






TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** January 25,2024

RE: *Construction Agreement between Southern Nevada Health District and EMCOR Services- Mesa Energy Systems, Inc*

PETITION #20-24

That the Southern Nevada District Board of Health *approve the construction Agreement between the Southern Nevada Health District and EMCOR Services-Mesa Energy Systems, Inc for the replacement of 13 rooftop HVAC units at 280 Decatur Blvd.*

PETITIONERS:

Fermin Leguen, MD, MPH, District Health Officer 
Kim Saner, Deputy District Health Officer- Administration 
Sean Beckham, Chief Facilities Officer 

DISCUSSION:

The 280 S. Decatur location has 13 rooftop HVAC units that are at the end of life. They will be replaced with new units.

FUNDING:

The cost of the HVAC replacement is \$387,516. It will be funded from the general fund.



**AIR CONDITIONING UNIT REPLACEMENT AGREEMENT
BETWEEN
SOUTHERN NEVADA HEALTH DISTRICT
AND
MESA ENERGY SYSTEMS, INC.
DOING BUSINESS AS
EMCOR SERVICES NEVADA
C2400052**

This Air Conditioning Unit Replacement Agreement (“Agreement”) is made and entered into as of the 1st day of February, 2024, by and between the Southern Nevada Health District (“Owner” or “Health District”) a political subdivision of the State of Nevada and Mesa Energy Systems, Inc. doing business as EMCOR Services Nevada (“Contractor”) (individually “Party” and collectively “Parties”) for the Health District’s rooftop air conditioning unit replacement project (“Project”).

RECITALS

WHEREAS, pursuant to Nevada Revised Statutes (“NRS”) Chapter 439, Health District is the public health authority for Clark County, Nevada and has jurisdiction over all public health matters therein;

WHEREAS, Contractor is a corporation authorized, registered, and licensed to do business in the State of Nevada and Clark County, providing a wide range of mechanical and energy systems solutions, including, but not limited to, new construction and retrofit of HVAC systems, and has a valid C-21 Refrigeration and Air Conditioning license issued by the Nevada State Contractor’s Board;

WHEREAS, Health District desires to replace thirteen (13) of its rooftop air conditioning units (“RTU(s)”) at its main facility located at 280 S. Decatur Blvd., Las Vegas, Nevada 89107 (the “Worksite”);

WHEREAS, Contractor agrees to remove and replace Health District’s existing RTUs (including hazardous materials abatement, if necessary) at the Worksite in accordance with the terms and conditions of the Agreement (“Work” or “Services”); and

WHEREAS, pursuant to NRS Chapter 338, the State of Nevada, Office of the Labor Commissioner has assigned public works project number PWP-CL-2024-040 for Health District’s RTU Project.

NOW, THEREFORE in consideration of the mutual promises and undertaking herein specified, Health District and Contractor agree as follows:

1) AGREEMENT.

1.01 This Agreement incorporates the following documents by reference with the same force and effect as if they were given in full text. Upon request, Health District will make their full text available (“Contract Documents”):

a) This Agreement signed by Owner and Contractor;

- b) Health District Invitation to Bid 24ITB004, dated September 19, 2023, and Addendum #1 dated October 10, 2023 (“ITB”);
 - c) Contractor’s response dated October 31, 2023, to the ITB;
 - d) Written orders for changes in the Work issued after execution of this Agreement; and
 - e) Modifications issued after execution of this Agreement, all of which form the Agreement, and are as fully a part of the Agreement as if attached to this Agreement or repeated herein.
- 1.02 In the event of conflicts or inconsistencies between or among the Contract Documents, this Agreement shall take precedence over the ITB.
- 1.03 REPRESENTATION. Sean Beckham, Health District’s Chief Facilities Officer, is designated as the Owner Representative for this Project (“Owner Representative”). Adam Licon is designated as Project Manager and Contractor’s representative (“Contractor Representative”). Neither the Owner Representative nor Contractor Representative shall be changed without ten (10) days’ prior written notice to the other Party. Owner reserves the right to reasonably object to Contractor’s change.
- 2) TERM AND TERMINATION. Contractor shall commence the Work on day and year first written above and complete the Work no later than June 30, 2024 unless modified as provided in the Contract Documents. Time is of the essence in the performance and completion of this Agreement.
- 2.01 Termination for Convenience. Health District may, at any time, terminate the Agreement in whole or in part for its own convenience by delivering to Contractor a written notice of termination identifying the extent to which performance of the Work is terminated and the effective date of termination. Contractor shall be entitled to receive payment for Work completed prior to the Termination Date.
- 2.02 Termination for Cause. Health District may terminate the Agreement if Contractor ceases Work or fails to adhere to the Schedule for a continuous and uncorrected period of thirty (30) days; or upon the occurrence, without limitation, of any one or more of the following events (“Event of Default”):
- a) Contractor violates any material provision of this Agreement.
 - b) Contractor persistently fails to promptly and diligently prosecute the Work; supply enough properly skilled workmen or materials to perform the Work; or disregards any applicable laws, statutes, codes, rules, regulations, or directive of any public agency or authority.
 - c) Contractor abandons the performance of the Work.
 - d) Contractor fails to make payments when due to any subcontractor, material supplier; or its own employees for earned wages or benefits.
 - e) Contractor submits a falsified invoice for payment, sworn statement, waiver of lien, affidavit or any other document.

