

COUNTY OF VENTURA CONTRACT #9344

CONTRACT

This Contract is entered into this July 1, 2024, by, and between, the County of Ventura, a political subdivision of the State of California, hereinafter called "County" and Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy, hereinafter called "Contractor" for Heating, Ventilation, and Air Conditioning (HVAC) Maintenance and Emergency Coverage Services for General Services Agency (GSA) and agencies listed herein."

WITNESSETH

WHEREAS, on January 8, 2024, County issued Request for Proposal ("RFP") No. 6169 for HVAC Maintenance and Emergency Coverage and Contractor submitted a proposal on February 26, 2024 [and a best and final offer on June 10, 2024 and July 1, 2024]; and

WHEREAS, Contractor represents it is specially trained, experienced, expert and competent to perform the special services hereinafter described, and it is necessary and desirable that County engage Contractor to do so;

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. **SERVICES TO BE PERFORMED BY CONTRACTOR**

Contractor shall perform the services and tasks described in the pricing matrix attached hereto, Emergency Coverage Services upon request and all services and tasks inferable therefrom and reasonably necessary for the completion of the same (the "Work"). Contractor shall furnish, at Contractor's own cost and expense, all personnel, services, tools, vehicles, and equipment or any other materials, necessary to perform the Work. Contractor shall perform, and ensure all subcontractors perform, the Work in a safe, professional, skillful, and workmanlike manner. All Work and any portion thereof separately identified shall be completed within the expected time.

2. **PAYMENTS**

In consideration of the services rendered in accordance with all terms, conditions and specifications of this Contract, County will make payment to Contractor in the manner specified in Exhibit A.

3. **INDEPENDENT CONTRACTOR**

No relationship of employer and employee is created by this Contract, it being understood that Contractor is an independent contractor, and neither Contractor nor any of the persons performing services for Contractor pursuant to this Contract, whether said person be member, partner, officer, employee, subcontractor, or

otherwise, will have any claim under this Contract or otherwise against County for any salary, sick leave, vacation pay, retirement benefits, social security, workers' compensation, disability, unemployment insurance benefits, federal, state or local taxes, or other compensation, benefits or taxes of any kind.

It is further understood and agreed by the parties hereto that, except as provided in this Contract, County will have no control over the means or methods by which Contractor will perform services under this Contract.

If, in the performance of this Contract, any third persons are employed by Contractor, such persons will be entirely and exclusively under direction, supervision and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other terms of employment or requirements of law, will be determined by Contractor, and County will have no right or authority over such persons or the terms of such employment, except as provided in this Contract.

The Contractor will comply with all of the provisions of the Worker's Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Labor Code and all amendments, thereto; and all similar State and Federal acts or laws applicable; and will indemnify and hold harmless the County from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including attorney's fees and costs, presented, brought or recovered against the County, for or on account of any liability under any of said Acts which may be incurred by reasons of any work to be performed under this Contract.

Contractor agrees to defend, through attorneys approved by County, indemnify and hold harmless Indemnitee (as defined elsewhere herein) from and against all Third-Party Claims (defined elsewhere herein) made against indemnitee based upon any contention by any third party that an employer-employee relationship exists by reason of this contract. Contractor further agrees to hold Indemnitee harmless from and to compensate Indemnitee for any Third-Party Claims against Indemnitee for payment of state or federal income or other tax obligations relating to Contractor's compensation under the terms of this contract. Contractor will not settle or otherwise compromise a Third-Party Claim covered by this paragraph without County's advance written approval. This subsection does not apply to any penalty imposed by any governmental agency that is not caused by or the fault of Contractor.

4. **WARRANTIES**

Contractor will warrant and represent that:

- a) its work hereunder will be of professional quality and performed consistent with generally accepted industry standards.

- b) there exists no actual or potential conflict of interest concerning the services to be performed under this Contract. Contractor represents that performance under this Contract does not require the breach of any agreement or obligation to keep in confidence the proprietary information of another party.

5. **NON-ASSIGNABILITY**

Contractor will not assign this Contract or any portion thereof, to a third party without the prior written consent of County, and any attempted assignment without such prior written consent will be null and void and will be cause, at County's sole and absolute discretion, for immediate termination of this Contract.

6. **TERM**

This Contract will be in effect from July 1, 2024, through June 30, 2029 subject to all the terms and conditions set forth herein.

This Contract may, upon mutual agreement, be extended for up to five (5) additional one (1) year periods, as indicated below. Quality and Time are of the essence in the performance of this Contract.

