

County of El Dorado

BID #21-968-052 / CONTRACT #5705

COUNTY OF EL DORADO
JOB ORDER CONTRACTING (JOC)
CLASS B – GENERAL BUILDING CONTRACTOR

THIS AGREEMENT ("Agreement") approved by the County of El Dorado Board of Supervisors, this 31st day of August, in the year of 2021, made and concluded, in duplicate, between the COUNTY OF EL DORADO, a political subdivision of the State of California, by the Chief Administrative Office, Facilities Division thereof, the party of the first part hereinafter called "County," and MESA ENERGY SYSTEMS, INC. party of the second part hereinafter called "Contractor."

RECITALS:

WHEREAS, County has caused the above-captioned contract to be let to formal bidding process; and

WHEREAS, Contractor has duly submitted a bid response for the captioned contract upon which County has awarded this Contract;

NOW, THEREFORE, the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree, each with the other, as follows:

Article 1. THE WORK

The improvement contemplated in the performance of this Contract is an improvement over which the County of El Dorado shall exercise general supervision. The County therefore, shall have the right, but not the duty to assume full and direct control over this Contract whenever the County at its sole discretion, shall determine that its responsibility is so required.

The Contractor shall complete the Work as specified or indicated under the County's Contract Documents entitled:

COUNTY OF EL DORADO
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This Contract is an indefinite quantity contract pursuant to which the Contractor will perform an ongoing series of individual projects involving, repair, remodeling, or other repetitive work for any County department on existing County facilities or properties at different locations throughout El Dorado County. The Work shall not include new construction, design, or contract drawings. The work of this Contract will be set forth in the Detailed Scope of Work referenced in the individual Job Orders issued under this Contract. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

This Contract is for construction work and related services to be performed at any County-owned or operated location within El Dorado County.

Article 2. CONTRACT DOCUMENTS

The Contract Documents consist of: the Notice to Bidders; the bid forms which include the accepted Proposal, Proposal Bid Price Schedule, Subcontractors Listings, Section 10285.1 Statement, Section 10162 Questionnaire, Section 10232 Statement, and the Noncollusion Affidavit, Iran Contracting Act Certification; the Contract which includes this Agreement with all Exhibits thereto, the Performance Bond and Payment Bond; Conditions of the Contract; Job Orders, Construction Task Catalog®, the Technical Specifications; all Addenda incorporated in those documents before their execution, Architect's Supplemental Instructions, and Construction Change Directives issued in accordance with the Contract Documents which may be delivered or issued after the Effective Date of this Agreement and are not attached hereto; the prevailing Labor Surcharge And Equipment Rental Rates (when required) as determined by the Department of Industrial Relations to be in effect on the date the Work is accomplished; all the obligations of County and of Contractor which are fully set forth and described therein; and all Contract Documents which are hereby specifically referred to and by such reference made a part hereof. All Contract Documents are intended to cooperate so that any work called for in one and not mentioned in the other is to be executed the same as if mentioned in all Contract Documents. If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: The Contract; Job Orders; Supplemental Job Orders; Supplemental or Special Conditions; the General Conditions; the Construction Task Catalog®, the Technical Specifications. Contractor agrees to perform all of its promises, covenants, and conditions set forth in the Contract Documents, and to abide by and perform all terms and conditions set forth therein. In case of conflict between this Agreement and any other contract document, this Agreement shall take precedence.

Article 3. CONTRACT PRICE

There is no Minimum Contract Value. The Maximum Contract Value is \$2,500,000 with one option to increase the Maximum Contract Value to the amount currently authorized by the California Public Code during the term of the contract. At no time may the sum of the outstanding Job Orders exceed the amount of the Payment Bond and Performance Bond. A Job Order is outstanding until the County has accepted the Project described in the Job Order by execution of a Notice of Completion. The Contractor may be issued Job Orders totaling the Maximum Contract Value during the term of the Contract. The Contractor is not guaranteed to receive this volume of Job Orders. It is merely an estimate. The County has no obligation to issue Job Orders up to the Maximum Contract Value.

