

Mesa Energy Systems, Inc.

SECOND AMENDMENT TO AGREEMENT FOR SERVICES #6736

THIS SECOND AMENDMENT to that Agreement for Services #6736 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 Mesa Energy Systems, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 2 Cromwell, Irvine, California 92618, and whose local address is 3906 Kristi Court, Sacramento, California 95827 (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, Contractor has been engaged by County to provide as-needed and emergency calibration, testing, reporting, routine and recurring maintenance and repair services for boiler, chiller, cooling tower, air handling and heating, ventilating, refrigeration and air conditioning systems at various County-operated facilities for the Chief Administrative Office, Facilities Division, pursuant to Agreement for Services #6736, dated July 13, 2022, and First Amendment to Agreement for Services #6736, dated January 25, 2023, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, the parties hereto desire to amend the Agreement to increase the not-to-exceed compensation amount of the Agreement by \$250,000, amending **ARTICLE III, Compensation for Services**;

WHEREAS, the parties hereto desire to fully-replace **ARTICLE XXVI, Indemnity**, to include updated contract provisions;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, County and Contractor mutually agree to amend the terms of the Agreement in this Second Amendment to Agreement for Services #6736 on the following terms and conditions:

I. **ARTICLE III, Compensation for Services**, paragraph five is amended in its entirety to read as follows:

The total amount of this Agreement, as amended, shall not exceed \$475,000, inclusive of all Work Orders and amended Work Orders, and all costs, taxes, and expenses. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Work Orders.

II. **ARTICLE XXVI, Indemnity**, is amended in its entirety to read as follows:

ARTICLE XXVI

Indemnity: To the fullest extent permitted by law, Contractor shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees,

agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Contractor or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in Civil Code section 2778.

The insurance obligations of Contractor are separate, independent obligations under the Agreement, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Agreement.

Nothing herein shall be construed to seek indemnity in excess of that permitted by Civil Code section 2782, et seq. In the event any portion of this Article is found invalid, the Parties agree that this Article shall survive and be interpreted consistent with the provisions of Civil Code section 2782, et seq.

Except as herein amended, all other parts and sections of Agreement for Services #6736 shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Agreement for Services #6736 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____ Dated: _____

Purchasing Agent
"County"

-- MESA ENERGY SYSTEMS, INC. --

By: _____ Dated: _____

Robert Lake
Chief Executive Officer
"Contractor"

By: _____ Dated: _____

Stephen Hunt
Chief Financial Officer