

**EL DORADO COUNTY BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL
Meeting of November 14, 2006**

AGENDA TITLE: Fourth Amendment to Agreement #008-03/04 with Decade Software Company, LLC.

DEPARTMENT: Environmental Management

DEPT SIGNOFF:

CAO USE ONLY:

CONTACT: Gerri Silva/Greg Stanton

DATE: 10/17/2006

PHONE: 6653/6658

Gerri Silva

*C-128
11/7/06*

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:

The Environmental Management Department is recommending the Board 1) approve the Fourth Amendment to Agreement #008-04/05 with Decade Software Company, LLC. to provide software licenses, and 2) authorize the Chair to execute the Forth Amendment to Agreement #008-03/04 with Decade Software Company, LLC. to increase the Agreement amount by \$6,930 for a total not to exceed \$92,430. (General Fund)

CAO RECOMMENDATIONS:

*Recommend approval. Laura S. Gill
11/6/06*

Financial impact? Yes () No

Funding Source: Gen Fund () Other

BUDGET SUMMARY:

Other:

Total Est. Cost \$6,930.00

CAO Office Use Only:

Funding

4/5's Vote Required () Yes () No

Budgeted \$6,930.00

Change in Policy () Yes () No

New Funding _____

New Personnel () Yes () No

Savings _____

CONCURRENCES:

Other _____

Risk Management *yes*

Total Funding \$6,930.00

County Counsel *yes*

Change in Net County Cost \$0.00

Other *IT apply pending*

***Explain** Funds are available in FY 06/07 budget in Software Licenses.

BOARD ACTIONS:

Vote: Unanimous _____ Or

Ayes:

Noes:

Abstentions:

Absent:

Rev. 04/05

I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors

Date: _____

Attest: Cindy Keck, Board of Supervisors Clerk

By: _____

**EL DORADO
COUNTY**



**ENVIRONMENTAL
MANAGEMENT
DEPARTMENT**

November 6, 2006

El Dorado County Board of Supervisors
330 Fair Lane
Placerville, CA 95667

**SUBJECT: Fourth Amendment to Agreement #008-03/04 with Decade
Software Company, LLC**

Honorable Board Members:

Recommendation:

The Environmental Management Department recommending the Chairman be authorized to sign Amendment IV to Agreement #008-04/05 with Decade Software Company, LLC, increasing compensation by \$6,930 to \$92,430 for seven additional software licenses and training for the Department's Vector Control unit. (General Fund)

Reasons for Recommendation:

Agreement #008-03/04 between El Dorado County and Decade Software Company, LLC was approved by the Board on November 4, 2003 for specialized software called "Envision." This software provides a department-wide, networked-based relational database for maintaining facility record information, issuing invoices, posting payments, issuing permits, tracking staff hours, generating operational data for mandated reporting purposes and other related informational needs. The software is critical to department operations, revenue generation and compliance with mandated reporting requirements.

Three amendments for time extensions and dollar increases have been approved by the Board since that time to allow for continued use of the software. We are recommending the Board approve a fourth amendment and final amendment to this contract that modifies the software license term to include Training of Vector Control Module Application and seven Field Inspection Licenses, and increases the compensation term by \$6,930 for a new total not-to-exceed amount of \$92,430 for the

*Environmental
Health Division*

*Air Quality
Management
District*

*Solid Waste &
Hazardous
Materials
Divisions*

Vector Control



**PLACERVILLE
OFFICE**

2850 Fairlane Ct.
Building C
Placerville, CA 95667

Ph. 530.621.5300
Fax. 530.642.1531
Fax. 530.626.7130

**SOUTH LAKE
TAHOE OFFICE**

3368 Lake Tahoe Blvd.
Ste 303
South Lake Tahoe, CA
96150

Ph. 530.573.3450
Fax. 530.542.3364

contract. This compensation increase includes a lump sum payment of \$1,680 for the Training of Vector Control Module Application and \$5,250 for the seven additional licenses due to Decade upon execution of this amendment.

Fiscal Impact:

Funding for the amendment is available in the Department's FY 2006-07 budget.

Net County Cost:

There is no change in net County cost.

