



**Agreement No. 007E-A-11/12-BOS
Between the
County of El Dorado
and
Decade Software Company, LLC**

This Agreement No. 007E-A-11/12-BOS 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 1195 W. Shaw Ave., Fresno, CA 93711 (hereinafter referred to as "Consultant").

WITNESSETH:

WHEREAS, County has determined that it has a continuing need for, and Consultant as Owner and Developer agrees to grant to County, licenses to a certain set of software products marketed using the trade name Envision and EnvisionConnect; and

WHEREAS, County desires to obtain from Consultant a revocable, non-exclusive, non-sub licensable and non-transferable license to use consultant's Licensed Programs and services; 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 Licensed Programs identified herein serves the intended and functional purpose for the Environmental Management Department 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, this Agreement witness that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual promises herein, the parties agree as follows:

ARTICLE 1

Exhibits:

The following Exhibits are incorporated herein and made by reference a part hereof:

EXHIBIT	Description
Exhibit A	Volumes, Prices, and Payment Schedule for License Fees
Exhibit B	Professional Services Rates
Exhibit C	Professional Service Request Gold Migration Plan
Exhibit D	Professional Services
Exhibit E	Fees and Payment Schedule
Exhibit F	Third Party Software

In the event of a conflict between the main body of the Agreement and an Exhibit to the Agreement, the terms of the Exhibit shall prevail.

ARTICLE 2

Definitions:

- a. Agreement: The agreement set forth in this document.
- b. Licensed Materials: The term "Licensed Materials" shall mean computer programs, in object form, and all related documentation and materials provided to County under the terms of this Agreement. Licensed Materials shall not include Source Code.
- c. Licensed Programs: The term "Licensed Programs" shall mean the object code version of the software, as well as all updates, enhancements and releases. Licensed Programs are a sub-set of the Licensed Materials.
- d. Source Code: The term "Source Code" shall mean a full source language statement of the programs owned by Consultant used to prepare the Licensed Programs, including any updates, enhancements, revisions and modifications thereto that are provided to County under this Agreement. Source Code shall not include any source language statements for any portion of the Licensed Programs owned by or sublicensed from third parties.

- e. Version: The term "Version" shall mean an issue of Licensed Programs, which has been made available to the County.
- f. Professional Service Request (PSR): The term "PSR" shall mean the document and process required to authorize professional services which are outside of those agreed to in the Statement of Work.
- g. Envision and EnvisionConnect: The term Envision and EnvisionConnect shall mean the trade name for the Licensed Programs provided under this Agreement as described in Exhibit A.
- h. Inspector: The term "Inspector" shall mean a County staff member whose job function requires fifty percent (50%) or more time is spent conducting field activities such as inspections or investigations.

ARTICLE 3
Scope of Services:

A. Software License

1. Consultant will grant, and County accepts, a revocable, non-exclusive, non-sub licensable and nontransferable license to the Licensed Materials identified as follows:

Envision and EnvisionConnect

2. The Licensed Materials are used for the general purposes of automated tracking of environmental programs. Consultant warrants and represents that the Licensed Material 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, hazardous materials inventory and business plans.
3. Consultant hereby grants to County, and County hereby accepts from Consultant, subject to the terms and conditions of this Agreement, a non-

exclusive, non-transferable license ("License") to use the Licensed Materials solely for its own use. The License shall be restricted for use with one (1) production server database with a single set of master code tables.

4. The License also authorizes County to maintain a back up copy of the Licensed Programs for use with databases for back up and testing purposes only. County agrees to maintain appropriate records on the quantity and location of all such copies, and produce same on demand by Consultant. County agrees to include the Consultant's copyright notice on all copies, in whole or in part, in any form. County agrees to receive prior written approval from Consultant before copying any portion of the Licensed Programs for any other purpose.
5. County may not assign, sublicense or otherwise transfer, in whole or in part, the License, this Agreement or any of its rights or obligations hereunder, whether voluntarily, by operation of law or otherwise, without the prior written consent of Consultant.
6. County agrees to not allow access to the Licensed Programs to any third party without written permission from Consultant.