- f) A mechanic's lien is filed against the Work or the Worksite for labor and materials for which Contractor was paid and Contractor fails or refuses to bond or discharge the lien.
- g) Filing against the Contractor of a petition under any Federal or State bankruptcy or insolvency law, or a receiver, liquidator or trustee is appointed on account of the Contractor's bankruptcy or insolvency.
 - (i) When Owner terminates the Agreement for any Event of Default, Contractor shall be responsible for paying all actual costs incurred to cure plus reasonable overhead, profit, and any legal or design fees incurred in curing same.
- h) Contractor fails to comply with Section 22 of this Agreement.

2.03 If Owner Representative fails to certify payment or make payment as provided in Payment/Progress Payments for a period of 30 days through no fault of Contractor, Contractor may give Health District notice of intent to stop work. If payment is not made within ten (10) business days of the notice to stop work, Contractor may terminate the Agreement upon fifteen (15) additional business days' written notice to Health District. Contractor may recover from Owner payment for Work executed including reasonable overhead and profit, and direct costs incurred by reason of such termination.

3) SCOPE OF WORK. Contractor shall provide all labor and materials and perform all Work necessary to remove and replace Health District's existing RTUs at the Worksite.

3.01 Contractor will perform the following Services to complete the Work pursuant to the terms and conditions of the Agreement:

- a) Site Assessment and Pre-Work
 - (i) Conduct a thorough site assessment to evaluate the existing RTUs, location, access points, and any other potential challenges.
 - (ii) Develop a comprehensive project plan outlining the installation process.
- b) Equipment Procurement
 - (i) Provide Health District with detailed specifications for the replacement RTUs, including capacity, energy efficiency, and compatibility with the existing building infrastructure.
- c) Removal of Existing RTUs
 - (i) Safely disconnect, remove, and haul away the thirteen (13) existing RTUs considering proper disposal methods for any hazardous materials in accordance with environmental regulations.
- d) Installation of Replacement RTUs
 - (i) Install thirteen (13) new RTUs according to manufacturer guidelines and best practices.
 - (ii) Ensure proper alignment, secure mounting, and integration with existing HVAC

systems.

- e) Electrical and Control System Integration
 - (i) Connect the thirteen (13) new RTUs to the Worksite electrical system, ensuring proper wiring and adherence to safety standards.
 - (ii) Integrate control systems with Health District's existing Schneider Electric Building Automation System to facilitate remote monitoring and adjustment of RTU functions.
 - f) Ductwork and Roof Repair
 - (i) Inspect and repair or replace ductwork components as necessary to ensure optimal airflow and distribution.
 - (ii) Eberhard roofing shall perform any required roof repairs in accordance with Health District's roof warranty.
 - g) Testing and Commissioning
 - (i) Perform comprehensive testing of each new RTU to verify functionality, efficiency, and proper airflow.
 - (ii) Adjust settings and controls to ensure optimal performance and comfort.
 - h) Documentation and Training
 - (i) Provide documentation including equipment manuals, specifications, and as-built diagrams.
 - (ii) Train Health District staff to effectively operate and maintain the new RTUs.
- 3.02 Time limits established by the schedule approved by Health District shall not be exceeded by Contractor unless pre-approved in writing by Health District.
- 3.03 Contractor shall furnish all Services in a timely, workman-like manner consistent with professional industry standards.
- 3.04 Contractor shall ensure all specifications, documents, or materials provided or prepared by Contractor are:
- a) Sufficient, complete, accurate, and adequate to meet the minimum applicable standard;
 - b) Consistent with Health District's aesthetic, functional, and operational objectives as expressed in the ITB and architectural drawings and specifications or as amended by mutual agreement;
 - c) Consistent with Health District's budget requirements for the Services and Services Schedule; and
 - d) Compliant with all laws, statutes, regulations, and building codes which apply to or govern the Services.

