



**Agreement No. 014E-A-11/12-BOS  
Between the County of El Dorado and  
Field Solutions, Inc.**

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**THIS AGREEMENT No. 014E-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"), acting by and through County Service Area No. 10, a lawfully established County Service Area as defined by Government Code Section 25210 et seq., and Field Solutions, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 6280 San Ignacio Ave., Suite P, San Jose, California 95119-1363 (hereinafter referred to as "Consultant").

**WITNESSETH**

**WHEREAS**, County has determined that it is necessary to obtain a Consultant to provide leachate mound pumping, reporting services, and landfill gas compliance monitoring, as required for compliance with the current Air Quality Management District permits, incorporated here as Exhibit "A", and Assembly Bill 32 (AB 32), incorporated here as Exhibit "B", located at the Union Mine Disposal Site for the Environmental Management Department; and

**WHEREAS**, County has been informed that the Local Enforcement Agency (LEA) requires these services to be performed by a qualified third party environmental monitor as outlined in Exhibit "C" marked "LEA Requirements Letter" incorporated herein and made by reference a part hereof.

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

**WHEREAS**, it is the intent of the parties hereto that such services are 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:** Consultant shall perform all professional and technical services and shall make available Consultant's own personnel, materials and equipment necessary to perform the services, work, and tasks designated as outlined in Exhibit "D" marked "Scope of Work" incorporated herein and made by reference a part hereof (hereinafter the "Work").

**ARTICLE II**

**Standards for Work:** Consultant will strive to perform services in a manner consistent with that level of care and skill ordinarily exercised by other members of the Consultant's profession currently practicing in the same locality and under similar conditions. No other representation, express or implied, is included or intended in this agreement, or in any report, opinion, document, or other instrument of service.

**ARTICLE III**

**Term:** This Agreement shall become effective when fully executed by both parties hereto and shall expire three (3) years from the date of execution thereof.

**ARTICLE IV**

**Compensation for Services:**

- A. For services provided herein, County agrees to compensate Consultant by Task, upon receipt of itemized invoice(s) detailing a description of "Work" performed. Payments shall be made within forty-five (45) days following County's receipt and approval of invoices(s). For the purposes hereof, the billing rate shall be in accordance with Exhibit "E" marked "Schedule of Charges" incorporated herein and made by reference a part hereof. The rates indicated in the "Schedule of Charges" may be updated annually with written notification from Consultant to County. The parties recognize that in the performance of this Agreement, Consultant may be required to perform other "Work" not listed on Exhibit "E." In such cases, Consultant shall be compensated at a price mutually agreed upon by County and Consultant and consistent with the prevailing market rate for such "Work."
  
- B. The total compensation under this Agreement to Consultant **SHALL NOT EXCEED** the estimated **One Hundred Thirty Three Thousand Five Hundred Dollars and No Cents (\$133,500.00)** without prior written approval by the County.

**ARTICLE V**

**Consultant Reporting:** Reports on Services rendered by Consultant shall be submitted to County in the format, and under the conditions, outlined in the "Work."

**ARTICLE VI**

**Deliverables:** Deliverables will be specified by the County for each individual

assignment, and specific task assignments and "Work" requirements will be specifically identified on a task-by-task basis. Failure to submit requested deliverables shall be grounds for termination of the Agreement, as provided in Article XIII.

**ARTICLE VII**

**Ownership of Data:** Upon completion or earlier termination of all "Work" under this Agreement, ownership and title to all reports, documents, plans, (including digitized plans) specifications and estimates produced as part of this Agreement will automatically be vested in the County and no further Agreement will be necessary to transfer ownership to the County. The Consultant shall furnish the County all necessary copies of data needed to complete the review and approval process. Any reuse of such materials shall be done at the sole risk of the County.

**ARTICLE VIII**

**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. There shall be no change in the Consultant's Administrator or sub consultants without prior written approval by the County's Administrator.

**ARTICLE IX**

**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 X**

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of their personnel. Consultant shall not subcontract, 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 XI**

**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 a workmanlike manner and shall be liable for its own

negligence and negligent acts of its employees and sub consultants. 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 or sub consultants.

**ARTICLE XII**

**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 XIII**

**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 in 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 in which the extension of time of 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. In the event of termination for default, County reserves the right to take over and complete the "Work" by Agreement or by any other means.