Action to be Taken Following Approval:

Upon execution by the Chair, the Board Clerk's Office will forward copies of the Amended Agreement to the Environmental Management Department for distribution, encumbrance, and administration.

Respectfully,



Gerri Silva, M.S., R.E.H.S.
Interim Director
Environmental Management Department

CONTRACT ROUTING SHEET

Date Prepared: 10/17/2006

Need Date: 10/31/2006

PROCESSING DEPARTMENT:

Department: Environmental Mgmt
Dept. Contact: Jan Hust

CONTRACTOR:

Name: Decade Software Co
Address: 4201 West Shaw Ave Suite 102
Fresno, CA 93722

Phone #: 7672

Department

Head Signature: [Signature]

Phone: _____

EL DORADO COUNTY COUNSEL
APPROVED
10/17/06 PM 5:00
[Signature]

CONTRACTING DEPARTMENT: Environmental Management-CHARGE TO 421100

Service Requested: Fourth Amendment providing Software Training of Vector Module, adding 7 Field Inspection System Licenses to software license and increasing dollar amount.

Contract Term: 11-30-06 Contract/Amendment Value: \$6,930.00

Compliance with Human Resources requirements? Yes: No:

Compliance verified by: N/A

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Disapproved: Date: 10/18/06 By: [Signature]

Approved: Disapproved: Date: _____ By: _____

ASSIGNMENT

DATE: 10/17/2006
ATTORNEY: MIKE C.
DEPT. INDEX NO.: 421100
BY: [Signature]

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: Disapproved: Date: 10/20/06 By: [Signature]

Approved: Disapproved: Date: _____ By: _____

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments: _____

Approved: Disapproved: Date: _____ By: _____

Approved: Disapproved: Date: _____ By: _____



Fourth Amendment to Agreement #008-03/04
Between the County of El Dorado and
Decade Software Company, LLC

THIS FOURTH AMENDMENT TO AGREEMENT #008-03/04 for services made and entered into the 4th day of November, 2003, the First Amendment made and entered into the 2nd day of November, 2004, the Second Amendment made and entered into the 6th day of December, 2005, and the Third Amendment made and entered into the 6th day of June, 2006, by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Decade Software Company, a Limited Liability Company, duly qualified to conduct business in the State of California and whose principal place of business is 4201 West Shaw Ave., Suite 102, Fresno, CA 93722 (hereinafter referred to as "Consultant") hereby amends the Agreement to read as follows:

ARTICLE I

Scope of Services:

A. Software License

2. **Paragraph One:** Shall be amended to include "In addition to the foregoing, Consultant agrees to provide Software Setup Configuration and Training of Vector Control Module Application and 7 Field Inspection System Licenses."

ARTICLE III

Compensation for Services: Shall be amended to increase the total amount of the Agreement by Six Thousand Nine Hundred Thirty Dollars and No/100 (\$6,930) so the total payment under this Agreement to Consultant **SHALL NOT EXCEED Ninety Two Thousand Four Hundred Thirty Dollars and No/100 (\$92,430)**. This increase includes a lump sum payment of One Thousand Six Hundred Eighty Dollars and No/100 (\$1,680) for the Training of Vector Control Module Application and Five Thousand Two Hundred Fifty Dollars and No/100 (\$5,250) for the 7 Licenses due to Decade upon execution of this amendment.

All other sections of the Agreement made and entered into the 4th day of November, 2003, the First Amendment made and entered into the 2nd day of November, 2004, the Second Amendment made and entered into the 6th day of December, 2005 and the Third Amendment made and entered into the 6th day of June, 2006, shall remain unchanged and in full force.