B. Ownership

1. Consultant is the lawful owner of all proprietary rights whatsoever in the Licensed Materials including any changes, additions, and enhancements in the form of new or partial programs or documentation, but not as to limit the generality thereof, all copyright interests in the Licensed Materials. All copies of the Licensed Materials provided to, or reproduced by, the County pursuant to this Agreement is, and remains the property of Consultant. No rights in the Licensed Materials are granted to anyone other than those set forth in this Agreement. The County shall use its commercially reasonable best efforts to prevent any violations of the Consultant's property rights in the Licensed Materials and shall, under no circumstances, sell, lease, sublease, sublicense, assign, barter, or otherwise transfer the Licensed Materials or use the Licensed Materials for the processing of data for others, except as provided herein.

2. The County shall have no right to modify, enhance or otherwise change the Licensed Materials in any way without the prior written consent of the Consultant, however the County shall be entitled to merge the Licensed Materials into other materials to form a system, provided that upon termination of the License granted by this Agreement, the Licensed Materials will be completely removed from the system and treated as though permission to merge had never been granted. Use of the Licensed Materials in a system shall remain subject to all other terms of this Agreement.
3. The Licensed Materials and all other data or materials supplied by Consultant to County are confidential and proprietary to Consultant, protected by law and of substantial value to Consultant, and their use and disclosure must be carefully and continuously controlled.
4. The Licensed Materials and the Source Code are protected by the Copyright Laws of the United States.
5. All logos, trademarks, and trade names of Consultant are proprietary to Consultant and may only be used as authorized in writing by Consultant.
6. County shall keep all property of Consultant free and clear of all claims, liens, and encumbrances.
7. County shall notify Consultant immediately of the unauthorized possession, use, or knowledge of any item supplied to County pursuant of this Agreement.
8. In the event County breaches or attempts to breach any of the provisions of this Section B, Consultant shall have the right, in addition to such other remedies which may be available to it, to injunctive relief enjoining such breach or attempt to breach, it being acknowledged that legal remedies are inadequate. The provisions of this Section B shall survive termination of this Agreement.

ARTICLE 4

Term: The term of this Agreement shall be for three (3) years and shall be for the period of November 1, 2011 through November 1, 2014.

ARTICLE 5

Compensation for Services: For services provided herein, County agrees to pay Consultant monthly in arrears. Prices for license fees and professional services are contained in Exhibit A, B, C, D and E. The original license and annual fees are based on the number of Inspectors specified in Exhibit A.

- a. County agrees to pay for additional Inspectors as they are added at Consultant's then prevailing license and maintenance fees.
- b. After the initial term and for successive terms thereafter, Consultant will notify County at least sixty (60) days prior to the end of the then current term of Consultant's intent to increase prices for the successive term.
- c. Any tax, such as sales and use taxes, exclusive of property and income taxes, that Consultant is required to collect or pay based upon the sale or delivery of products or services under this Agreement shall be paid by County to Consultant, or County shall pay directly to the taxing agency with proof of payment provided to Consultant. This obligation extends retroactively if so assessed by a taxing agency.
- d. If County is using the Licensed Programs in California, and receives the Licensed Programs on tangible personal property (for example floppy disks, magnetic tape, Zip disk, CD-ROM, or any other medium by which the Licensed Programs are temporarily stored to effect transfer to County's computer) then the full license and support fee, as well as training and conversion fees, are subject to California sales and use tax. The definition of transfer is the leaving behind of such tangible personal property. However, if the Licensed Programs are received by County over communication lines, via the internet, a bulletin board service or through a direct connection between County and Consultant computers, the license and support, training, and conversion fees are not subject to sales and use tax. In California, all parts and supplies are subject to sales and use tax, and hourly-based professional services, other than training and file conversion for the Licensed Programs, are not.