- 3.05 Tools, equipment, surplus materials, scraps, and debris resulting from the Services provided shall be organized and cleaned up, or removed and disposed of by Contractor, daily. At the completion of the Services, Contractor shall remove its tools, construction equipment, machinery, and surplus material and shall properly dispose of all waste materials.
- 3.06 Health District may make changes to the Scope of Work, including changes to drawings and specifications, from time to time during Project construction. However, any such change or modification shall only be made by written "Change Order" signed by the authorized representative of both Parties. Such Change Orders shall become part of this Agreement. Health District agrees to pay any actual increase in the cost of the Project because of a valid Change Order. In the event the cost of a Change Order is not known at the time a Change Order is executed, Contractor shall estimate the cost thereof and Health District shall pay the actual cost.
- 3.07 Contractor acknowledges that its failure to timely perform Services pursuant to this Agreement may cause Health District to sustain loss and damages that if proven to be the responsibility of Contractor shall be recoverable by Health District from Contractor.

4) CONTRACTOR CARE, CUSTODY AND CONTROL OF THE WORK.

- 4.01 Upon commencement of work, Contractor shall be fully responsible for the care, custody, and control of the Worksite until Services have been completed.
- 4.02 Contractor shall continuously protect Work from damage, protect all persons from injury and protect all other property from damage, injury, or loss arising in connection with the Services provided.
- 4.03 Contractor shall be solely responsible for the safety, efficiency, and adequacy of its equipment, tools, and materials.
- 4.04 Contractor shall always keep the Worksite free from accumulations of waste materials or rubbish caused by the Work, its employees, or sub-Contractor(s). Upon completion of each day, Contractor shall be responsible for the removal of all unused materials, equipment, scraps and debris resulting from the work done. The Worksite shall be left clean in a manner acceptable to Health District.

5) FIRM-FIXED-PRICE AMOUNT.

- 5.01 For satisfactory performance of the Services, subject to additions and deductions by Change Orders:
 - a) The contract sum is \$387,516 ("Firm-Fixed-Price Amount") and includes all items and services necessary for the proper execution and completion of the Services.
 - b) The Firm-Fixed-Price Amount comprises all costs required to complete and deliver the finished Project including, but not limited to, labor, materials, equipment, subcontractors, insurance, bonds, overhead and associated costs (taxes, freight, travel, etc.).

6) PAYMENT

6.01 All Contractor invoices for payment shall include detail of Contractor charges, including each portion the Work completed as applicable. Invoices must reference Agreement number C2400052, must be signed by Contractor's official representative, and must include a statement certifying that the invoice is a true and accurate billing. Based upon verified and approved invoices for Payment submitted to Owner Representative, with such approval not to be unreasonably withheld, Health District shall make payments to Contractor within thirty (30) days of Owner Representative's approval.

- a) Contractor is required to provide backup documentation for invoice including but not limited to purchase orders, supplier invoices, receipts, proof of payments, and/or any other documentation requested by Health District.
- b) If Work is suspended – in whole or in part - at any time by Owner, Contractor is to be paid for actual Work performed prior to receipt of written notice from Health District of such suspension. Owner shall determine the percentage of completion.
- c) Upon receipt of payment from Owner, Contractor shall promptly pay each subcontractor and supplier an amount determined in accordance with the terms of the applicable subcontract(s) and purchase order(s).
- d) Neither Owner nor Owner Representative shall have responsibility for payments to a subcontractor or supplier.

6.02 PROGRESS PAYMENTS. Payment prior to completion of the Work shall be made as follows:

- a) RTU Replacement Units. Upon Owner Representative's written approval of the specifications for Contractor proposed replacement RTUs, and upon Contractor's purchase of Owner Representative approved replacement RTUs, Contractor will invoice Health District for the replacement RTUs at cost

6.03 FINAL PAYMENT.

- a) To obtain final payment, Contractor must submit to Owner:
 - (i) A final invoice confirming that 100% of all required Work, including change order Work that has been completed.
 - (ii) A Certificate of Completion of all Work, stating all Work including Change Orders, and punchlist items, has been performed in accordance with the Contract Documents and that all payments received were consistent with the terms herein.
 - (iii) Contractor's Certification confirming all satisfaction of all indebtedness associated with the Project including:
 - A. All bills for material and equipment;
 - B. All required payments to subcontractors;
 - C. All payroll and benefits to all labor directly employed by it; and