The Contractor shall perform all work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog® and the following Adjustment Factors:

- A. West Slope General Facilities/Properties Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday.

1.3499
- B. West Slope General Facilities/Properties Other Than Normal Working Hours 6:00 p.m. to 6:00 a.m. Monday to Friday, and all day Saturday, Sunday, and Holidays.

1.4000
- C. West Slope Secure Facilities/Properties Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday.

1.3499
- D. West Slope Secure Facilities/Properties Other Than Normal Working Hours 6:00 p.m. to 6:00 a.m. Monday to Friday, and all day Saturday, Sunday, and Holidays.

1.4000
- E. Tahoe Basin Facilities/Properties Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday.

1.4299

F. Tahoe Basin Facilities/Properties Other Than Normal Working Hours 6:00 p.m. to 6:00 a.m. Monday to Friday, and all day Saturday, Sunday, and Holidays.

1.4599

G. Tahoe Basin Secure Facilities/Properties Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday.

1.4299

H. Tahoe Basin Secure Facilities/Properties Other Than Normal Working Hours 6:00 p.m. to 6:00 a.m. Monday to Friday, and all day Saturday, Sunday, and Holidays.

1.4599

Article 4. COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall commence ninety (90) days after contract execution OR upon first Notice to Proceed, whichever occurs first. The work shall be diligently prosecuted to completion within the time specified on the Notice to Proceed for each individual Job Order.

County and Contractor recognize that time is of the essence of the Agreement and that County will suffer financial loss if the Work is not completed within the time specified in the above paragraph, plus any extensions thereof allowed in accordance with Article 4.3.5 of the Conditions of the Contract. They also recognize the delays, expense, and difficulties involved with proving in a legal proceeding the actual loss suffered by County if the Work is not completed on time. Accordingly, instead of requiring any such proof, County and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay County the sum identified in the Conditions of the Contract as liquidated damages and not as a penalty, for each and every calendar day's delay in submitting the Job Order Proposal or finishing the Work in excess of the contract time prescribed herein. The County may increase this sum based on an urgency factor established at the time of the issuance of the Request for Proposal for an individual Job Order.

Article 5. INDEMNITY

To the fullest extent allowed by law, Contractor shall defend, indemnify, and hold the County and its officers, directors, and employees harmless against and from any and all claims, suits, losses, damages, and liability for damages, including attorney's fees and other costs of defense brought for or on account of injuries to or death of any person, including but not limited to, workers and the public, or on account of injuries to or death of County employees, or damage to property, or any economic, consequential or special damages which are claimed or which shall in any way arise out of or be connected with Contractor's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subcontractors or employees of any of these, except for the active, or sole negligence of the County, its officers and employees, or where expressly prescribed by statute.

The duty to indemnify and hold harmless the County specifically includes the duties to defend set forth in Section 2778 of the Civil Code. The insurance obligations of the Contractor are separate, independent obligations under the Contract Documents, 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 Contract Documents.

Article 6. GUARANTEES

Contractor shall repair or replace any or all work provided hereunder which is defective due to faulty materials, poor workmanship, or defective equipment at no expense to County, ordinary wear or tear and unusual abuse or neglect excepted, during the Job Order Completion Time and for a period of one (1) year after Job Order Acceptance. Contractor shall be required to repair or replace any and all adjacent facilities or areas which have been damaged or displaced due to Contractor work performed under this Agreement at no expense to County during the Job Order Completion Time and for a period of one (1) year after Job Order Acceptance.

If a warranty or guarantee exceeding one (1) year is provided by the supplier or manufacturer of any equipment or materials used in a Job Order, or if a warranty or guarantee exceeding one (1) year is required elsewhere in these Contract Documents, then the guarantee for such equipment or materials shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials, and Contractor shall supply County with all warranty and guaranty documents relative to equipment and materials incorporated in the job and guaranteed by its suppliers or manufacturers.