- e. If County is using the Licensed Programs in a state other than California then County is responsible for knowing the sales and use tax rules of that state.
- f. Section 6 lists products and services that are not included in the license and support fee. Fees for County's use of these items are due and payable when invoiced.
- g. Payment shall be made within forty five (45) days following County receipt and approval of itemized invoice(s) detailing services rendered. County agrees to pay Consultant in accordance with Exhibit A – "Service Fee Schedule".
- h. The total amount of the Three Year Agreement shall not exceed **One Hundred Nineteen Thousand One Hundred Seventy Nine Dollars and 00/100 (\$119,179)**.

Consultant reserves the right to withhold services for non-payment of fees.

ARTICLE 6

Support Services: The following services are included in the license and support fees.

- a. **Telephone Support:** Consultant provides telephone support via a toll free number for County's usability questions and/or problem resolution. Support is provided during Consultant's regular business hours (8:00 A.M. to 5:00 P.M., Pacific Time, Monday through Friday, with Federal and State holidays excluded). Issues can be reported 24-hours a day by RTI WebFirst, e-mail, fax or telephone. Consultant supports both the applications developed in-house and the database backend on which these applications run.

Holidays Include

New Year's Day
Martin Luther King Jr. Birthday
Presidents' Day
Memorial Day
Independence Day
Labor Day

Thanksgiving Day
The Friday after Thanksgiving
Christmas Eve
Christmas Day

- b. **Web-based Support:** 24-hour access to our web resources. This includes all system documentation, Envision and EnvisionConnect upgrade files, and quarterly “Did You Know?” newsletter of system workflows tips. Web resources allow searches Consultant’s Knowledge Base of known Envision and EnvisionConnect issues and suggestions and instantly send issues to Consultant technical support staff via an online support form
- c. **Licensed Programs Maintenance:** Consultant will provide Licensed Programs maintenance, which includes defect fixes, and any other required modifications to keep the Licensed Programs in conformance with the specifications contained in the then current Consultant Licensed Materials. Consultant will amend the specifications only to remove documentation errors, provide consistency of interpretation, or describe improvements to the Licensed Programs. Consultant will correct any error or malfunction in the Licensed Programs that prevents them from operating in conformance with the then current Licensed Materials, or Consultant will provide a commercially reasonable alternative that will conform to the then current Licensed Materials. If County's system is inoperable due to a reproducible error or malfunction, and County is using the current release of the Licensed Programs, Consultant will provide continuous effort to correct the error or malfunction.
- d. **User Group Meetings:** User group meetings occur on a frequency determined by the user community. These meetings allow users to share ideas, workflows, etc. County may send representatives to any user group meeting conducted by Consultant clients.
- e. **Refresher Training:** There will be no charge for refresher training conducted at Consultant's office on mutually agreeable dates, if the

material was covered and the attendee(s) was included in County's initial training. Refresher training does not include training for new Licensed Programs or County staff that has not been trained before, which are billable services.

- f. **List Server:** to share information. Workflows for the Licensed Programs, environmental regulation workflows, user-customized reports, and general questions and answers are available.
- g. **Consultant Exchange:** Consultant Exchange is a web-based file exchange solution that provides a secure area where County can share files. Clients have the freedom to upload/download useful reports, scripts, and other files at times most convenient to them. Clients have a searchable archive of environmental regulation workflows, Licensed Programs workflows, user-customized reports, scripts, and general questions and answers that can be accessed through keyword searches. Users have the option of drilling down through categories or searching for files by using a search dialog box.
- h. **Client Relationship Management:** RTI CustomerFirst is a Client Relationship Management (CRM) software application that enables Consultant to manage every aspect of our relationship with the County. County information acquired from sales, marketing, client service, and support is captured and stored in a centralized database to improve client satisfaction. Consultant will not release any County information without prior authorization from the County.
- i. **Consultant Modification;** Consultant has the right to eliminate, add to, or modify F, G and H.