The term is subdivided to coincide with County's fiscal year calendar as follows:

Base Term:

| | | | |
|-----------------|--------------|---------|---------------|
| Fiscal Year 25: | July 1, 2024 | through | June 30, 2025 |
| Fiscal Year 26: | July 1, 2025 | through | June 30, 2026 |
| Fiscal Year 27: | July 1, 2026 | through | June 30, 2027 |
| Fiscal Year 28: | July 1, 2027 | through | June 30, 2028 |
| Fiscal Year 29: | July 1, 2028 | through | June 30, 2029 |

Five year extensions, if granted:

| | | | |
|-----------------|--------------|---------|---------------|
| Fiscal Year 30: | July 1, 2029 | through | June 30, 2030 |
| Fiscal Year 31: | July 1, 2030 | through | June 30, 2031 |
| Fiscal Year 32: | July 1, 2031 | through | June 30, 2032 |
| Fiscal Year 33: | July 1, 2032 | through | June 30, 2033 |
| Fiscal Year 34: | July 1, 2033 | through | June 30, 2034 |

The rate structure is subject to annual price escalation after the first 24 months of the base term. The pricing for years 3 through 5 of the base term, and any extension, may be subject to increase, a maximum of 3% or by the average CPI-U Analysis for the greater Los Angeles area as defined by the US Department of Labor, Bureau of Labor Statistics, whichever is lower, in any given twelve (12) month period. County reserves the right to either accept or reject any proposed price adjustments which, if Contractor intends to submit a proposed price

adjustment, must be submitted, in writing, by Contractor, ninety (90) days prior to the end of the current fiscal year.

Continuation of the Contract is subject to the appropriation of funds for such purpose by the County's Board of Supervisors. If funds to effect such continued payment are not appropriated, County may terminate this project as thereby affected and Contractor will relieve County of any further obligation therefor.

7. TERMINATION

The County may cancel this Contract, without penalty to County, as follows:

- a) County's obligation hereunder will be limited to the funds appropriated by the Board of Supervisors for this purpose for each fiscal year in which this Contract is in effect. In the event that the Board of Supervisors fails to so appropriate said funds, County's obligation hereunder will terminate at the end of the fiscal year for which funds were appropriated or at the end of this Contract term, whichever occurs first.
- b) County may terminate this Contract under the provisions of "Cumulative Remedies" (paragraph 22) for cause.
- c) County at its sole option may terminate this Contract upon thirty (30) days' written notice with or without cause. In the event of termination under this paragraph, Contractor will be paid for all work provided to the date of termination as long as such work meets the terms and conditions of this Contract. On completion or termination of this Contract, County will be entitled to immediate possession of and Contractor will furnish copies of all computations, correspondence and other pertinent data gathered or computed by Contractor specifically for the services required hereunder prior to such termination. Contractor hereby expressly waives any and all claims for damages or compensation arising under this Contract except as set forth in this paragraph in the event of such termination.
- d) This right of termination belonging to the County of Ventura may be exercised without prejudice to any other remedy which it may be entitled at law or under this Contract.

8. DEFAULT

If Contractor defaults in the performance of any term or condition of this Contract, Contractor must cure that default by a satisfactory performance within 10 days after service upon Contractor of written notice of the default. If Contractor fails to cure the default within that time, then County may terminate this Contract without further notice.

The foregoing requirement for written notice and opportunity to cure does not apply with respect to paragraph 6 above.

9. INDEMNIFICATION, HOLD HARMLESS AND WAIVER OF SUBROGATION

All activities and/or work covered by this Contract will be at the risk of Contractor alone. Contractor agrees to defend, indemnify, and save harmless the County, including all of its boards, agencies, departments, officers, employees, agents and volunteers (collectively, "Indemnitee"), against any and all claims, lawsuits, judgments, debts, demands and liability (including attorney fees and costs) (collectively, "Third Party Claims"), whether against Contractor, County or others, including without limitation, those arising from injuries or death of persons and/or for damages to property, arising directly or indirectly out of the obligations herein described or undertaken or out of operations conducted or subsidized in whole or in part by Contractor, save and except Third Party Claims litigation arising through the sole negligence or wrongdoing and/or sole willful misconduct of Indemnitee. Contractor shall not settle or otherwise compromise a Third Party Claim covered by this section without County's prior written approval. Contractor agrees to waive all rights of subrogation against Indemnitee for losses arising directly or indirectly from the activities and/or work covered by this Contract.

