



## **Contract No. 035-C-06/07-BOS Between the County of El Dorado and CDC Consulting**

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**THIS CONTRACT NO. 035-C-06/07-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 Chris Charrette, individually, doing business as CDC Consulting, whose principal place of business is 108 Strentzel Lane, Martinez, CA 94553 (hereinafter referred to as "Contract Operator").

### **W I T N E S S E T H**

**WHEREAS**, County has determined that it is necessary to obtain a Contract Operator to provide day-to day operation of the Union Mine Wastewater Treatment Facility (5700 Union Mine Road, El Dorado, CA) for the Environmental Management Department; and

**WHEREAS**, Contract Operator 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 service are in conformity with all applicable federal, state and local laws; and

**WHEREAS**, County has determined that the provisions of such services provided by Contract Operator 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 Contract Operator mutually agree as follows:

### **ARTICLE I**

**Scope of Work:** Contract Operator as directed by the County, shall perform the day to day plant operation activities consisting of the control of any process at the Union Mine Wastewater Treatment Facility which may affect the quality of the discharge of the treatment facility and shall make available Contract Operators own personnel, materials and equipment necessary to complete the "Scope of Work." (hereafter the "Work").

The Work may also include performance of day-to-day maintenance work so long as the primary function is control of the process. Maintenance operation will include functions necessary to keep the reliable operation of the major treatment processes.

The Contractor Operator may serve as the Chief Plant Operator to supervise, train plant personnel and be responsible for the overall operation of the Union Mine Wastewater Treatment Facility, ensuring current waste discharge requirements and directly related documents are adhered to while under Contract.

## **ARTICLE II**

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

## **ARTICLE III**

**Term:** This Contract shall become effective when fully executed by both parties hereto. The initial term of this Contract shall be for a period of twelve (12) months. No work under this Contract shall begin until a written "Notice to Proceed" is issued by the County.

## **ARTICLE IV**

### **Compensation for Work:**

- A. For Work provided herein, County agrees to pay Contract Operator monthly upon receipt of itemized invoice(s) detailing a description of work performed (identifying number of hours worked) on a time and materials basis. The billing rate shall be Eighty-Five Dollars and no/100 (\$85.00) per hour. Payment shall be made within forty-five (45) days following County's receipt and approval of invoice(s).
- B. The total payment to Contract Operator for the twelve (12) month term under this Contract SHALL NOT EXCEED Sixty Thousand Dollars **(\$60,000.00)**.
- C. In addition to the above, the County shall reimburse Contract Operator for the actual, reasonable and necessary expense of travel in accordance with the El Dorado County Board of Supervisor's Travel Policy No. D-1 as set forth in Exhibit "A" attached hereto and incorporated herein. County shall also reimburse Contract Operator for reasonable costs without markup of mailing, photocopying and long distance telephone calls.

## **ARTICLE V**

**Licenses:** Contract Operator warrants and represents he/she holds a valid Grade IV Wastewater Operator's Certificate Number IV-6432 and a Wastewater Treatment Plant Contract Operator's Registration Number CO-0045 issued by the California State Water Resources Control Board and that his/her Certificate is in good standing. A copy of the Certificate must be provided with this Contract.

## **ARTICLE VI**

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

## **ARTICLE VII**

**Deliverables:** Deliverables will be specified by the County for each assignment, and work requirements will be specifically identified. Failure to submit requested deliverables shall be grounds for termination of the Contract, as provided in Article XIV.

## **ARTICLE VIII**

**Ownership of Data:** Upon completion or earlier termination of all work under this Contract, ownership and title to all reports, documents, plans, (including digitized plans) specifications and estimates produced as part of this Contract will automatically be vested in the County and no further Contract will be necessary to transfer ownership to the County. The Contract Operator 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 IX**

**Changes to Contract:** This Contract 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 Contract Operator's Administrator or sub consultants without prior written approval by the County's Administrator.

## **ARTICLE X**

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

## **ARTICLE XI**

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

## **ARTICLE XII**

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

Contract Operator shall be responsible for performing the work under this Contract 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 Contract Operator or it's employees or sub consultants.

## **ARTICLE XIII**

**Fiscal Considerations:** The parties to this Contract 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 Work 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 Contract to the contrary, County shall give notice of cancellation of this Contract in the event of adoption of a proposed budget that does not provide for funds for the Work, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Contract. Upon the effective date of such notice, this Contract 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 Work were agreed to be performed, pursuant to this paragraph in the sole discretion of the County, this Contract may be deemed to be canceled in its entirety subject to payment for Work performed prior to cancellation.