ARTICLE 7

Items not covered by License and Support Fee: The following services will be provided on a fee basis. Exhibit A contains prices for license fees, and all services included in Exhibit D Professional Services Request & Estimate that are agreed upon as a condition of this Agreement. Services not specifically included in Exhibit D can be obtained from Consultant after completion and approval of a Professional Service Request (PSR) at the rates identified in Exhibit B.

- a. Support Initiated Outside Normal Working Hours; Consultant's normal working hours are 8:00 A.M. to 5:00 P.M., Pacific Time, Monday through Friday, with Federal and State holidays excluded. If County requires or initiates service outside these hours, County will pay for such support according to Exhibit B.

Holidays Include

New Year's Day
Martin Luther King Jr. Birthday
Presidents' Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
The Friday after Thanksgiving
Christmas Eve
Christmas Day

- b. Data Conversion;
- c. Data Correction or Restoration; unless caused by Consultant's negligence while working on County's system.
- d. Custom Programming;
- e. Software Implementation;
- f. Initial and New Staff Training;
- g. County will reimburse Consultant for out-of-pocket costs expended on County's behalf, unless such costs are caused by Consultant's negligence. These can include travel and per diem, parts and supplies,

media and reproduction, and long distance calls initiated from Consultant to County's system. Consultant will obtain County's prior approval before expending more than \$100.00 per incident.

ARTICLE 8

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 9

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 10

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not sub Contract, 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 11

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 12

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 at least thirty (30) days 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 with 30 days notice in its entirety subject to payment for services performed prior to cancellation.

ARTICLE 13

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 thirty (30) 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.

- E. **Warranty and Limitation of Consultant's Liability:** Consultant warrants that the media used to deliver the Licensed Materials to County is free from mechanical or recording defects, and if such defects are found, Consultant will immediately replace the defective media.

Consultant warrants that it is the owner of the Licensed Materials and that it has the right to grant the License granted hereunder. Consultant agrees to defend County against, and pay the amount of any adverse final judgment (or settlement to which Consultant consents) resulting from third party claim(s) (hereinafter "Indemnified Claims") that the Licensed Materials infringe any copyright or patent; provided Consultant is notified promptly in writing of the Indemnified Claims and has sole control over its defense or settlement, and County provides reasonable assistance in defense of same.

Consultant warrants that the Licensed Programs will perform substantially in accordance with its then-current Licensed Materials, at no additional cost to County, provided that: (a) the Licensed Programs have not been modified, changed or altered by anyone other than Consultant or as authorized by Consultant in writing; (b) County is operating the then-current version of the Licensed Programs; (c) County's computer system is in good operating order and is installed in a suitable operating

environment; (d) County's computer system configuration used in the operation of the Licensed Programs meets Consultant's approved specifications (e) the error or defect is not caused by County or its agents, employees, or Consultants; (f) County promptly notifies Consultant of the error or defect when it is discovered; (g) all fees then due to Consultant have been paid; and (h) County is not otherwise in breach of its obligations under this Agreement. In such event, Consultant shall use its commercially reasonable efforts to cause the Licensed Programs to perform substantially in accordance with its then-current Licensed Materials as soon as reasonably practicable under the circumstances.

If County notifies Consultant of such error or defect and, after investigation by Consultant, Consultant determines that such error or defect occurred as a result of County not being in compliance with one or more of the reasons listed in the above paragraph, then County shall reimburse Consultant at Consultant's then prevailing rates for all costs incurred in investigating such error or defect.

EXCEPT AS SPECIFICALLY SET FORTH ABOVE, THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PROGRAMS, THE LICENSED MATERIALS OR ANY UPDATES, ENHANCEMENTS OR RELEASES THERETO, OR ANY OTHER SERVICES OR GOODS PROVIDED BY CONSULTANT TO CLIENT IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT'S SOLE AND EXCLUSIVE REMEDIES AND CONSULTANT'S ONLY OBLIGATIONS UNDER THE WARRANTY SET FORTH ABOVE AND THIS AGREEMENT IS TO CAUSE THE LICENSED PROGRAMS TO OPERATE SUBSTANTIALLY IN ACCORDANCE WITH CONSULTANT'S THEN-CURRENT LICENSED MATERIALS OR TO CORRECT THE THEN-CURRENT LICENSED MATERIALS.

