President

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

11.2 Indemnification. Consultant shall defend, indemnify and hold LAFCO, its elected officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions, errors or willful misconduct of Consultant, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the performance of the Services or this Agreement, including without limitation the payment of all consequential damages and reasonable attorneys' fees and other related costs and expenses except such loss or damage which was caused by the active negligence, sole negligence, or willful misconduct of LAFCO.

Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against LAFCO, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against LAFCO or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall

reimburse LAFCO and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by LAFCO, its directors, officials, officers, employees, agents or volunteers.

- 11.3 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, State and Federal laws, rules, regulations and ordinances in any manner affecting the performance of the Project or the Services, including without limitation LAFCO business license requirements and all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to LAFCO, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold LAFCO, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.
- 11.4 Prohibited Interests. Consultant covenants that neither it, nor any of its employees, agents, contractors or subcontractors has any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Agreement, nor any other interest which would conflict in any manner or degree with the performance of the Services hereunder.
- 11.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are subject to the Prevailing Wage Laws, Consultant agrees to fully comply with such Prevailing Wage Laws.
- 11.6 Equal Opportunity Employment. Consultant shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation.
- 11.7 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's

Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

- 11.8 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and all other costs of such action.
- 11.9 Assignment or Transfer. Consultant shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of LAFCO, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due Consultant from LAFCO under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to LAFCO.
- 11.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.
- 11.11 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 11.12 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.
- 11.13 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Services specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.
- 11.14 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in El Dorado County.
- 11.15 Time of Essence. Time is of the essence for each and every provision of this Agreement.
- 11.16 Interpretation. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.
- 11.17 No Third Party Beneficiaries. There are no intended third party

beneficiaries of any right or obligation assumed by the Parties.

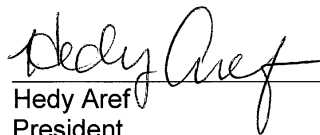
- 11.18 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.
- 11.19 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 11.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

EL DORADO LAFCO

Incrementum

By: _____
Ken Humphreys
Chair, El Dorado LAFCO

By: 
Hedy Aref
President

Attest:

By: _____
José C. Henríquez
Executive Officer

Approved as to Form:

By: _____
Andrew Morris
Best Best & Krieger LLP
LAFCO Counsel