#### **ARTICLE XIV**

##### **Default, Termination, and Cancellation:**

A. Default: Upon the occurrence of any default of the provisions of this Contract, 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 Contract provision and shall demand that the party in default perform the provisions of this Contract within the applicable period. No such notice shall be deemed a termination of this Contract 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 Contract, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contract Operator.

C. Ceasing Performance: County may terminate this Contract in the event Contract Operator ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Contract.

D. Termination or Cancellation without Cause: County may terminate this Contract 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 Work rendered prior to the effective dates as set forth in the Notice of Termination

provided to Contract Operator, and for such other Work, which County may agree to in writing as necessary for Contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Contract. Upon receipt of a Notice of Termination, Contract Operator shall promptly discontinue all Work 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 Contract or by any other means.

## **ARTICLE XV**

**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:

County of El Dorado  
Environmental Management Department  
Attention: Gerri Silva, Interim Director  
2850 Fairlane Ct.  
Placerville, CA 95667

or to such other location as the County directs.

Notices to Contract Operator shall be addressed as follows:

CDC Consulting  
Attn: Chris Charrette  
108 Strentzel Lane  
Martinez, CA 94553

## **ARTICLE XVI**

**Indemnity:** The Contractor 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 attorneys 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 Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, sub Contractor(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 Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

## **ARTICLE XVII**

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

A. Full Worker's Compensation and Employer Liability Insurance covering all

employees of the Contract Operator as required by law in the State of California is **not** required. **The Contract Operator is the only employee.**

- 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 Contract Operator in the performance of the Contract.
- D. In the event Contract Operator is a licensed professional, and is performing professional Work under this Contract, professional liability (for example, malpractice insurance) **is not** required with a limit of liability of not less than One Million Dollars (\$1,000,000) per occurrence.
- E. Contract Operator 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 the Risk Management Division.
- G. Contract Operator agrees that the insurance required above shall be in effect at all times during the term of this Contract. In the event said insurance coverage expires at any time or times during the term of this Contract, Contract Operator 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 Contract, 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 Contract Operator agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contract Operator 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 Contract upon the occurrence of such events.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insures 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 additionally insured, but only insofar as the operations under this Contract is concerned. This provision shall apply to all liability policies except workers' compensation and professional liability insurance policies.
- I. The Contract Operator's insurance coverage shall be primary insurance as respects the County, it 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 Contract Operator'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 Contract Operator 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. Contract Operators' obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Contract.
- N. In the event Contract Operator cannot provide an occurrence policy, Contract Operator shall provide insurance covering claims made as a result of performance of this Contract for not less than three (3) years following completion of performance of this Contract.
- 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 Work to be provided by Contract Operator under this Contract shall participate in or attempt to influence any decision relating to this Contract 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 Contract or the proceeds thereof.

**ARTICLE XIX**

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

**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 Contract if Contract Operator falls under "Contract-Employee" category as determined by County prior to execution of Contract.

#### **ARTICLE XXI**

**California Residency (Form 590):** All independent Contract Operators providing Work 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 Contract Operator will be required to submit a Form 590 prior to execution of a Contract or County shall withhold seven (7) percent of each payment made to the Contract Operator during the term of the Contract. This requirement applies to any Contract/contract exceeding \$1,500.00.

#### **ARTICLE XXII**

**Tax Payer Identification Number (Form W-9):** All independent Contract Operators or Corporations providing Work 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 Contract, 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. Contract Operator 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 Contract is Greg Stanton, Environmental Health Manager, or his successor.

#### **ARTICLE XXV**

**Authorized Signatures:** The parties to this Contract represent that the undersigned individuals executing this Contract 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 Contract 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 XXVII**

**Venue:** Any dispute resolution action rising out of this Contract, 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. Contract Operator waives any removal rights it might have under Code of Civil Procedure Section 394.

**ARTICLE XXVIII**

**Confidentiality:** Contract Operator 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. Contract Operator, and all Contract Operators 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 Contract. This confidentiality Contract shall survive after the expiration or termination of this Contract.

**ARTICLE XXIX**

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

**ARTICLE XXX**

**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.

**REQUESTING DEPARTMENT CONCURRENCE:**

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

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

**Gerri Silva, M.S., REHS  
Interim Director Environmental Management Department**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

**- - COUNTY OF EL DORADO - -**

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

**By:** \_\_\_\_\_  
**Chair,**  
**Board of Supervisors**

**ATTEST:**

**Cindy Keck, Clerk of the**  
**Board of Supervisors**

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

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

**- - CONTRACT OPERATOR - -**

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

**By:** \_\_\_\_\_  
**Chris Charrette, individually and**  
**doing business as**  
**CDC Consulting**  
**“Contract Operator”**

# **EXHIBIT “A”**

## **El Dorado County**

Board of Supervisor’s Travel Policy No. D-1