CONSULTANT DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE LICENSED PROGRAMS SHALL MEET CLIENT'S REQUIREMENTS OR SHALL OPERATE IN COMBINATION WITH OTHER SOFTWARE OR SYSTEMS WHICH CLIENT SELECTS FOR USE, OR THAT THE OPERATION OF THE LICENSED PROGRAMS

SHALL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL ERRORS AND DEFECTS HAVE BEEN IDENTIFIED AND CORRECTED BY CONSULTANT.

CONSULTANT SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER SUFFERED OR INCURRED BY CLIENT AS A CONSEQUENCE OF THE USE OR PERFORMANCE OF THE LICENSED PROGRAMS OR OTHERWISE, EVEN IF CONSULTANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, UNDER NO CIRCUMSTANCES SHALL CONSULTANT BE LIABLE FOR ANY LOSS, COST, EXPENSE OR DAMAGE TO CLIENT IN AN AMOUNT EXCEEDING THE SUM OF THE INITIAL LICENSE FEE ACTUALLY PAID BY CLIENT TO CONSULTANT UNDER THIS AGREEMENT, WHETHER ARISING AS A RESULT OF: (A) ANY BREACH OF THIS AGREEMENT BY CONSULTANT; (B) ANY ACT OR FAILURE TO ACT OF CONSULTANT; OR (C) ANY CLAIM MADE AGAINST CLIENT BY ANY OTHER PARTY, EVEN IF CONSULTANT HAS BEEN ADVISED OF THE CLAIM OR POTENTIAL CLAIM. CLIENT AGREES THAT IT SHALL NOT ASSERT ANY CLAIMS AGAINST CONSULTANT BASED ON ANY THEORY OF STRICT LIABILITY.

F. County Responsibilities: County is responsible for the following:

1. Timely payment of Consultant invoices.
2. Provision of a test system, and use of said system, prior to installing any enhancements, Versions, or Licensed Programs.
3. Provision of appropriate operating environment for County's computer system, County employees, and Consultant staff when at County location.
4. Provision of knowledgeable, competent operators with an understanding of County's operations.
5. Scheduled training to properly prepare County's staff to use Licensed Programs.
6. Backing up files and Licensed Programs daily, or whenever they change, and keeping them in a secure place.
7. Notifying Consultant of a problem as soon it appears.

G. Actions Upon Termination:

1. County will cease using Licensed Materials immediately upon termination.
2. Within thirty (30) days after termination for any reason, County will furnish Consultant an affidavit certifying that the original and all copies, in whole or in part, of the Licensed Materials have been returned to Consultant or destroyed by County.
3. County will pay all amounts due Consultant.

H. Version and Module Upgrades: Consultant will periodically make Licensed Programs upgrades and enhancements available to County. Consultant will provide the necessary instructions and software tools so County can install the upgrades and modifications.

County will maintain its system at the current release level of the Licensed Programs. Consultant will have the sole discretion to decide if new Licensed Programs are a no charge upgrade, a no charge enhancement, or a billable offering. Billable offerings are optional, and County will not be required to purchase them to maintain the current release level.

I. Access to County Systems: County agrees to install such telephone lines, communications software, and communications equipment necessary to allow remote access to County's computer system. This access will be used to provide technical support and problem resolution. County shall install its own security measures to prevent unauthorized access. County shall be responsible for all expenses associated with obtaining and installing such telephone lines and communication equipment. Consultant shall provide County with the appropriate communication software at no additional cost.

ARTICLE 14

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: Kerri Williams, Fiscal Administration Manager

or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

Decade Software Company, LLC
1195 W. Shaw Ave.
Fresno, CA 93711
ATTN: Kevin Delaney

or to such other location as the Consultant directs.