REQUESTING DEPARTMENT CONCURRENCE:

By: _____ Dated: _____
Gerri Silva, M.S., REHS
Environmental Management Interim Director

IN WITNESS WHEREOF, the parties hereto have executed this Third Agreement the day and year first below written.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____
Chairman, Board of Supervisors
“County”

ATTEST:
Cindy Keck,
Clerk of the Board of Supervisors

Dated: _____

By: _____

-- CONSULTANT --

Dated: _____

By: _____
Kevin Delaney, President
Decade Software Company, LLC
A California Limited Liability Company

ATTEST:

Dated: _____

By: _____
Secretary
Decade Software Company, LLC
A California Limited Liability Company



Third Amendment to Agreement #008-03/04
Between the County of El Dorado and
Decade Software Company, LLC

THIS THIRD AMENDMENT TO AGREEMENT #008-03/04 for services made and entered into the 4th day of November, 2003, the First Amendment made and entered into the 2nd day of November, 2004, and the Second Amendment made and entered into the 6th day of December, 2005 by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Decade Software Company, a Limited Liability Company, duly qualified to conduct business in the State of California and whose principal place of business is 4201 West Shaw Ave., Suite 102, Fresno, CA 93722 (hereinafter referred to as "Consultant") hereby amends the Agreement to read as follows:

ARTICLE I

Scope of Services:

A. Software License

2. Paragraph One: Shall be amended to include "vector control management."

ARTICLE III

Compensation for Services: Shall be amended to increase the total amount of the Agreement by One Thousand Five Hundred Dollars and No/100 (\$1,500) so the total payment under this Agreement to Consultant **SHALL NOT EXCEED Eighty Five Thousand Five Hundred Dollars and No/100 (\$85,500)**. This increase includes an additional monthly billing of Three Hundred Dollars and No/100 (\$300) for Five (5) Mobile Vector Control Modules commencing on June 1, 2006.

All other sections of the Agreement made and entered into the 4th day of November, 2003, the First Amendment made and entered into the 2nd day of November, 2004, and the Second Amendment made and entered into the 6th day of December, 2005 shall remain unchanged and in full force.

REQUESTING DEPARTMENT CONCURRENCE:

By: Gerri Silva Dated: May 2, 2006
Gerri Silva, M.S., REHS
Environmental Management Interim Director

IN WITNESS WHEREOF, the parties hereto have executed this Third Agreement the day and year first below written.

-- COUNTY OF EL DORADO --

Dated: 6/6/06
By: James R. Sweeney
Chairman, Board of Supervisors
"County"
JAMES R. SWEENEY,

ATTEST:
Cindy Keck,
Clerk of the Board of Supervisors

Dated: 6/6/06
By: Stephan Taylor
Deputy Clerk

-- CONSULTANT --

Dated: 5-12-
By: Kevin Delaney
Kevin Delaney, President
Decade Software Company, LLC
A California Limited Liability Company

ATTEST:
Dated: May 12, 2006
By: Cheeryl Rutherford
Secretary
Decade Software Company, LLC
A California Limited Liability Company



Second Amendment to Agreement #008-03/04
Between the County of El Dorado and
Decade Software Company, LLC

THIS SECOND AMENDMENT TO AGREEMENT #008-03/04 for services made and entered into the 4th day of November, 2003 and the First Amendment made and entered into the 2nd day of November, 2004 by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Decade Software Company, a Limited Liability Company, duly qualified to conduct business in the State of California and whose principal place of business is 4201 West Shaw Ave., Suite 102, Fresno, CA 93722 (hereinafter referred to as "Consultant") hereby amends the Agreement to read as follows:

ARTICLE II

Term: Shall be amended to extend for one (1) additional year, expiring on November 30, 2006.

ARTICLE III

Compensation for Services: Shall be amended to increase the total amount of the Agreement by Twenty Eight Thousand Dollars and No/100 (\$28,000), so the total payment under this Agreement to Consultant **SHALL NOT EXCEED Eighty Four Thousand Dollars and No/100 (\$84,000).**

All other sections of the Agreement dated the 4th day of November, 2003 and the First Amended Agreement dated the 2nd day of November, 2004 shall remain unchanged and in full force.

REQUESTING DEPARTMENT CONCURRENCE:

By: Jon Morgan Dated: 11/2/05
Jon Morgan,
Environmental Management Director

IN WITNESS WHEREOF, the parties hereto have executed this Third Agreement the day and year first below written.