10. **INSURANCE PROVISIONS**

- A) Contractor, at its sole cost and expense, will obtain and maintain in full force during the term of this Contract the following types of insurance:
- 1) General Liability "occurrence" coverage in the minimum amount of \$1,000,000 combined single limit (CSL) bodily injury & property damage each occurrence and \$2,000,000 aggregate, including personal injury, broad form property damage, products/completed operations, and broad form blanket contractual.
 - 2) Commercial Automobile Liability coverage in the minimum amount of \$1,000,000 CSL bodily injury & property damage, including owned, non-owned, and hired automobiles. Also to include Uninsured/Underinsured Motorists coverage in the minimum amount of \$100,000 when there are owned vehicles.
 - 3) Workers' Compensation coverage, in full compliance with California statutory requirements, for all employees of Contractor and Employer's Liability in the minimum amount of \$1,000,000.
 - 4) Professional Liability coverage in the minimum amount of \$1,000,000 each occurrence and \$2,000,000 aggregate.
- B) All insurance required will be primary coverage as respects County and any insurance or self-insurance maintained by County will be excess of Contractor's insurance coverage and will not contribute to it.
- C) County is to be notified immediately if any aggregate insurance limit is exceeded. Additional coverage must be purchased to meet requirements.

- D) The County, and any applicable Special Districts are to be named as Additional Insured as respects to work done by Contractor under the terms of this Contract for General Liability Insurance.
- E) Contractor agrees to waive all rights of subrogation against the County, Its Boards, Agencies, Departments, any applicable Special Districts, Officers, Employees, Agents and Volunteers for losses arising from work performed by Contractor under the terms of this Contract.
- F) Policies will not be canceled, non-renewed or reduced in scope of coverage until after sixty (60) days written notice has been given to the County of Ventura, Risk Management Division.
- G) Contractor agrees to provide County with the following insurance documents on or before the effective date of this Contract:
 - 1. Certificates of Insurance for all required coverage.
 - 2. Additional Insured endorsement for General Liability Insurance.
 - 3. Waiver of Subrogation endorsement (a.k.a.: Waiver of Transfer Rights of Recovery Against Others, Waiver of Our Right to Recover from Others) for Workers' Compensation.

Failure to provide these documents will be grounds for immediate termination or suspension of this contract.

11. **NON-DISCRIMINATION**

A) General.

No person will on the grounds of race, color, national origin, religious affiliation or non-affiliation, sex, age, handicap, disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Contract.

B) Employment.

Contractor will ensure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Contract. Contractor's personnel policies will be made available to County upon request.

12. **SUBSTITUTION**

If particular people are identified in Exhibit A as working under this Contract, the Contractor will not assign others to work in their place without written permission

from the Chief Procurement Officer. Any substitution will be with a person of commensurate experience and knowledge.

13. **INVESTIGATION AND RESEARCH**

Contractor by investigation and research has acquired reasonable knowledge of all conditions affecting the work to be done and labor and material needed, and the execution of this Contract is to be based upon such investigation and research, and not upon any representation made by the County or any of its officers, agents or employees, except as provided herein.

14. **CONTRACT MONITORING**

The County will have the right to review the work being performed by the Contractor under this Contract at any time during Contractor's usual working hours. Review, checking, approval or other action by the County will not relieve Contractor of Contractor's responsibility for the thoroughness of the services to be provided hereunder. This Contract will be administered by General Services Agency, Facilities and Maintenance Division or his/her authorized representative.

15. **ADDENDA**

County may from time to time require changes in the scope of the services required hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation which are mutually agreed upon by and between County and Contractor will be effective when incorporated in written amendments to this Contract.

16. **CONFLICT OF INTEREST**

Contractor covenants that Contractor presently has no interest, including, but not limited to, other projects or independent contracts, and will not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract no person having such interest will be employed or retained by Contractor under this Contract.

17. **CONFIDENTIALITY**

Any reports, information, data, statistics, forms, procedures, systems, studies and any other communication or form of knowledge given to or prepared or assembled by Contractor under this Contract which County requests in writing to be kept confidential, will not be made available to any individual or organization by Contractor without the prior written approval of the County except as authorized by law.

18. **NOTICES**

All notices required under this Contract will be made in writing and addressed or delivered as follows:

TO COUNTY: County of Ventura
General Services Agency
Procurement Services
800 South Victoria Avenue, L#1080
Ventura, CA 93009

TO CONTRACTOR: Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy
861 Lawrence Drive
Thousand Oaks, CA 91320

Either party may, by giving written notice in accordance with this paragraph, change the names or addresses of the persons or departments designated for receipt of future notices. When addressed in accordance with this paragraph and deposited in the United States mail, postage prepaid, notices will be deemed given on the third day following such deposit in the United States mail. In all other instances, notices will be deemed given at the time of actual delivery.