**ARTICLE XIV**

**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 registered. Notices to County shall be in duplicate and addressed as follows:

Greg Stanton, Deputy Director  
Environmental Management Department  
County of El Dorado  
2850 Fairlane Ct., Building "C"  
Placerville, CA 95667

Or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

Patrick Lacey  
Field Solutions, Inc.  
6280 San Ignacio Avenue, Suite P  
San Jose, CA 95119-1363

Or to such other location as the Consultant directs.

**ARTICLE XV**

**Indemnity:** The Consultant shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Consultant's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Consultant, sub consultant(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prohibited by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

**ARTICLE XVI**

**Environmental Indemnity:** To the fullest extent allowed by law, from and after recording of Notice of Completion, Consultant shall indemnify, defend, and save harmless County from all losses or damages resulting from injury to or death of any person and damage to property, and any fine, which is occasioned by or arises out of any breach of Environmental and Toxics Warranty, representations, or covenants of Consultant under this Agreement. Consultant further agrees to indemnify and hold harmless County, its officers, employees, and agents, from and against any and all liability as follows:

- A. Including all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of hazardous materials in any location by Consultant, and
- B. Including, without limitation, the cost of any required or necessary remediation, repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following filing of the Notice of Substantial Completion to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of hazardous materials by any person on the "Work" prior to filing of the Notice of Substantial Completion. Consultant's obligations pursuant to the foregoing indemnity shall survive the filing of Notice of Completion of the "Work."
- C. This Agreement as to indemnity and reimbursement as above set forth to be undertaken by the Consultant shall survive the performance of the remainder of said Agreement and shall remain in full force and effect notwithstanding such performance.

- D. The foregoing duties of indemnity shall not apply to loss, damage, expense, or liability caused solely by the active negligence of the County or the County's agents, servants or independent contractors.

#### **ARTICLE XVII**

**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 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 One Million Dollars (\$1,000,000) combined a single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) 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 One Million Dollars (\$1,000,000) per occurrence.
- 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 the Risk Management Division, or be provided through a 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 a said expiration date, a new certificate of insurance evidencing insurance coverage as

provided for herein for not less than the remainder of a 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 the Risk Management Division 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 events.

- H. The certificate of insurance must include the following provisions stating that:
  - a. The insurer will not cancel the insurance coverage without thirty (30) days prior written notice to County, and;
  - b. The County of El Dorado, its officers, officials, employees, and volunteers are included as additionally insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except workers' 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 excess of the Consultant's insurance and shall not contribute with it.
  
- J. Any deductibles or self-insured retention must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retention 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 and employees 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. Certificates of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for protection of the County.

**ARTICLE XVIII**

**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 XIX**

**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 XX**

**Withholding (Form 730):** In accordance with changes in Internal Revenue Law, OASDI (Old Age, Survivors, & Disability Insurance) and income taxes may be withheld from any payments made under terms of this Agreement if Consultant falls under "Contract-Employee" category as determined by County prior to execution of Agreement.

**ARTICLE XXI**

**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, certifying 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 the term of the Agreement. This requirement applies to any Agreement/Contract exceeding \$1,500.00.

**ARTICLE XXII**

**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 XXIII**

**California Forum and Law:** 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 XXIV**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Greg Stanton, Deputy Director of Environmental Management, or his successor.

**ARTICLE XXV**

**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 XXVI**

**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 XXVIII**

**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 XXIX**

**Entire Agreement:** This document and the documents referred to herein or exhibit(s) hereto is the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**CONTRACT ADMINISTRATOR CONCURRENCE:**

By:  Dated: 4/11/12  
Greg Stanton, REHS  
Deputy Director, Environmental Management

**REQUESTING DEPARTMENT HEAD CONCURRENCE:**

By:  Dated: April 11, 2012  
Gerri Silva, M.S., REHS  
Director, Environmental Management

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

- - COUNTY OF EL DORADO - -

Dated: \_\_\_\_\_

By: \_\_\_\_\_

John R. Knight, Chair  
Board of Supervisors  
County of El Dorado

ATTEST:

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Suzanne Allen de Sanchez  
Clerk of the Board of Supervisors  
County of El Dorado


- - CONSULTANT - -

Dated: 4-2-2012

By: 

Patrick Lacey, "President"  
Field Solutions, Inc.

Dated: 4-2-2012

By: 

Corporate Secretary  
Field Solutions, Inc.