- D. Payment of all fees, taxes and other expenses incurred in performing the Work.
- b) A final release and waiver covering all monies and claims on the Project for Contractor, subcontractors, and suppliers.
 - c) Proof of inspection and approvals or sign-offs from any governmental authority and close out of any open permits.
 - d) All manufacturers' and suppliers' warranties and guarantees.
 - e) A list of any outstanding known and unreported Worksite accidents or injuries involving Contractor's employees or subcontractors.
 - f) Complete sets of "as built" drawings showing the Work in place.
 - g) Upon receipt of Contractor's final invoice, Owner Representative will inspect the Work. When Owner Representative finds the Work acceptable and the Agreement fully performed, Owner Representative will promptly issue a final invoice for payment, which will include all remaining monies due to Contractor, not to exceed the Firm-Fixed-Price Amount.
 - h) Contractor's acceptance of final payment constitutes a waiver of all claims, except those previously made in writing and identified by Contractor as unsettled at the time of submittal of its final invoice for payment.
 - i) Owner may withhold all or a portion of final payment on account of: i) incomplete Work, ii) defective or nonconforming work, iii) Contractor's failure to make payment properly for services, materials, equipment or subcontracts, iv) damages caused to Owner by Contractor or those under Contractor's control, or v) failure to carry out the Work in accordance with this Agreement, all as determined by Owner in its reasonable discretion. In so doing, Owner may withhold (1) the cost to complete such incomplete Work, 2) the cost to cure such defective or nonconforming Work, 3) the amount of such damages, and 4) all costs reasonably necessary to cure any failure to carry out the Work in accordance with this Agreement.
 - j) In issuing the final payment, Owner expressly reserves any claims:
 - (i) Previously asserted in writing and currently pending;
 - (ii) Relating to liens, security interests, and other encumbrances against the Project that remain unsettled or are later asserted;
 - (iii) Arising from the failure of the Work to comply with the Contract Documents;
 - (iv) Arising from latent defects in the work; and/or
 - (v) Related to any warranties or guarantees under the Agreement.
 - k) If Contractor has any claim for additional compensation against Owner, Contractor shall give Owner written notice of such claim within ten (10) business days after Contractor obtains knowledge of the event alleged to have given rise to the claim. If Contractor fails

to give such notice, the claim shall be deemed waived and forever discharged.

- 7) **PREVAILING WAGE.** Contractor shall ensure that all of its employees (and subcontractor employees, as applicable) assigned to the Project are paid at least the Prevailing Wages for Clark County, Nevada, as established by the State of Nevada through its Office of the Labor Commissioner. In providing the Services under this Agreement, Contractor agrees to comply as applicable with NRS Chapter 338, including but not limited to the State of Nevada's Prevailing Wage Act, NRS 338.020-090.
- 8) **APPRENTICESHIPS.** Contractor agrees to ensure its compliance (and subcontractor compliance as applicable) with Nevada's Apprenticeship Utilization Act pursuant to NRS 338.040.
- 9) **INSURANCE.**
 - 9.01 Owner and Contractor shall procure and maintain insurance as set forth in Attachment A, Insurance and Bonds.
 - 9.02 Contractor shall provide bonds as set forth in Attachment A. No Work is authorized until such time as Owner has received a Certificate of Insurance and required bonds in compliance with this Section.
- 10) **HEALTH DISTRICT'S RIGHTS AND RESPONSIBILITIES.**
 - 10.01 **Owner's Right to Stop the Work.** If Contractor fails to correct Work which is not in accordance with the Contract Documents, Owner may direct Contractor in writing to stop the Work until the correction is made.
 - 10.02 **Owner's Right to Carry out the Work.** In the event of default or Contractor otherwise neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from Owner to correct such default or cease such neglect with diligence and promptness, Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due Contractor.
 - 10.03 Owner, in its sole discretion, may direct Contractor, at no additional cost to Owner, to promptly and satisfactorily correct any Services that are found to be defective or not in compliance with the requirements of this Agreement, or the requirements of any laws, statutes, rules, regulations, ordinances, building codes, and Owner's guidelines which apply to or govern the Services provided.
- 11) **CONTRACTOR RESPONSIBILITIES.**
 - 11.01 Contractor, before commencing Work, shall prepare and submit for Owner's review and approval, Contractor's schedule for the Work.
 - 11.02 Contractor, before commencing Work, shall submit the name of each subcontractor that will be paid an amount exceeding five percent (5%) of the total firm-fixed-price amount. Contractor must verify that all subcontractors listed are properly licensed. Contractor may use the State of Nevada's Office of the Labor Commissioner's Subcontractor List for Public Works Projects form as a template.

