

ORIGINAL

07-750

AGREEMENT FOR SERVICES #358-C0111 AMENDMENT II

This Amendment II to that Agreement for Services #358-C0111, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and PKWARE of Ohio, Inc., an Ohio Corporation duly qualified to conduct business in the State of California, whose principal place of business is 9009 Springboro Pike, Miamisburg, OH 45342 and whose Agent for Service of Process is Barry Goss, 181 Garbarda Way, Portola, CA 94028, (hereinafter referred to as "Contractor");

WITNESSETH

WHEREAS, Contractor has been engaged by County to provide software license fee and maintenance for PKZIP MVS Base 2.51A to compress/decompress files on the mainframe during file transfers for the Information Technologies Department in accordance with Agreement for Services #358-C0111, dated December 12, 2000, and Amendment I, dated December 2, 2003, incorporated herein and made by reference a part hereof; and

WHEREAS, the parties hereto have mutually agreed to increase the compensation by \$639.38 per year, hereby amending **ARTICLE 5 - Charges**; and

WHEREAS, the parties hereto have mutually agreed to amend **ARTICLE 13 – Administrator**; and

WHEREAS, the parties hereto have mutually agreed to add **ARTICLE 16 – Fiscal Considerations**, **ARTICLE 17 – Insurance**, and **ARTICLE 18 – County Business License**.

NOW THEREFORE, the parties do hereby agree that Agreement for Services #358-C0111 shall be amended a first time as follows:

5. Charges

The First Year Fee for purchase of the License and first year support shall be \$10,585.00 U.S. dollars that is an accumulation of the Total Amount(s) indicated on the Machine Description Form(s). "First Year Fee" means the fee County must pay for the License and support for the first one (1) year term of this Agreement. The fee depends on the machine's model, type and manufacturer.

Any invoice issued to County under this Agreement is due and payable within thirty (30) days of its receipt by County. Initially, a key will be issued for thirty (30) days until payment in full for the First Year Fee is received by Contractor.

County shall pay an upgrade fee when the MIPS capacity of the machine(s) increases from the base machine(s) at the time of purchase. The upgrade fee shall be equal to the difference between the average MIPS capacity of the base machine(s) indicated in Exhibit "A", marked "Amended Software Machine Description Form", incorporated herein and made part by reference hereof, and the average MIPS capacity of the upgraded machine(s), multiplied by the per MIPS fee indicated on said form. For the purpose of this agreement, the billing rate for the period of December 12, 2000 through March 31, 2007 shall be \$1,852.37 per year; effective April 1, 2007, the billing rate shall be \$2,491.75 per year. The upgraded machine will establish the new average base MIPS capacity. Average MIPS capacity per machine is determined by Cheryl Watson's CPU chart, or equivalent source if not available.

Customer shall be responsible for all other federal, state, municipal and other government excise, sales, use, customs, value added, or other taxes, fees or duties now in force or enacted in the future, except for taxes measured by Contractor's net income.

If County required Purchase Order Number or Contract Number to be printed on the invoices, County must provide the same. In the event of conflict between County's Purchase Order/Contract and this Agreement, the parties agree that this Agreement shall control.

Payment shall be made in U.S. dollars drawn on a U.S. bank item that is clearable through the Federal Reserve System of the U.S.

13. Administrator

The County Officer or employee with responsibility for administering this Agreement is Steve Featherston, Assistant Director, Information Technologies, or successor.

16. 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 contracted 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.

17. Insurance

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor 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 \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor 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.
- E. Contractor 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. Contractor 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, Contractor 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 the 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 Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor 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 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 the general liability policy.
- I. The Contractor'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 excess of the Contractor'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 Contractor 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 and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor 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 contracting County Department either independently or in consultation with Risk Management, as essential for the protection of the County.

18. County Business License

It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

Except as herein amended, all other parts and sections of that Agreement #358-C0111 shall remain unchanged and in full force and effect.

Requesting Contract Administrator Concurrence:

By: Steve Featherston Dated: 3-5-2007
Steve Featherston
Assistant Director
Information Technologies

Requesting Department Head Concurrence:

By: Jacqueline Nillius Dated: 3-5-07
Jacqueline Nillius
Director
Information Technologies

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IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to that

Agreement for Services #358-C0111 on the dates indicated below, the latest of which shall be deemed to be the effective date of this Amendment.