The parties agree that this guarantee and the rights and obligations accruing therefrom shall be in addition to, and not by way of limitation in any manner whatsoever to, the rights, obligations, warranties or remedies otherwise provided for by law.

In the event of Contractor's failure to comply with the above mentioned conditions within ten (10) calendar days after being notified in writing by County, Contractor hereby authorizes County to proceed to have said defects repaired and made good at Contractor's expense, and Contractor will honor and pay all costs and charges therefore upon written demand.

Article 7. NOTICE

Any notice or other correspondence required to be given under this Agreement by either party to the other may be affected by personal delivery in writing or by mail, postage prepaid. Notices personally delivered during normal business hours shall be deemed received on the actual date of delivery; mailed notices shall be deemed received one (1) day after affixed postmark. Notices and correspondence to County shall be in duplicate and shall be delivered to it as follows:

To County:	With a copy to:
County of El Dorado Chief Administrative Office Facilities Division 3000 Fairlane Court, Suite One Placerville, California 95667	County of El Dorado Chief Administrative Office Procurement and Contracts Division 330 Fair Lane Placerville, California 95667
Attn.: Russ Fackrell Facilities Division Manager	Attn.: Michele Weimer Procurement and Contracts Manager

Notices and correspondence to Contractor shall be delivered when personally delivered to, or if mailed, addressed to Contractor at:

Mesa Energy Systems, Inc.
2 Cromwell
Irvine, California 92618
Attn.: Leon Rua
Vice President

Either party may change its address for notices by giving written notice pursuant to this Article.

Article 8. VENUE

Any litigation arising out of this Contract shall be brought in El Dorado County.

Article 9. PERFORMANCE BOND

As a part of the execution of this Contract, Contractor shall furnish a bond of a surety company authorized to do business in the State of California, conditioned upon the faithful performance of all covenants and stipulations under this Contract. The amount of this bond shall be **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000)** and shall be executed upon the form provided by County. Once the total of completed and outstanding Job Orders reaches \$1,500,000, the amount of the original bond, and prior to beginning additional work, Contractor shall re-bond for an additional amount as determined by County for anticipated work. At no time shall the sum of the outstanding and completed Job Orders exceed the amount of the Performance Bond.

Article 10. PAYMENT BOND

As a part of the execution of this Contract, Contractor shall furnish a bond of a surety company authorized to do business in the State of California, conditioned upon the payment in full of all claims for labor and materials in accordance with the provisions of the law of the State of California. The amount of this bond shall be **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000)** and shall be executed upon the form provided by County. Once the total of completed and outstanding Job Orders reaches \$1,500,000, the amount of the original bond, and prior to beginning additional work, Contractor shall re-bond for an additional amount as determined by County for anticipated work. At no time shall the sum of the outstanding and completed Job Orders exceed the amount of the Payment Bond.

Article 11. NOTIFICATION OF SURETY COMPANY

The surety company shall familiarize itself with all of the conditions and provisions of this Contract, and shall waive the right of special notification of any change or modifications of this Contract or extension of time, or of decreased or increased work, or of the cancellation of the Contract, or of any other act or acts by County or its authorized agents, under the terms of this Contract; and failure to so notify the aforesaid surety company of changes shall in no way relieve the surety company of its obligation under this Contract.

Article 12. ASSIGNMENT OF ANTITRUST ACTIONS

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor offers and agrees and will require all of its subcontractors and suppliers to agree to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to Contractor, without further acknowledgment by the parties.

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Government Code Sections 4550-4554, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under Government Code Sections 4550-4554 if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

Article 13. TERMINATION BY COUNTY FOR CONVENIENCE

County reserves the right to terminate the Contract, a Job Order or any portion of a Job Order at any time. County shall issue Contractor a written notice specifying that the Contract is to be terminated.

Upon receipt of said written notice, Contractor shall stop all work under the Contract except: (1) work specifically directed to be completed prior to termination, (2) work the Inspector deems necessary to secure the project for termination, (3) removal of equipment and plant from the site of the Work, (4) action that is necessary to protect materials from damage, (5) disposal of materials not yet used in the Work as directed by County, and (6) clean up of the site.