ARTICLE 15

General Indemnification: Decade shall hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees brought by any third party, arising out of any breach of the Agreement by Decade, caused in whole or in part by any negligent act or omission of Decade, anyone employed by Decade or anyone for whose acts Decade may be liable, except to the extent caused by the negligence, omission, or willful misconduct of, or resulting from work performed by or at the direction of, the County, its employees, agents, consultants or subcontractors. However, Decade is not obligated to hold harmless, defend or indemnify County unless County does all of the following:

Notifying Decade of the claims, damages, losses and/or expenses in writing within a reasonable period of time, such that Decade suffers no prejudice to its rights;

Giving Decade the right to control and direct the defense and settlement of that action with counsel acceptable to the County;

Making no compromise, settlement or admission of liability; and

Providing reasonable assistance and cooperates in the defense of that action.

Decade's obligations as stated in this section will not apply to any claim, suit or proceeding to the extent it is based on any of the following:

Any modification of the EnvisionConnect software other than by Decade, or the combination of the software with non-Decade software or any hardware that fails to comply with the EnvisionConnect hardware and software requirements;

Client's use of other than the latest release of the EnvisionConnect software if Client is informed that a claim, suit or proceeding can be avoided by use of the latest release;

Any use of the EnvisionConnect software not authorized by this Agreement; or

Any modification or derivative work made by Decade based on Client's instructions, designs or specifications.

ARTICLE 16

Insurance:

- I. THIS CONTRACT/AGREEMENT SHALL NOT BE EXECUTED BY COUNTY and the CONTRACTOR is not entitled to any rights, unless certificates of insurances, or other sufficient proof that the following provisions have been complied with, and such certificate(s) are filed with the COUNTY.

- II. Without limiting Contractor's indemnification provided herein, Contractor shall and shall require any of its subcontractors to procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. The following policies of insurance shall be placed with insurers with a current A.M. Best's rating of no less than A:VII. Coverage shall be at least as broad as:

A. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

1. The COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insured on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
2. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer’s liability.
3. For any claims related to this contract, the **Contractor’s insurance coverage shall be primary** insurance as respect to COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.
4. Any failure to comply with reporting or other provisions of the parties,

including breach of warranties, shall not affect coverage provided to COUNTY, its officers, employees, and agents.

- B. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- C. Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- D. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
- E. Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. COUNTY may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- F. Contractor shall furnish COUNTY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- G. If Contractor does not keep all required policies in full force and effect,

COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and Contractor agrees to pay the cost of said insurance.

ARTICLE 17

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 18

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 19

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 20

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 21

Administrator: The County Officer or employee with responsibility for administering this Agreement is Kerri Williams, Fiscal Administration Manager, Environmental Management Department, or her successor.

ARTICLE 22

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 23

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. Any waiver of any clause of this Agreement shall not constitute a subsequent waiver of that clause or any other clause. Failure or delay of either party to enforce compliance with any clause shall not constitute a waiver of such clause.

ARTICLE 24

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 25

Consultant Staff: County shall not attempt to hire any current or former Consultant staff member without prior written consent from Consultant.

ARTICLE 26

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.

ARTICLE 27

Confidentiality: Consultant shall maintain the confidentiality and privileged nature of all records together with any knowledge therein acquired, in accordance with all applicable State and Federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultants staff, employees and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to the County Environmental Management Department for the purpose of, and in the performance of the Agreement. This confidentiality Agreement shall survive after the expiration or termination of this Agreement.

ARTICLE 28

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, or City of Placerville, or City of South Lake Tahoe business license unless exempt under County Code section 5.08.07

ARTICLE 29

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.

ARTICLE 30

General: Any clause of this Agreement found to be unenforceable shall be severed from this Agreement and the remainder of the Agreement shall remain in full force and effect. Any waiver of any clause of this Agreement shall not constitute a subsequent waiver of that clause or any other clause. Failure or delay of either party to enforce compliance with any clause shall not constitute a waiver of such clause. This Agreement replaces all other prior agreements, orally or in writing, relating to the subject matter contained herein, including any made by other parties such as distributors, consultants, dealers or resellers. This Agreement can only be modified in writing as approved by authorized signatories of both parties. This Agreement is binding upon and shall inure to the benefit of the legal successors and assigns of the parties.