--- COUNTY OF EL DORADO ---

Dated: _____

By: _____

Chairman
Board of Supervisors
"County"

ATTEST:

Cindy Keck, Clerk
of the Board of Supervisors

By: _____ Date: _____
Deputy Clerk

-- CONTRACTOR --

Dated: 4/23/07

PKWARE OF OHIO, INC.,
A WISCONSIN CORPORATION

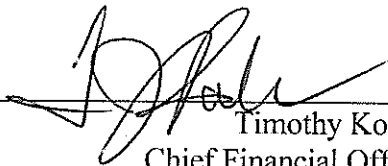
By:  _____
Timothy Kohler
Chief Financial Officer
"Contractor"



EXHIBIT "A"

AMENDED SOFTWARE MACHINE DESCRIPTION FORM

| | |
|----------------------|---------------------|
| Quote Number: | Q01490074 |
| Quote Date: | 12/26/2006 |
| End Licensee: | County of El Dorado |
| Site ID: | 10219 |
| Good Until: | 1/26/2007 |

| Invoice Address | | Authorized Site (physical location of software installation) | |
|--|--|---|--|
| Company: | County of El Dorado | Company: | County of El Dorado |
| Name: | Steve Featherston | Name: | Steve Featherston |
| Street Address (no PO Box): | 360 Fair Lane Placerville, CA 95667-4103 United States | Street Address (no PO Box): | 360 Fair Lane Placerville, CA 95667-4103 United States |
| Telephone: | 530-621-5424 | Telephone: | 530-621-5424 |
| Fax Number: | 530-295-2512 | Fax Number: | 530-295-2512 |
| E-Mail: | sfeatherston@co.el-dorado.ca.us | E-Mail: | sfeatherston@co.el-dorado.ca.us |

| Line | SKU | Description | Qty | Cost | Ext Cost |
|--|--------------------|--|-----|--------------------|-------------------|
| 1 | PKZ08-5602-ENG-DC0 | PKZIP,zSeries,v5.6,SE,h/w upgrade,server lic | 1 | 1,600.00 | 1,600.00 |
| 2 | PKZ08-5602-ENG-FC1 | PKZIP,zSeries,v5.6,SE,renewal maint,server lic | 1 | 160.00 | 160.00 |
| | | | | SUBTOTAL: | \$1,760.00 |
| Those customers who are receiving goods in OH, PA, FL, NE, WI, CA will be charged applicable sales tax or VAT if in the United Kingdom. The appropriate amount will be added to the sales invoice. | | | | Amount Due: | \$1,760.00 |

| Maintenance Information | | |
|-------------------------|--------------------------|--|
| Line 2 | Product: | PKZIP,zSeries,v5.6,SE,renewal maint,server lic |
| | Maintenance Rate: | 15% |
| | Maintenance Fee: | \$160.00 |
| | Maintenance Term: | 4/1/2007 - 11/30/2007 |

Comments to Customer:

Licensing:

- For large platform products the processor details and serial number for all machine(s) to be licensed are required.
- A permanent authorization code (key) will be issued upon receipt of payment for large platform products. A temporary key will be provided until payment is received. The extended continuation of a temporary key is on a case-by-case basis.

Terms and Conditions:

- Payment terms: Net 30
- All MIPS ratings are determined by Cheryl Watson's CPU chart.
- The Maintenance Term will begin and end on the dates specified on the invoice.
- Make remittance payable to:
PKWARE, Inc.
648 N. Plankinton Ave., Suite 220
Milwaukee, WI 53203

Kristine Ison
PKWARE
kristine.ison@pkware.com

Upgrade Information

| Hardware Upgrade | | | | |
|------------------|--|---|-------------|---------------------|
| Line 1 | Product: | PKZIP, zSeries, v5.6, SE, h/w upgrade, server lic | | |
| | From Machine: | 001019, 7060 H30 | To Machine: | 001019-00- 2096-F01 |
| | From MIPS | 60 | To MIPS | 109 |
| | Total Upgrade Fee: | | | \$1,600.00 |
| | Maintenance Rate: | | | 15% |
| | Annual Maintenance and Support will increase to: | | | \$2,491.75 |

(Annual renewals may be subject to percentage increase.)

This is an Amendment (the "Amendment") to the License Agreement, including all related addendums and schedules (collectively the "Agreement") by and between PKWARE, Inc., *ffka* ASI, Inc. or PKWARE of Ohio, Inc. ("Licensor") and ("Licensee"). Except where expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect. Where any term of the Agreement conflicts with a term of this Amendment, the terms of this Amendment shall control. The term "ASI, Inc." or "PKWARE of Ohio, Inc." as it appears in the Agreement is hereby deleted in its entirety and replaced with the term "PKWARE, Inc." PKWARE, Inc. shall hereafter be considered the Licensor under the Agreement and shall assume all rights, responsibilities and obligations previously held by ASI, Inc. or PKWARE of Ohio, Inc. under the Agreement.

**Machine Upgrade Discounted Per-MIPS
Pricing Schedule
(after initial purchase, with support
addendum executed):**

| | | |
|-------------|----------|-----------------|
| 0 to 49 | Flat Fee | \$1,600.00 |
| 50 to 99 | | \$35.00 Per MIP |
| 100 to 149 | | \$31.00 Per MIP |
| 150 to 199 | | \$28.00 Per MIP |
| 200 to 299 | | \$23.00 Per MIP |
| 300 to 499 | | \$18.00 Per MIP |
| 500 to 999 | | \$15.00 Per MIP |
| 1000 and up | | \$10.00 Per MIP |