- 11.03 Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Agreement is executed.
- 11.04 If Contractor performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, Contractor shall assume full responsibility for such Work and shall bear the attributable costs.
- 11.05 Contractor shall promptly review, approve in writing, and submit to Owner Representative, Product Data, Samples, and similar submittals required by the Contract Documents.
- 11.06 Contractor shall supervise and direct its employees and subcontractors using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.
- 11.07 Contractor shall furnish in writing to Owner the names of subcontractors or suppliers for each portion of the Work. Contractor shall not contract with any subcontractor or supplier to whom Owner has made a timely and reasonable objection.
- 11.08 Contractor agrees that throughout the Project's duration, Contractor will have sufficient resources available to perform and complete the Work in accordance with the Project Schedule.
- 11.09 Contractor shall promptly correct Work rejected by Owner Representative as failing to conform to the requirements of the Contract Documents. Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.
- 11.10 If Contractor fails to correct nonconforming Work within a reasonable time, Owner may correct it consistent with this Agreement.
- 11.11 Tests and Inspections
- a) At the appropriate times, Contractor shall arrange and bear cost of tests, inspections and approvals of portions of the Work required by the Contract Documents or applicable federal, state, or local laws, statutes, ordinances, codes, rules and regulations.
 - b) Contractor shall perform such additional tests as requested by Owner Representative.
- 11.12 Contractor shall take reasonable precautions to prevent damage, injury or loss to its employees at the Worksite, the Work, materials, and other property at the site or adjacent thereto. Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor, or by anyone for whose acts Contractor may be liable.
- a) In the event that Contractor fails to successfully and timely put one or more replacement RTUs into service in accordance with this Agreement resulting in lack of adequate cooling within the Worksite, Contractor will:
 - (i) At its sole expense, procure, deliver, install, and put into service alternate temporary cooling equipment acceptable to Owner and adequate to maintain

proper refrigeration of units used to safely store materials, including but not limited to vaccines and medications, until such time as the affected RTU cooling zone (s) can be satisfactorily restored by Contractor;

- (ii) At its sole expense, remove alternate temporary cooling equipment promptly as soon as Owner acknowledges adequate and appropriate cooling is restored to an affected RTU's cooling zone. Additionally, Contractor will restore any indoor area disturbed by use of alternate temporary cooling equipment to its original state;
- (iii) Coordinate with Owner to ensure its day-to-day business operations are not affected by alternate temporary cooling methods; and
- (iv) Reimburse Owner for the actual cost of any refrigerated materials due to Contractor's failure to timely restore cooling service. Owner will invoice Contractor at cost for the loss of such materials, and Contractor shall reimburse Owner within thirty (30) days of invoice receipt.

11.13 In addition to Contractor's other obligations including warranties under this Agreement, Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

12) LABOR AND MATERIALS

12.01 Unless expressly provided in the Contract Documents, Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other services necessary for proper execution and completion of the Work.

12.02 Contractor shall guarantee all material to be as specified. Any alteration or deviation from these specifications involving extra costs will be approved only upon a Change Order executed by both Parties.

13) WARRANTY.

13.01 Contractor's warranty shall be limited to defects in workmanship within the Scope of Work performed by Contractor and which arise and become known within one (1) year from Project completion. All said defects arising after one (1) year and defects in material are not warranted by Contractor. Contractor hereby assigns to Owner all warranties on materials as provided by the manufacturer of such materials.

13.02 Contractor warrants to Owner that:

- a) Contractor has the expertise and ability to provide pre-construction, construction, and construction management services that meet Owner's objectives and requirements as well as general and specialty contracting industry standards.
- b) Title to any Work covered by Contractor invoices will pass to Owner no later than the time of payment.
- c) Upon submittal of an invoice for payment, all Work and/or product invoiced shall, to the best of Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to Owner's interests.

- d) Materials and equipment furnished under the Agreement will be new and of good quality and free of defect unless otherwise required or permitted by the Contract Documents.
- e) The Work will be free from defects not inherent in the quality required or permitted and will conform to the requirements of the Contract Documents.
- f) Contractor will recommend to Health District all process and construction improvement it believes in good faith would optimize Project construction and operations, provided Contractor's liability for breaches of such warranty shall be limited to instances of gross negligence or willful misconduct.

14) SITE INSPECTION

- 14.01 Contractor warrants that, by examination, it has satisfied itself as to the general nature and location of the Work, the general character, quantity and kind of materials to be encountered, the equipment required and the general conditions and other matters which may in any manner affect the Work. The Owner shall furnish all site surveys and legal descriptions required for the Work, if any, and Contractor shall be entitled to rely upon the same. Contractor expressly disclaims all liability for latent or subsurface conditions. Notwithstanding the foregoing, Contractor shall be responsible for locating and managing the Work around any existing underground pipes and electrical lines.
- 14.02 Contractor and Owner's Representative shall visit the Project prior to the expiration of Contractor's one (1) year warranty period; Owner shall note any breaches or violations of the guarantees provided by Contractor and report the same if any are observed or discovered, in writing to Contractor for remediation within a reasonable time.

15) CHANGES IN THE WORK.