AGREEMENT ADMINISTRATOR CONCURRENCE:

Dated: _____

By: _____
Kerri Williams,
Environmental Management, Fiscal Administration Manager

REQUESTING DEPARTMENT CONCURRENCE:

Dated: _____

By: _____
Gerri Silva, M.S., REHS
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: _____

By: _____
Chair, Board of Supervisors

ATTEST:

Dated: _____

By: _____
Clerk of the Board of Supervisors

--CONSULTANT--

Dated: _____

By: _____
Kevin Delaney, President
"It's Member and Managing Officer"
Decade Software Company, LLC
A California Limited Liability Company

Exhibits A, B, C, D and E

Exhibit A – “Service Fee Schedule”

A.1 Number of Inspectors

Inspectors and Program Areas	Numbers
Number of Inspectors	20
Number of Inspectors Using FIS	14

A.2 Licensed Programs

Envision and EnvisionConnect –Licensed Programs Included in this Agreement:

- Envision/EnvisionConnect
- Field Inspection System/EnvisionConnect Remote
- Envision and EnvisionConnect Public Access/Press Agent
- Extender
- Batch Payments Import Tool (BPI)
- PA to CUPA Transfer Process (PACT)
- Epitome
- Mobile Vector Control Management

A.3 Envision and EnvisionConnect Prices

Annual License and Support Fees	Monthly Cost	Annual Cost
Envision/Envision and EnvisionConnect	\$ 2,166.67	\$ 26,000.00
<input checked="" type="checkbox"/> Taxes on Envision (7.750)	\$ 167.92	\$ 2015.04
<input checked="" type="checkbox"/> FIS/Envision and EnvisionConnect Remote Use	\$ 700.00	\$ 8,400.00
	Subtotal	\$ 36,415.04

The following Professional Services Fees cover all services outlined in Exhibit D, Statement of Work for Professional Services.

One Time Professional Service Fees	Amount
<input type="checkbox"/> Training Package	
<input type="checkbox"/> Data Conversion from Legacy System(s)	
<input checked="" type="checkbox"/> Gold Migration Package– Please see the Professional Service Request provided in Exhibit C.	\$8,245.00
<input type="checkbox"/> Report Development	
<input type="checkbox"/> Public User Portal Set Up	
<input type="checkbox"/> Interface Design	
<input checked="" type="checkbox"/> Additional - One Day Onsite Training	\$1,688.00

A.4 Payment Schedule

License and Support Fees

Payment Percentage	Milestone
Will be billed	Monthly in Arrears

Gold Migration Package

Payment Percentage	Milestone
50 Percent	Agreement Signing
50 Percent	Project Completion

Additional - One Day of Onsite Training

Payment Percentage	Milestone
100 Percent	Completion of Onsite Training

All invoices are payable net forty five (45) days.

A.5 Payment Frequency

Second and successive Annual License Renewal Fees, may be paid in advance annually or monthly, County's choice.

Payment Frequency

- Annually
- Quarterly
- Monthly

A.6 County Taxes

Tax	Rate	Exempt	Exemption Number
Envision	7.75%	<input type="checkbox"/>	

Exhibit B – “Professional Services Rates”

Any services requested outside of those agreed to herein will require authorization through a Professional Service Requests (PSR) signed by both parties.

The following rates will apply for the listed professional services.

Item	Rate	Per Unit
<i>Professional Services</i>		
• Custom Programming	\$126.00	Hour
• Consultation	\$126.00	Hour
• Report Development	\$126.00	Hour
 <i>Training</i>		
• Training at County Facility Maximum of 6 participants	\$1,470.00	Day
• Training at County Facility Maximum of 15 participants	\$2,205.00	Day
 <i>Support</i>		
• Phone Support Outside Normal Service Hours	\$189.00	Hour
• Third Party Support	\$126.00	Hour
 <i>Travel Expenses</i>		
• Travel Per Diem	\$280.00	Day
• Airfare	\$300.00- 500.00	Flight

These prices may be increased annually on the Anniversary Date, upon at least sixty (60) days prior notice to County.