If the Contract is terminated for County's convenience as provided herein, all finished or unfinished work and materials previously paid for shall, at the option of County, become its property. Contractor shall be paid an amount which reflects costs incurred for work provided to the date of notification of termination. In addition, Contractor shall be paid the reasonable cost, as solely judged by County, and without profit, for all work performed to secure the project for termination.

Article 14. TERMINATION BY COUNTY FOR CAUSE

If Contractor is adjudged as bankrupt or insolvent, or makes a general assignment for the benefit of its creditors or if a trustee or receiver is appointed for Contractor or for any of its property, or if Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or on more than one occasion fails to supply sufficient skilled workmen or suitable material or equipment, or on more than one occasion fails to make prompt payments to subcontractors for labor, materials, or equipment, or disregards the authority of the County's representative, or the Engineer, if one is appointed, or otherwise violates any provision of the Contract Documents, including the JOC System License Fee and Agreement, then County may, without prejudice to any other right or remedy and after giving Contractor and its Surety a minimum of ten (10) days from delivery of a written termination notice, terminate the services of Contractor and take equipment and machinery thereon owned by Contractor and finish the Work by whatever method County may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished.

Without prejudice to other rights or remedies County may have, if Contractor fails to begin delivery of materials and equipment, to commence Work within the time specified, to maintain the rate of delivery of material, to execute the Work in the manner and at such locations as specified, or fails to maintain a work program which will ensure County's interest, or, if Contractor is not carrying out the intent of the Contract, an Inspector's written notice may be served upon Contractor and the Surety on its faithful performance bond demanding satisfactory compliance with the Contract. If Contractor or its Surety does not comply with such notice within five (5) days after receiving it, or after starting to comply, fails to continue, County may exclude it from the premises and take possession of all material and equipment, and complete the Work by County's own forces, by letting the unfinished Work to another Contractor, or by a combination of such methods.

Where Contractor's services have been so terminated by County, said termination shall not affect any right of County against Contractor then existing or which may thereafter accrue. Any retention or payment of monies by County due Contractor will not release Contractor from compliance with the Contract Documents.

Contractor shall be paid for all Work performed prior to the effective date of termination. If the sums under the Job Order Price are insufficient for completion, Contractor or Surety shall pay to County within five (5) days after the completion, all costs in excess of the Job Order Price. In any event, the cost of completing the Work shall be charged against Contractor and its Surety and may be deducted from any money due or becoming due from County.

The provisions of this Article shall be in addition to all other rights and remedies available to County under law.

If after notice of termination, it is determined for any reason that Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued. The Contract shall be equitably adjusted to compensate for such termination.

Article 15. SUCCESSORS AND ASSIGNS

This Agreement shall bind and inure to the heirs, devisees, assignees, and successors in interest of Contractor and to the successors in interest of County in the same manner as if such parties had been expressly named herein.

Article 16. REPORTING ACCIDENTS


Contractor shall prepare and submit (within 24 hours of such incidents) reports of accidents at the site and anywhere else the work is in progress in which bodily injury is sustained or property loss in excess of Five Hundred Dollars (\$500.00) occurs.

Article 17. EMISSIONS REDUCTION

Contractor and its subcontractors shall comply with emission reduction regulations mandated by the California Air Resources Board, and sign a certification of knowledge thereof.

CERTIFICATE OF KNOWLEDGE – EMISSIONS REDUCTION REGULATIONS

I am aware of the emissions reduction regulations being mandated by the California Air Resources Board (CARB). I will comply with such regulations before commencing the performance of the Work and maintain compliance throughout the duration of this Contract.

Signed:  Date September 8, 2021

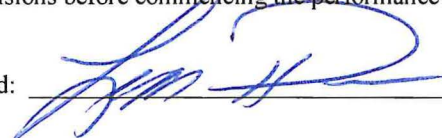
Contractor shall indemnify County against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules, and regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

Article 18. WORKERS' COMPENSATION CERTIFICATION

Contractor shall comply with Labor Code Sections 3700 et seq., requiring it to obtain Workers' Compensation Insurance, and sign a certificate of knowledge thereof.