- 15.01 Health District, without invalidating the Agreement, may order changes in the Work within the general scope of the Agreement consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly in writing. If Health District and Contractor cannot agree to a change in the Contract Sum, Health District shall pay Contractor its actual cost-plus reasonable overhead and profit.
- 15.02 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time may be subject to equitable adjustment.

16) SUBSTANTIAL COMPLETION

- 16.01 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so Health District can utilize the Work for its intended use.
- 16.02 When the Work is substantially complete, Owner Representative will make an inspection to determine whether the Work is substantially complete. When Owner Representative determines the Work is substantially complete, Owner Representative shall prepare a

Certificate of Substantial Completion that establishes the date of Substantial Completion, the responsibilities of Health District and Contractor, and fixes the time within which Contractor shall complete all items on the list accompanying the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work.

17) COMPLIANCE/LICENSES.

17.01 Contractor, its employees, subcontractors or assigns, shall obtain, at its own expense, all licenses, permits, and other authorizations necessary to comply with all applicable federal, state and local laws and regulations relating to the performance of the Agreement.

17.02 Contractor is responsible for compliance with all labor, employment, and tax laws pertaining to its employees, subcontractors, officers, and agents and shall indemnify and hold Health District harmless from any failure by Contractor to comply with such laws.

18) NOTICE. All notices required or permitted under this Agreement shall be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the receiving party from time to time) and delivered by personal delivery, via overnight courier (with all fees pre-paid), or certified or registered mail, return receipt requested, postage pre-paid. Except as otherwise provided in this Agreement, a Notice is effective only: a) upon receipt by the receiving party, and b) if the Party giving the Notice has complied with the requirements of this Section.

OWNER	CONTRACTOR
Southern Nevada Health District	Mesa Energy Sytems, Inc.
Legal Department	doing business as
Contract Administrator	EMCOR Services Nevada
280 S. Decatur Blvd	6295 S. Pearl, Ste. 1400
Las Vegas NV 89107	Las Vegas, NV 89120

19) DISPUTE_RESOLUTION.

19.01 If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute first through good faith direct discussions between the Parties' representatives, who shall have the authority to settle the dispute. If the Parties' representatives are not able to promptly settle the dispute, the senior executives of the Parties, who have authority to settle the dispute, shall meet within fifteen (15) business days after the dispute first arises. If the dispute is not settled within ten (10) business days from the referral of the dispute to the senior executives, the Parties shall submit the dispute to arbitration in accordance with this Section.

a) Unless otherwise agreed in writing, Contractor shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If Contractor continues to perform, Health District shall continue to make payments in accordance with this Agreement.

- b) Arbitration. If the dispute cannot be settled pursuant to this Section, the Parties shall settle the dispute by binding arbitration under the then current Construction Industry Arbitration Rules of the American Arbitration Association. Once one-Party files a request for arbitration with the other Party and with the American Arbitration Association, the Parties agree to conclude such arbitration within sixty (60) days of filing of the request. The Parties shall request arbitration by a panel of three (3) arbitrators, selected in accordance with the Rules of the American Arbitration Association. The decision of the arbitrators shall be final and judgment upon the award may be entered into any court having jurisdiction thereof. Any construction lien foreclosure suit shall be stayed pending the arbitration.
- (i) Regardless of outcome, (a) each Party shall pay all of its own costs and expenses, including without limitation its own legal fees and expenses, and (b) joint expenses shall be borne equally among the Parties.
 - (ii) Arbitration proceedings and any trial court suit or action arising out of or related to this Agreement shall be commenced and conducted in Clark County, Nevada.
- 20) BOOKS AND RECORDS. Each Party shall keep and maintain under generally accepted accounting principles full, true and complete books, records, and documents as are necessary to fully disclose to the other Party, properly empowered government entities, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms of this Agreement and any applicable statutes and regulations. All such books, records and documents shall be retained by each Party in accordance with its respective Records Retention Schedule, or for a minimum of five (5) years; whichever is longer, from the date of termination of this Agreement. This retention time shall be extended when an audit is scheduled or in progress for a period of time reasonably necessary to complete said audit and/or to complete any administrative and/or judicial processes which may ensue.
- 21) STATEMENT OF ELIGIBILITY. Each Party acknowledges to the best of its knowledge, information, and belief, and to the extent required by law, neither it nor any of its respective employees/contractors is/are: i) currently excluded, debarred, suspended, or otherwise ineligible to participate in federal health care programs or in federal procurement or non-procurement programs; and ii) has/have not been convicted of a federal or state offense that falls within the ambit of 42 USC 1320a-7(a). If Contractor status changes at any time pursuant to this Section 22, Contractor agrees to immediately notify Health District in writing, and Health District may terminate this Agreement for cause as described in the above Subsection 2.02h).
- 22) MUTUAL COOPERATION. The Parties shall fully cooperate with one another in furtherance of this Agreement and shall provide assistance to one another in the investigation and resolution of any complaints, claims, actions or proceedings that may arise out of the provision of Services hereunder. The Parties shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate, or convenient to achieve the purposes of this Agreement.
- 23) BOYCOTT OF ISRAEL. Contractor certifies that it is not currently engaged in, and agrees for the term of this Agreement not to engage in, a boycott of Israel pursuant to NRS 332.065
- 24) GENERAL CONDITIONS.