19. **MERGER CLAUSE**

This Contract supersedes any and all other contracts, either oral or written, between Contractor and the County, with respect to the subject of this Contract. This Contract contains all of the covenants and contracts between the parties with respect to the services required hereunder. Contractor acknowledges that no representations, inducements, promises or contracts have been made by or on behalf of County except those covenants and contracts embodied in this Contract. No modification, waiver, amendment or discharge of this Contract shall be valid unless the same is in writing and signed by duly authorized representatives of both parties.

20. **GOVERNING LAW**

The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties under this Contract, will be construed pursuant to and in accordance with the laws of the State of California.

21. **SEVERABILITY OF CONTRACT**

If any term of this Contract is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the Contract terms will remain in full force and effect and will not be affected.

22. **CUMULATIVE REMEDIES**

The exercise or failure to exercise of legal rights and remedies by the County in the event of any default or breach hereunder will not constitute a waiver or forfeiture of any other rights and remedies and will be without prejudice to the enforcement of any other right or remedy available by law or authorized by this Contract.

23. **COMPLIANCE WITH LAWS**

Each party to this Contract will comply with all applicable laws.

24. **PREVAILING WAGE**

- a. Work to be performed under this Contract is "public works" as defined in Labor Code section 1720(a), subject to prevailing wage, apprenticeship and other labor requirements of Labor Code division 2, part 7, chapter 1, section 1720 et seq. Pursuant to Section 1773.2 of the Labor Code, the current prevailing rate of per diem wages at the time of the Bid as determined by the Director of the Department of Industrial Relations (DIR) are on file with the County Purchasing Agent and available at <https://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. The Contractor shall post a copy of these rates at the Work site. Pursuant to Section 1774 of the Labor Code, the Contractor and any subcontractors shall pay not less than the specified prevailing rates of wages to workers employed on the Contract. The project is subject to compliance monitoring and enforcement by the DIR. The Contractor is responsible for posting job site notices as prescribed by regulation pursuant to Labor Code section 1771.4, subdivision (a)(2). The Contractor and each Subcontractor, if any, must be registered with the DIR pursuant to Labor Code section 1725.5 and section 1771.1. The Contractor and each Subcontractor, if any, must submit certified payrolls to the Labor Commissioner pursuant to Labor Code 1771.4.
- b. Payroll Records: Pursuant to Section 1776 of the Labor Code the Contractor and each subcontractor, if any, shall keep, make available, and submit to the County within ten (10) days of receipt of a written request, certified payroll records. Pursuant to Labor Code section 1776, subsection (h), the Contractor and each subcontractor, if any, shall, as a penalty to the Agency, forfeit the prescribed amount for each calendar day, or portion thereof, for each worker, the Contractor and each subcontractor, if any, fails to comply with that subsection until strict compliance is effectuated. The Contractor and each subcontractor, if any, waives any right to any notice or hearing on the forfeiture of such penalties pursuant to Labor Code sections 1726 or 1771.6. The Contractor shall include this requirement in its subcontracts as required to make this paragraph effective as to each subcontractor. Upon written request, the Contractor shall withhold penalties forfeited by a subcontractor pursuant to Labor Code section 1776.1 subsection (h), and this paragraph from payment due to such Subcontractor and remit such penalties withheld to the County.
- c. Hours of Labor: Pursuant to Section 1810 of the Labor Code, 8 hours of labor shall constitute a legal day's work. Pursuant to Section 1813 of the Labor Code,

the Contractor and any subcontractors, shall, as a penalty to the County, forfeit the prescribed amount per calendar day for each worker required or permitted to work more than 8 hours in any 1 calendar day and 40 hours in any 1 calendar week without being compensated in accordance with Section 1815. Contractor and each subcontractor, if any, waives any right to any notice or hearing on the forfeiture of such penalties pursuant to Labor Code sections 1726 and 1771.6. Contractor shall include terms in its subcontracts as required to make this paragraph effective as to each Subcontractor. Upon written request, Contractor shall withhold penalties forfeited by a subcontractor pursuant to Labor Code section 1813 and this paragraph from payments due to such Subcontractor and remit such penalties withheld to the County.