CERTIFICATE OF KNOWLEDGE - LABOR CODE SECTION 3700

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of work of this Contract.

Signed:  Date September 8, 2021

Article 19. WARRANTY

Contractor warrants to County that materials and equipment furnished for the Work will be of good quality and new, unless otherwise required or permitted under the Contract Documents, that the Work will be free from defects or flaws and is of the highest quality of workmanship and that the Work will conform with the requirements herein. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

Article 20. RETAINAGE

The retainage from payments is set forth in Section 6.4 "WITHHOLDINGS FROM PAYMENTS" of the Conditions of the Contract. Contractor may elect to receive one hundred percent (100%) of payments due as set forth in the Contract Documents, without retention, by depositing securities of equivalent value with County, in accordance with, and as set forth in Section 22300 of the Public Contract Code. Securities eligible for deposit hereunder shall be limited to those listed in Section 16430 of the Government Code, or bank or savings and loan certificates of deposit.

Article 21. PREVAILING WAGE REQUIREMENTS

In accordance with the provisions of California Labor Code Sections 1770 et seq., the general prevailing rate of wages in the county in which the Work is to be done has been determined by the Director of the California Department of Industrial Relations. Interested parties can obtain the current wage information by submitting their requests to the Department of Industrial Relations, Division of Labor Statistics and Research, PO Box 420603, San Francisco CA 94142-0603, Telephone (415) 703-4708 or by referring to the website at <http://www.dir.ca.gov/dlsr/PWD>. The rates at the time of the bid advertisement date of a project will remain in effect for the life of the project in accordance with the California Code of Regulations, as modified and effective January 27, 1997.

Copies of the general prevailing rate of wages in the county in which the Work is to be done are also on file at the Chief Administrative Office, Facilities Division, and are available upon request.

In accordance with the provisions of Labor Code 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Contractor and any subcontractor employed under this Contract shall conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

Article 22. CONTRACTOR REGISTRATION

In accordance with California Labor Code Section 1771.1, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

The contractor must post job site notices as prescribed by regulation 8 California Code of Regulations Section 16451. All contractors and subcontractors must furnish electronic certified payroll records directly to the Department of Industrial Relations (DIR). The work is subject to compliance monitoring and enforcement by the DIR.

Article 23. AUDIT BY CALIFORNIA STATE AUDITOR

Audit by California State Auditor: Contractor acknowledges that if total compensation under this agreement is greater than \$10,000, 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, Contractor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

Article 24. TAXES

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

Article 25. CHILD SUPPORT COMPLIANCE ACT

For any Agreement in excess of \$100,000, the Contractor acknowledges in accordance with Public Contract Code 7110, that:

- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to,

disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

Article 26. LICENSES

Contractor warrants and represents that it holds a valid California license pursuant to the Contractors' State License Law (Business and Professions Code Sections 7000, et seq.), that its license is in good standing and that it possesses a **Class B – General Building Contractor's License** as required by the categories and type of the Work. Copies of Contractor's State Contractors' license must be provided with this Agreement.

In addition, Contractor hereby represents and warrants that Contractor and any of its subcontractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Contractor and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Contractor and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

Article 27. BUSINESS LICENSE

The County Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Contractor warrants and represents that it shall comply with all of the requirements of the County Business License Ordinance, where applicable, prior to beginning work under this Contract and at all times during the term of this Contract.

Article 28. CONTRACT ADMINISTRATOR

The County Officer or employee with responsibility for administering this Agreement is Russ Fackrell, Chief Administrative Office, Facilities Division Manager, or successor.

Article 29. AUTHORIZED SIGNATURES

The parties hereto represent that the undersigned individuals executing this Agreement on their behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

Article 30. PARTIAL INVALIDITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

Article 31. ENTIRE AGREEMENT

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral agreements or understandings.