- 24.01 Entire Agreement: This Agreement represents the entire and integrated agreement between the Parties and supersedes prior negotiations, representations or agreements, either written or oral. The Agreement may be amended or modified only by a written modification.
- 24.02 Assignments: Neither Party shall assign this Agreement without the prior written consent of the other Party.
- 24.03 Governing Law: This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed according to the laws of the State of Nevada, notwithstanding conflict of laws principles, with Clark County, Nevada as the exclusive venue of any action or proceeding related to or arising out of this Agreement.
- 24.04 Waiver: Either Party's waiver of any breach of any provision of this Agreement by the other Party shall not constitute a waiver of any further or additional breach of such provision or of any other provision of this Agreement.
- 24.05 Appropriation of Funds: The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by Health District for the performance of this Agreement. If sufficient appropriations and authorizations are not made by Health District, this Agreement shall terminate, without penalty or expense to Health District of any kind whatsoever, upon written notice being given by Health District to Contractor.
- 24.06 Right to Audit: Records subject to audit, inspection, examination, and evaluation shall include, but not be limited to, those records necessary to evaluate and verify prices, reimbursable services, etc. as they may apply to costs, matters or items associated with this Agreement (collectively, the "Records"). For the purpose of such audits, inspections, examination, and evaluations, Health District's agent or authorized representative shall have access to said records for the duration of the Work and for the retention period described in Section 21 of this Agreement until five (5) years after the date of final payment by Health District to Contractor pursuant to this Agreement Records shall be open to inspection, audit and/or reproduction, during normal working hours by Health District's agent or its authorized representative to the extent necessary to evaluate and verify payments, invoices, or claims submitted by Contractor or any of its payees relative to the Project.
- 24.07 Public Records: Pursuant to NRS Chapter 239, information or documents, including this Agreement, and any other documents generated incidental thereto may be opened by Health District to public inspection and copying. Health District will have a duty to disclose unless a particular record is made confidential by law or common law balancing of interests. Contractor is responsible for and will work with Health District to respond to a properly submitted request for information or documents to the extent such information or documents are in Contractor's care, custody, and control.
- 24.08 Authority: Health District and Contractor each represent and warrant to each other that each respectively has the authority to execute and deliver this Agreement and perform their respective obligations there under and that the execution, delivery and performance of this Agreement have been duly authorized by all necessary action by each respective

Party.

- 24.09 Limited Liability: Health District will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. To the extent applicable, actual agreement damages for any breach shall be limited by NRS 353.260 and NRS 354.626. Neither Party shall be subject to Agreement-related punitive damages.
- 24.10 Non-Discrimination: As an Equal Opportunity Employer, the Parties each have an ongoing commitment to hire, develop, recruit, and assign the best and most qualified individuals possible. The Parties employ employees without regard to race, sex, color, religion, age, ancestry, national origin, marital status, status as a disabled veteran, or veteran of the Vietnam era, disability, sexual orientation or gender identity or expression. The Parties each agree that they will comply with all state and federal employment discrimination statutes, including but not limited to Title VII and the Americans with Disabilities Act, in connection with this Agreement.
- 24.11 Fair Labor Standard: Contractor shall, in the production of the goods and/or performance of services covered by this order and any resulting contract, shall comply with all applicable requirements of the U.S. Fair Labor Standards Act, the U.S. Occupational Safety and Health Act, and the United States Department of Labor as they may from time to time be amended.
- 24.12 Confidentiality. No protected health information as that term is defined in the Health Insurance Portability and Accountability Act of 1996, or personally identifiable information will be shared with Contractor during the course of this Agreement. Consistent with state and federal privacy laws, Contractor will at all times have in place procedures to ensure the privacy and maintain the confidentiality of any information received with at least the same degree of care as it maintains the confidentiality of its own confidential information of like import. Accordingly, no Business Associate Agreement is required.
- 24.13 Marketing: Contractor may not use Health District's name or logo in its marketing materials without Health District's prior written consent. Contractor is strictly prohibited from releasing any statements to the media regarding work performed under this Agreement without the review and express prior written approval of Health District. Health District's approval is at its sole discretion; however, such approval will not be unreasonably withheld.
- 24.14 Force Majeure: Neither Party shall be liable for delays or defaults due to acts of God, acts of terrorism, governmental authority or public enemy, war, fires, floods, epidemics, freight embargoes, or contingencies reasonably beyond its control. The party so affected shall use its good faith efforts to remediate such force Majeure as expeditiously as possible and, upon prompt written notice to the other party, shall be excused from making or taking deliveries hereunder to the extent of such prevention or restriction. Health District may terminate this Agreement in the event of such delay in performance.
- 24.15 Third Party: This Agreement is made for the benefit of Health District and Contractor and not for any outside party.