-- COUNTY OF EL DORADO --

Dated: 12/16/05

By: Charlie Paine
Chairman, Board of Supervisors
"County"

ATTEST:
Cindy Keck,
Clerk of the Board of Supervisors

Dated: 12/16/05

By: [Signature]

-- CONSULTANT --

Dated: 11-7-05

By: Kevin Delaney
Kevin Delaney, President
Decade Software Company, LLC
A California Limited Liability Company

ATTEST:

Dated: 11/7/05

By: Sandra Sanchez
Secretary
Decade Software Company, LLC
A California Limited Liability Company



**First Amendment to Agreement #008-03/04
Between the County of El Dorado and
Decade Software Company, LLC**

THIS FIRST AMENDMENT TO AGREEMENT #008-03/04 for services made and entered into the 4th day of November, 2003 by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Decade Software Company, a Limited Liability Company, duly qualified to conduct business in the State of California and whose principal place of business is 4201 West Shaw Ave., Suite 102, Fresno, CA 93722 (hereinafter referred to as "Consultant") hereby amends the Agreement to read as follows:

1. ARTICLE III

Compensation for Services:

- B. Shall be amended to increase the total amount of the Agreement by Twenty Eight Thousand Dollars and No/100 (\$28,000), so the total payment under this Agreement to Consultant SHALL NOT EXCEED Fifty Six Thousand Dollars and No/100 (\$56,000).**

All other sections of the Agreement, dated the 4th day of November, 2003 shall remain unchanged and in full force.

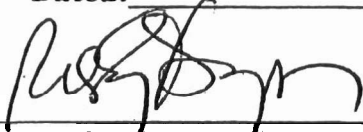
REQUESTING DEPARTMENT CONCURRENCE:

By: JCA Morgan Dated: 9/20/04
Jon Morgan,
Environmental Management Director

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

-- COUNTY OF EL DORADO --

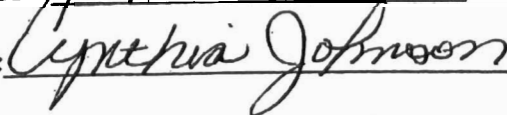
Dated: 11-2-04

By: 
Chairman, Board of Supervisors
RUSTY DUPRAY "County"

ATTEST:


Cindy Keck, Clerk of the
Board of Supervisors

Dated: 11-2-04

By: 

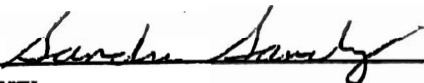
-- CONSULTANT --

Dated: 9-24-04

By: 
Kevin Delaney, President
Decade Software Company, LLC
A California Limited Liability Company

ATTEST:

Dated: 9-24-04

By: 
Secretary
Decade Software Company, LLC
A California Limited Liability Company



Agreement #008-03/04 Between the
County of El Dorado and
Decade Software Company, LLC

THIS AGREEMENT #008-03/04 made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Decade Software Company, a Limited Liability Company, duly qualified to conduct business in the State of California, whose principal place of business is 4201 West Shaw Ave., Suite 102, Fresno, CA 93722 (hereinafter referred to as "Consultant");

WITNESSETH

WHEREAS, County has determined that it has a continuing need for, and Consultant agrees to grant to County, an environmental management software product (hereinafter referred to as "Program") necessary to track, manage, issue, and store data for various Environmental Management Programs/Projects to be used by the Department of Environmental Management of El Dorado County. The Program shall consist of the software, license to the software, and software maintenance as described in this Agreement; and

WHEREAS, Consultant has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, Consultant warrants and represents that the Program identified herein serves the intended and functional purpose for the Environmental Management of El Dorado County; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provisions of such services provided by Consultant are in the public's best interest, are more economically and feasibly performed by outside independent Consultants as well as authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code 31000;

NOW, THEREFORE, County and Consultant mutually agree as follows:

ARTICLE I

Scope of Services:

A. Software License

1. Consultant continues to grant, and County accepts, a nonexclusive, nontransferable license to the Program identified as follows:

Envision for Windows

2. The Program referred to hereinabove is used for the general purposes of automated tracking of environmental programs. Consultant warrants and represents that the Program fits its intended purpose as needed by County. The function of the Program includes, but is not limited to, the following purposes: enables the County to track, manage, issue reports and store data, including but not limited to, underground storage tanks, food facilities, pools and spas, small water systems and business plans.