All prices are exclusive of any applicable taxes

Exhibit C – “Services”

Consultant provides License and Support for Software to County under the Agreement. Consultant will provide additional professional services to upgrade County from one version of the Software; Envision, to the most current version of the Software; Envision and EnvisionConnect. Consultant will provide the professional services checked below and described in Exhibit D.

- Gold Package
- Silver Package
- Additional Day of Onsite Training at Go-Live

Fees and Payment Schedule

All fees for professional services rendered or provided to County shall be in accordance with Consultant's fee schedule provided in Exhibit E.

Exhibit D – “Professional Services”

GOLD PACKAGE

Consultant will assist County with the following migration tasks:

- Project Analysis
- Upgrade County Envision Database to Latest Version 3.4 (if applicable)
- Migration in Test Environment
- Migrate Data From Sybase to MS SQL (if applicable)
- Perform SQL Scripting and/or Report Writing
- Migration in Production Environment
- Define Security Levels in EnvisionConnect
- Customize Page Layouts in EnvisionConnect
- System Testing

Consultant will deliver the following training:

- Two (2) Days of Onsite Training
- 16 Hours of Web-based Training
- Free Bi-weekly Web-based Training Sessions

Consultant staff will provide remote phone support during system go-live.

ADDITIONAL ONE DAY OF ONSITE TRAINING AT GO-LIVE

Exhibit E – “Fees and Payment Schedule”

The following Professional Services Fees cover services outlined in Exhibit D.

Professional Service Fees	Amount
<input checked="" type="checkbox"/> Gold Upgrade Package	\$14,125.00
Less Discount for SQL Server Conversion: (As agreed to in 2006 for Project #2006 – 030)	(\$ 5,880.00)
<input checked="" type="checkbox"/> Additional - One (1) Day Onsite Training	\$ 1,688.00
Total	\$ 9,933.00

Payment Schedule

Payment Percentage	Service Description	Milestone	Amount
50 % of	EnvisionConnect Upgrade Services Gold Package	Agreement Signing	\$ 4,122.50
50 % of	EnvisionConnect Upgrade Services Gold Package	EnvisionConnect Go-Live	\$ 4,122.50
100 % of	One (1) Day Onsite Training	Completion of Onsite Training	\$ 1,688.00
	Total		\$ 9,933.00

Go-Live is reached when 1) the data in Envision and EnvisionConnect is living information that represents factual records and 2) this information in Envision and EnvisionConnect is going to continue to be used for business purposes (not deleted and later re-entered).

Exhibit F – “Third Party Software”

SAP Crystal Reports

Crystal Reports is a database report designer and viewer owned by SAP. Decade utilizes Crystal Reports to design “canned” and custom reports that are later distributed with the Licensed Materials. The Licensed Materials includes a server-side report generation component. This is allowed under section 4.2.5 of the Crystal Reports Standard, Professional, and Developer License Agreement. Use of the server-side report generation component within the Licensed Materials is subject to the following terms.

Client agrees not to modify, disassemble, decompile, translate, adapt or reverse-engineer the Runtime Product or the report file (.RPT) format;

Client agrees not to distribute the Runtime Product to any third party;

Client agrees not to use the Runtime Product to create for distribution a product that is generally competitive with SAP product offerings;

Client agrees not to use the Runtime Product to create for distribution a product that converts the report file (.RPT) format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of SAP;

Client agrees not to use the Runtime Product on a rental or timesharing basis or to operate a service bureau facility for the benefit of third-parties;

SAP AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. SAP AND ITS SUPPLIERS SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, COVER OR OTHER DAMAGES ARISING UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SOFTWARE.