24.16 Relationship of the Parties: Contractor shall be considered an independent contractor and nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor between the Parties and their respective employees, agents, subcontractors or assigns, during or after the term of the Agreement. Contractor shall be responsible for taxes or contributions payable on its employees, including without limitation employee contributions under federal or state laws and full compliance with record keeping, reporting, and other requirement of such laws.

24.17 CODE OF CONDUCT. By executing the Agreement, Contractor acknowledges it has read and agrees to comply as applicable with Health District’s Code of Conduct, which is available online at:

<https://media.southernnevadahealthdistrict.org/download/FQHC-2020/20200129/20200129-VII-1-Code-of-Conduct-Booklet-Leguen-Signature.pdf>

24.18 COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one instrument. A signed copy delivered by facsimile, email or other means of electronic transmissions shall have the same force and effect as an original signed copy.

This Agreement entered into as of the day and year first written above.

SOUTHERN NEVADA HEALTH DISTRICT

**MESA ENERGY SYSTEMS, INC.
DOING BUSINESS AS
EMCOR SERVICES NEVADA**

By: _____
Fermin Leguen, MD, MPH
District Health Officer

By: _____
Randy Alvarado
General Manager
Contractor License No: 0073520
Jurisdiction: Nevada State Contractors Board

APPROVED AS TO FORM:

This document is approved as to form.
Signatures to be affixed after approval by

By: Southern Nevada District Board of Health.
Heather Anderson-Fintak, Esq.
General Counsel
Southern Nevada Health District

**ATTACHMENT A
INSURANCE AND BONDS**

All policies and coverages required below shall remain in effect until all Services covered under this Agreement have been performed by Contractor and accepted by Health District:

- A. Health District. Health District will secure and maintain sufficient insurance coverage to cover the existing structure and its contents during this Project.
- B. Contractor.
 - B.1 Certificates of Insurance. Contractor shall provide certificates of insurance acceptable to Health District evidencing compliance with the requirements of this Agreement prior to commencement of the Work, upon renewal or replacement of each required policy of insurance, and upon Health District's written request.
 - B.2 Additional Insured Obligations. Contractor's additional insured coverages shall be primary and non-contributory to any of Health District's general liability insurance policies and shall apply to both ongoing and completed operations.
 - B.3 Contractor's Required Insurance. Contractor shall purchase and maintain the following types and limits of insurance:
 - i) Comprehensive Commercial General Liability. Insurance for the Project written on an occurrence form with policy limits of not less than one million dollars (\$1,000,000) each occurrence, two million dollars (\$2,000,000) general aggregate, and two million dollars (\$2,000,000) aggregate.
 - ii) Automobile Liability. Insurance shall cover owned and non-owned vehicles used by Contractor with policy limits of not less than one million dollars (\$1,000,000) for any one occurrence and one million dollars (\$1,000,000) aggregate for damages for all occurrences.
 - iii) Workers Compensation. Contractor shall maintain worker's compensation insurance in compliance with State of Nevada requirements.
 - B.4 Contractor's Coverage. Insurance selected and described in this Attachment shall be purchased from an insurance company or companies lawfully authorized to issue insurance in the state of Nevada, Clark County. The coverage required shall extend to all Contractor's employees and subcontractors. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final invoice and thereafter upon renewal or replacement of such coverage until the expiration of the one (1) year warranty period.
- C. Performance and Payment Bonds from Travelers Casualty and Surety Company of America. Contractor shall:
 - C.1 Provide Health District with a bid guarantee bond in the amount of no less than 5 percent of bid amount.
 - C.2 Provide Health District with a performance bond for 100 percent of the Agreement price to

secure fulfillment of all Contractor requirements under this Agreement.

- C.3 Provide Health District with a payment bond for 100 percent of the Agreement price to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the Agreement.
 - C.4 Bonds shall be current as of the date of this Agreement and remain in full force and effect until the Health District has accepted all projects initiated under the Agreement.
- D. All premiums, costs, and expenses for the requirement of Contractor's insurance and bonds shall be paid for by Contractor.