The Program includes in an Escrow Agreement, source code or related design documentation. The Escrow Agreement pursuant to this Agreement is identified as Exhibit "A", incorporated herein and made by reference a part hereof. For the purposes of this Agreement, source code is defined as the language in which the software (Program) is written.

3. The County's rights under this Agreement shall not be assigned, sublicensed or otherwise transferred to any other entity.
4. County Agrees to use the Program only at the County's site and on the County's computers, and solely for the County's internal business purpose.

County may use the Program at the licensed site or in a remote access mode solely to process its own data and the data of all County remote sites located within the County's jurisdiction. The County ensures that any remote site that has access to the Program complies with the terms and conditions of this Agreement. County may transfer the Program to any other site owned by County upon written notice to Consultant.

County shall have sole responsibility for the propriety, confidentiality and the use of the data maintained by the Program.

5. County may make complete or partial copies of the Program as needed solely for testing, archival and back-up purposes. County shall ensure that all copyright and other proprietary notices or legends contained in or placed upon the Program shall appear on any such copies.

6. Consultant warrants that the Program, when properly installed and operated by qualified professionals, shall operate in accordance with the Consultant's specifications and as represented to County. This warranty shall conform to the Users Guide. Should Consultant fail to correct any non-conformance within the period specified in ARTICLE IX, County shall be entitled to a full refund for any monies paid under the terms of this Agreement.
7. Title and full ownership rights including, but not limited to, all copyrights in and to all copies of the Program shall remain the sole and exclusive property of Consultant. County acknowledges and agrees that the Program constitutes, contains, and embodies valuable confidential information, trade secrets and proprietary rights of Consultant.
8. If source code is licensed, County may modify or enhance the Program for any purpose reasonably related to the purpose for which the Program was originally licensed, provided that:
 - a. If the County is provided any source code, the County's right to modify or enhance the Program shall not diminish the Consultant's copyrights, interest in, or ownership of the Program;
 - b. Unless otherwise agreed to by both parties in writing, the County shall be solely responsible for any and all maintenance of any modifications or enhancements it makes to the Program.
9. Disclosure of this Agreement is subject to any and all pertinent laws governing disclosure of public information (California Public Records Act - Government Code 6250 et seq.). County shall give Consultant notice of any request for public disclosure of any confidential information or data made available by Consultant in connection with the license granted hereunder, including, without limitation, all methods, processes, techniques, knowledge and know-how. Consultant shall notify the County immediately if Consultant contends the information requested is exempt from disclosure, and shall inform the County of Consultant's basis therefore. The final determination as to the County's obligations to comply with the Public Records Act shall remain solely with the County.

During access to the County's software and data, Consultant agrees to maintain complete confidentiality as to information contained in the software and data.

County shall take all reasonable action to fulfill its obligations with respect to the use, copying, confidentiality and security of the Program and all other confidential material of Consultant or its Licensor. County agrees not to reverse assemble, or decompile or otherwise attempt to create or derive source code from the Program.

10. Consultant has provided specifications for the computer system necessary for the successful operation of software and acknowledges that all of its requirements have been met by County and Consultant certifies that the computer system is suitable for continued operation.

B. Software Maintenance

1. Consultant offers to County and County hereby accepts the following provisions for the maintenance and improvement of the software Program identified as:

Envision for Windows

2. Consultant will attempt to identify the sources of any malfunction, determine the cause of the malfunction and document its findings, if the Program malfunctions and fails to perform as described in the on-line reference manual provided by Consultant.

County shall notify Consultant in writing immediately regarding Program malfunctions and shall provide a listing of output and such other data as is required to reproduce operating conditions as existed when the suspected malfunction occurred.

Consultant shall provide continued Program maintenance consisting of updates and error corrections to the Program and enhancements and improvements to individual features of the Program. Additional programs that are sold separately are expressly excluded.

3. Consultant will provide to the County those enhancements to the Program, which are released during the term of this Agreement, at no additional cost to the County. Said enhancements shall be provided to the County within ninety (90) days after general release by Consultant. The term "enhancement" includes any revision of, or improvement to, the Program which substantially conforms to published literature provided to the County by Consultant as of the date of the software license.

