

# ORIGINAL

**Nolte Associates, Inc.**

## **THIRD AMENDMENT TO AGREEMENT NO. 012E-A-11/12-PA**

**THIS THIRD AMENDMENT** to that Agreement No. 012E-A-11/12-PA, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Dunn Environmental, Inc., a corporation, now operating as Nolte Associates, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business address is 2495 Natomas Park Drive, Fourth Floor, Sacramento, California 95833 (hereinafter referred to as "Consultant");

### **RECITALS**

**WHEREAS**, Dunn Environmental, Inc. has been engaged by County under Agreement No. 012E-A-11/12-PA to provide landfill gas field monitoring services at the Meyers Landfill for the Environmental Management Division, in accordance with Agreement No. 012E-A-11/12-PA, dated January 25, 2012, as amended, incorporated herein and made by reference a part hereof (hereafter referred to as "Agreement"); and

**WHEREAS**, Dunn Environmental, Inc. has been acquired by Nolte Associates, Inc. effective August 12, 2013; and

**WHEREAS, ARTICLE X, Assignment and Delegation**, of the Agreement prohibits Dunn Environmental, Inc. from assigning services to be provided without the prior written consent of County; and

**WHEREAS**, Dunn Environmental, Inc. has requested that County accept work under the Agreement by Nolte Associates, Inc. and approve the assignment of the Agreement from Dunn Environmental, Inc. to Nolte Associates, Inc.; and

**WHEREAS**, Dunn Environmental, Inc. will remain liable for all obligations, covenants, and conditions, and/or liabilities for services already performed under the terms and conditions of Agreement No. 012E-A-11/12-PA, for all services performed prior to August 12, 2013; and

**WHEREAS**, notwithstanding the assignment, Dunn Environmental, Inc. acknowledges and agrees that all existing indemnity and insurance obligations of Dunn Environmental, Inc. will remain in full force and effect as set forth in the Agreement for all services performed prior to August 12, 2013, and as thereafter required by the Agreement; and

**WHEREAS**, Nolte Associates, Inc. will assume all Consultant's duties, responsibilities, and obligations, including insurance and indemnity obligations, for all services performed under the terms and conditions of Agreement, commencing on August 12, 2013; and

**WHEREAS**, the parties hereto have mutually agreed that Nolte Associates, Inc. shall fulfill the terms and conditions of the Agreement and of this Third Amendment to said Agreement; and

**WHEREAS**, the parties hereto have mutually agreed to amend **ARTICLE XIV, Notice to Parties**; and

**WHEREAS**, the parties hereto have mutually agreed to amend **ARTICLE XVI, Insurance**, to reflect current County insurance requirements; and

**WHEREAS**, the parties hereto have mutually agreed to amend **ARTICLE XXI, Tax Payer Identification Number (Form W-9)**; and

**WHEREAS**, the parties hereto have mutually agreed to amend the Agreement to add **ARTICLE XXIV, Change of Address**; **ARTICLE XXV, Audit by California State Auditor**; **ARTICLE XXVI, No Third Party Beneficiaries**; **ARTICLE XXVII, Counterparts**; and **ARTICLE XXVIII, Taxes**, to reflect updated County contracting provisions; and

**WHEREAS**, the parties hereto have mutually agreed to amend the Agreement to include **ARTICLE XXIX, Assignment**, a provision that expressly states the terms of County's approval of the assignment of the Agreement from Dunn Environmental, Inc. to Nolte Associates, Inc.;

**NOW, THEREFORE**, the parties agree to amend Agreement No. 012E-A-11/12-PA as follows and County approves of the assignment of the Agreement from Dunn Environmental, Inc. to Nolte Associates, Inc. on the following terms and conditions:

**ARTICLE XIV, Notice to Parties, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:**

**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 return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado  
Community Development Agency  
Environmental Management Division  
2850 Fairlane Court  
Placerville, California 95667

Attn.: Greg Stanton  
Deputy Director

With a Copy to:

County of El Dorado  
Community Development Agency  
Administration and Finance Division  
2850 Fairlane Court  
Placerville, California 95667

Attn.: Sherrie Busby  
Administrative Services Officer  
Contract Services Unit

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Nolte Associates, Inc.  
2495 Natomas Park Drive, Fourth Floor  
Sacramento, California 95833

Attn.: Gary Rivas  
Lead Project Analyst

or to such other location as Consultant directs.

**ARTICLE XVI, Insurance, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:**

**ARTICLE XVI**

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.

- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein 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 shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division, and Consultant agrees that no work or services shall be performed prior to the giving of such approval.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without prior written notice to County; and
  - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Consultant's insurance coverage shall be primary insurance as respects County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or 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 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 the 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. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

**ARTICLE XXI, Tax Payer Identification Number (Form W-9), of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:**

**ARTICLE XXI**

**County Payee Data Record Form:** All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

**The original Agreement is further amended to add the following Articles:**

**ARTICLE XXIV**

**Change of Address:** In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in Article XIV, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

**ARTICLE XXV**

**Audit by California State Auditor:** Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records and documentation necessary to demonstrate performance under the Agreement.

**ARTICLE XXVI**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

**ARTICLE XXVII**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

**ARTICLE XXVIII**

**Taxes:** Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

**ARTICLE XXIX**

**Assignment:** Pursuant to ARTICLE X, Assignment and Delegation, of the Agreement, County approves the assignment of the Agreement from Dunn Environmental, Inc. (previous Consultant) to Nolte Associates, Inc. (Consultant), effective August 12, 2013, on the following terms and conditions. Nolte Associates, Inc. assumes all duties, covenants, obligations, and responsibilities, including all indemnity and insurance obligations, of Consultant under Agreement No. 012E-A-11/12-PA and all amendments thereto, and is responsible for executing, performing, and providing all work and services as of August 12, 2013, in accordance with all terms and conditions as set forth in and as defined in Agreement No. 012E-A-11/12-PA and all amendments thereto. Dunn Environmental, Inc. shall remain liable, jointly and severally, for all work performed and service provided prior to August 12, 2013 and all of Dunn Environmental, Inc.'s insurance and indemnity obligations set forth in the Agreement shall remain in full force and effect on the terms set forth in the Agreement notwithstanding the assignment of the Agreement.

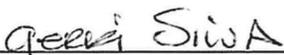
Except as herein amended, all other parts and sections of this Agreement No. 012E-A-11/12-PA and First and Second Amendments to Agreement No. 012E-A-11/12-PA shall remain unchanged and in full force and effect.

**Requesting Contract Administrator Concurrence:**

By:   
Greg Stanton  
Deputy Director  
Environmental Management Division  
Community Development Agency

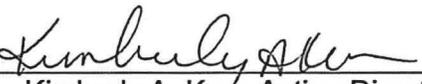
Dated: 12/4/13

**Requesting Division Concurrence:**

By:   
Gerri Silva  
Environmental Management Division Director  
Community Development Agency

Dated: December 4, 2013

**Requesting Department Concurrence:**

By:   
Kimberly A. Kerr, Acting Director  
Community Development Agency

Dated: 12/4/13

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to Agreement No. 012E-A-11/12-PA on the dates indicated below.

-- C O U N T Y O F E L D O R A D O --

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

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

Board of Supervisors  
"County"

Attest:  
James S. Mitrisin  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

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

-- N O L T E A S S O C I A T E S , I N C . --

By: \_\_\_\_\_  
Parag Mehta  
Senior Vice President  
"Consultant"

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

By: \_\_\_\_\_  
Mary Jo O'Brien  
Corporate Secretary

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