25. **CONSTRUCTION OF COVENANTS AND CONDITIONS**

Each term and each provision of this Contract will be construed to be both a covenant and a condition.

26. **NON-EXCLUSIVITY**

The County reserves the right to contract with providers of similar services and/or equipment other than the Contractor when it is reasonably determined to be in the best interest of the County.

27. **MISCELLANEOUS**

- a. Third Party Beneficiaries. Except for indemnitees under sections 3 and 8 above, this contract does not, and the parties to this contract do not intend to, confer a third-party beneficiary right of action on any third party whatsoever, and nothing set forth in this contract will be construed so as to confer on any third party a right of action under this contract or in any manner whatsoever.
- b. Further Actions. The parties hereto agree that they will execute any and all documents and take any and all other actions as may be reasonably necessary to carry out the terms and conditions of this contract.
- c. Legal Representation. Each party warrants and represents that in executing this contract, the party has relied upon legal advice from attorneys of the party's choice (or had a reasonable opportunity to do so); that the party has read the terms of this contract and had their consequences (including risks, complications and costs) completely explained to the party by the party's attorneys (or had a reasonable opportunity to do so); and that the party fully understands the terms of this contract. Each party further acknowledges and represents that the party has executed this contract freely and voluntarily without the undue influence of any person, and the party has not relied on any inducements, promises or representations made by any person not expressly set forth in this contract.

- d. No Waiver. Failure by a party to insist upon strict performance of each and every term, condition and covenant of this contract shall not be deemed a waiver or relinquishment of the party's rights to enforce any term, condition or covenant.
- e. Partial Invalidity. If any provision of this contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the parties intend, and it shall be so deemed, that the remaining provisions of this contract shall continue in full force without being impaired or invalidated in any way. If such provision is held to be invalid, void or unenforceable due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- f. Interpretation of Contract. For purposes of interpretation, this contract shall be deemed to have been drafted by both parties, and no ambiguity shall be resolved against any party by virtue of the party's participation in the drafting of the contract. Accordingly, Civil Code section 1654 shall not apply to the interpretation of this contract. Where appropriate in the context of this contract, the use of the singular shall be deemed to include the plural, and the use of the masculine shall be deemed to include the feminine and/or neuter.
- g. Counterparts. This contract may be transmitted and signed by electronic or digital means by either or both parties and such signatures shall have the same force and effect as original signatures, in accordance with California Government Code Section 16.5 and California Civil Code Section 1633.7. This contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same contract.

IN WITNESS WHEREOF the parties hereto have executed this Contract.

COUNTY OF VENTURA

CONTRACTOR*

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Date

Date

Tax Identification Number

Secretary of State Entity Number

CONTRACTOR*

Authorized Signature

Printed Name

Title

Date

* If a corporation, this Contract must be signed by two specific corporate officers.

The first signature must be from either (1) the Chief Executive Officer, (2) the Chairman of the Board, (3) the President, or (4) a Vice President.

The second signature must be from either (a) the Secretary, (b) an Assistant Secretary, (c) the Chief Financial Officer (or Treasurer), or (d) an Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the company for this Contract.

**EXHIBIT A
COMPENSATION AND PRICING MATRIX**

1. Compensation Summary

The following summarizes the maximum amount of compensation available to Contractor under this contract. The actual amount of compensation shall be established and paid in accordance with the applicable provisions of the Contract including this Exhibit A.

| | |
|-------------------------------------|----------------|
| Maximum Fees for services: | \$6,150,250.00 |
| Maximum Reimbursement for Expenses: | \$0.00 |
| Total Amount Not to Exceed: | \$6,150,250.00 |

2. Fees for Services

County agrees to pay Contractor the following fees for services:

☒ an **hourly rate** compensation, for actual hours of Emergency Coverage Services performed that is based upon the hourly rates set forth below, which rates shall remain fixed for the duration of the contract, plus compensation for necessary parts and equipment rental at cost plus a 20 percent markup, not to exceed the **maximum fee amount of \$3,909,335.00**.

Hourly Rates: Straight time rate - \$130; Overtime rate - \$195; Sundays and official County holidays rate - \$260.

☒ a **fixed fee** compensation, in the total amount of **\$2,240,915.00**, for completion of all Work specified in the pricing matrix attached hereto at the fixed fee specified therefor.

No Reimbursement for Expenses Except for the compensation for parts and rental equipment specified above, any expenses related to services are not reimbursable..

3. Payment

Payment terms are Net 30 Days upon receipt of invoice, in arrears for services rendered.