Consultant shall maintain backup copies of the current and prior versions, if any, of the Program. Consultant shall provide updates of individual pages of documentation affected by any changes, and updates or enhancements to the Program. If entire new documents are prepared as part of such changes, updates or enhancements, Consultant shall supply as many copies as are licensed by County. Consultant shall replace Program(s) that have been lost or damaged and County shall pay any then current media and reproduction costs, unless such loss or damage is caused solely by the negligence of Consultant, in which case there will be no charge to County.

4. If any Program malfunction is determined under Software Maintenance, Paragraph 2. above to have been caused by Consultant's programming, or by incorrect instructions from Consultant personnel or documentation provided by Consultant, investigative services under Paragraph 2. above are treated as standard maintenance under this paragraph and Consultant corrects the malfunction at no additional charge.
5. Consultant agrees to provide telephone hot line support services to the County. Telephone hot line services are provided by Consultant during normal business hours (9:00 AM - 5:00 PM). Consultant reserves the right to limit such telephone consultation should County require more than one hour per week. Any additional consultation shall be billed at \$30.00 per call, only with prior consent of County. Telephone hot line services include answering questions, providing technical guidance with regard to the Program, receiving trouble reports, troubleshooting system problems and other investigative services relative to the Program. County agrees to keep the necessary telecommunications components and connections in operation during the term of this Agreement.

If any Program malfunction is determined to have been caused by machine malfunction, by an enhancement to the Program not provided by Consultant, by the use of incorrect data, by the use of incorrect procedures by County's personnel, or by any other cause not attributable to Consultant, corrective action shall be treated as Other Systems Maintenance or custom programming for which the Consultant shall bill County not to exceed eighty-three dollars (\$83.00) per hour.

6. If County requests reinstatement of Maintenance Service after a termination or cancellation has occurred, Consultant shall reinstate service only after payment of software update fees, as may be required by Consultant, together with other payments which may be due Consultant from County under this Agreement, or in lieu thereof, obtain non-Agreement service, if available, by paying for parts, labor and travel at rates in effect at the time of service. However, there will be no retroactive payment of monthly Maintenance Service fees if service was discontinued by the County due to Consultant non-performance.
7. Consultant warrants that the software provided pursuant to this Agreement meets or exceeds the performance standards specified in this Agreement and as Consultant has represented to County. Should the software as sold and installed hereunder fail to meet any of the specifications as detailed in this Agreement or any related documentation, County may exercise whatever options are set forth in this Agreement at County's sole option.

Consultant warrants that Software shall be free from defects in material and workmanship and shall function according to the specifications, and agrees to replace or repair all defects at no charge during the term of this Agreement, provided the damage shall not have been caused by willful act or negligence of County's agents or employees.

Consultant warrants that it has the right to license application software and sell the licensed supporting software and that all software is delivered and installed free of any claim or patent, trademark or copyright infringement.

Consultant warrants that software is merchantable and is fit for the purpose expressly set forth in this Agreement and will perform in accordance with the Consultant's specifications and related documentation (User Guide).

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto. The term of this Agreement shall be for two (2) years and shall be for the period of December 1, 2003 through November 30, 2005.

ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Consultant monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered. County agrees to pay Consultant license fees in the amount of \$2,166.67 plus applicable Sales Tax, monthly in arrears. The total amount of this Agreement shall not exceed \$28,000.00 including every item of expense applicable to the services to be provided under the terms of this Agreement.

ARTICLE IV

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE V

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during term hereof.

ARTICLE VI

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subAgreement, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VII

Independent Consultant/Liability: Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates and sub-consultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

ARTICLE VIII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were agreed to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE IX

Default, Termination and Cancellation:

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in

writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part seven (7) calendar days upon written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Consultant, and for such other services, which County may agree to in writing as necessary for Agreement resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

ARTICLE X

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

County of El Dorado
Environmental Management Department
2850 Fairlane Court
Placerville, CA 95667
ATTN: Jon A. Morgan, Director

or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

Decade Software Company, LLC
4201 West Shaw Ave., Ste 102
Fresno, CA 93722
ATTN: Kevin Delaney

or to such other location as the Consultant directs.

ARTICLE XI

Indemnity: The Consultant agrees to save harmless and to indemnify County from every claim or demand which may be made for any injury or death, or damage to property caused by Consultant during the term of this Agreement. Such duty shall be irrespective of the date upon which the claim or demand is asserted. If any judgment is rendered against County for any injury, death or damage caused by Consultant during the term of this Agreement, Consultant shall, at its own expense, satisfy and discharge any judgment. Neither of the forgoing statements shall be applicable if the injury, death or damage is caused by the sole negligence on the part of the County, its officers and employees. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XII

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. In the event Consultant is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence. For the purposes of this Agreement, professional liability is not required.
- E. Consultant shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.

- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Consultant agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the County, and;
 - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. The Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County; either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, officials, employees or volunteers, or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement

- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the Agreementing County Department, either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE XIII

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XIV

Interest of Consultant: Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other Agreement connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

ARTICLE XV

California Residency (Form 590): All independent Consultants providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The consultant will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement. This requirement applies to any agreement/Agreement exceeding \$1,500.00.

ARTICLE XVI

Tax Payer Identification Number (Form W-9): All independent Consultants or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XVII

Year 2000 Compliance: Consultant agrees that hardware and software developed, distributed, installed, programmed or employed as a result of this order will comply with ISO 9000 date format to correctly manipulate and present date-sensitive.

Upon delivery of product and thereafter, the date and date logic component shall effectively and efficiently operate using a four digit year.

Upon written notification by the County of any hardware or software failure to comply with ISO 9000 date format, Consultant will replace or correct the failing component with compliant hardware or software immediately, at no cost to the County.

ARTICLE XVIII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Jon A. Morgan, Director, Environmental Management Department, or his successor.

ARTICLE XIX

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XX

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXI

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Consultant waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XXII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

Requesting Department Concurrence:

By: JON A. MORGAN Dated: 9-30-03
Jon A. Morgan, Director
Environmental Management Department

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

-- COUNTY OF EL DORADO --

Dated: November 4, 2003

By: Helen K. Baumann
Chair, Board of Supervisors
HELEN K. BAUMANN

ATTEST:
DIXIE L. FOOTE, Clerk
of the Board of Supervisors

Dated: November 4, 2003

By: Margaret E. Moody
Deputy Clerk

-- CONSULTANT --

Dated: 9-12-2003

Decade Software Company, LLC
A California Limited Liability Company

By: Kevin Delaney
Kevin Delaney, President
"It's Member and Managing Officer"

ATTEST:

Dated: 9-30-03

By: Sandra Sanchez
Secretary

EXHIBIT "A"

ESCROW OF SOURCE CODE AGREEMENT

Escrow of Source Code Agreement

Decade, upon receipt of a signed Agreement, will place a current, complete copy of the software system referred to as ENVISION in a custodial account at the CalFed Bank at 2270 W. Shaw Avenue, Fresno, CA 93711. This software shall include the current source code required to modify the system. In addition, an updated, current, complete copy of the software system shall be replaced in the custodial account at the above mentioned bank every 90 days.

The above referenced software source code shall only be released to the Director of Environmental Management. Environmental Management guarantees that the rights of Decade shall not be violated from the disclosure of the source code to any person or organization not employed by the County of El Dorado.

In the event of the necessary release of the above mentioned software source code, it is understood by Environmental Management that the right to use said source code is a NON-EXCLUSIVE right and is to be used only for the purpose for which it has been intended.

The above referenced software source code shall only be released when it has been determined that Decade, its successors or assignees cannot fulfill the obligations of the current Agreement.

Release of the software source code to Environmental Management does not imply any right of ownership to Environmental Management.

Environmental Management shall obtain written authorization from Decade Software Company, LLC to release the software source code to an outside person or entity. Should the software source code be released by Environmental Management to any outside person or entity and that person or entity alters any of the Envision routines, any warranties or guarantees shall be void.

Should it be necessary for Decade to fix and/or repair the ENVISION system released by Environmental Management to an outside person, Environmental Management agrees to reimburse Decade for any and all expenses related to repairing the ENVISION system. Alteration of the ENVISION routines voids any warranties or guarantees.