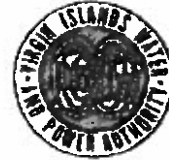


VIRGIN ISLANDS WATER AND POWER AUTHORITY
POST OFFICE BOX 1450
ST. THOMAS, U.S. VIRGIN ISLANDS 00804-1450



**CONTRACT BETWEEN THE VIRGIN ISLANDS WATER AND POWER
AUTHORITY and TELEDYNE MONITOR LABS,
A BUSINESS UNIT OF TELEDYNE INSTRUMENTS, INC.**

SC-30-17

The Proceeding Contract is a properly negotiated agreement between all parties involved. Any marks, changes, white out, or deletions without the expressed written permission from all parties involved shall make this contract null and void.

This Contract is entered into this 2 day of May, ²⁰¹⁸ ~~2017~~, by and between the Virgin Islands Water and Power Authority (hereinafter called the "Authority") at mailing address Post Office Box 1450, St. Thomas, U.S. Virgin Islands 00804 and Teledyne Monitor Labs, a business unit of Teledyne Instruments, Inc. (hereinafter called the "Contractor") at mailing address 35 Inverness Drive East, Englewood, CO 80112, to provide technical and professional services to the Authority regarding to the DAHS System and the procurement of CEMS Maintenance/Audit Service to be provided at the Authority's Richmond and Randolph Harley Generating Facilities, located in St. Croix and St. Thomas, US Virgin Islands. The Authority and the Contractor shall jointly be referred to as the "Parties".

WITNESSETH

In consideration of the mutual promises, covenants, and conditions contained herein the Parties hereto, intending to be legally bound, hereby agree as follows:

1. **SCOPE OF WORK:** The Contractor shall provide technical and professional services to the Authority in accordance with its responses dated July 22,

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2016 and September 8, 2016 by providing the Authority with replacement of the Data Acquisition and Handling System (DAHS) Software and the procurement of CEMS Maintenance/Audit Service. Additionally, the Contractor shall provide the following services:

1. provide in-person servicing of the monitors four (4) times per year;
2. conduct Cylinder Gas Audits on three of the four visits; and
3. conduct once yearly RATAs service.

Both Parties agree that commencing on or about March 15, 2017, the Contractor has been providing services as identified under this contract. Further that the terms and conditions of this agreement shall apply retroactively thereto

The above services shall be provided at the Authority's Richmond and Randolph Harley Generating Facilities, located in St. Croix and St. Thomas, US Virgin Islands in accordance with the specifications and requirements outlined in the following documents:

- i) The Authority Professional General Contract Terms, dated May 30, 2012, attached hereto, made a part hereof and identified as Appendix "A"
- ii) The Authority's Request for Proposal, PR-22-16, dated June 22, 2016 and cover letter dated June 28, 2016, combined and attached hereto, made a part hereof and identified as Appendix "B";
- iii) The Authority's Clarification I dated July 18, 2016, attached hereto, made a part hereof and identified as Appendix "C";
- iv) The Contractor's response dated January 30, 2017 (Quote 1502031-5), attached hereto, made a part hereof and identified as Exhibit "A";
- v) The Contractor's Warranty, attached hereto and made a part hereof and identified as Exhibit "B";
- vi) Evaluation Committee's Clarification 1 dated September 6, 2016 and attachment dated September 2, 2016, combined and attached hereto, made a part hereof and identified as Appendix "D"; and

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- vii) The Contractor's response to Evaluation Committee's Clarification I dated September 8, 2016, attached hereto, made a part hereof and identified as Exhibit "C".

2. CONSIDERATION: In consideration of the Contractor's performance of the Work, the Authority shall pay the Contractor the total sum of Nine Hundred Ninety Seven Thousand Nine Hundred Twenty Dollars and 00/100 (\$997,920.00). Said consideration shall be for providing professional and technical consulting services associated with the Scope of Services. Parties agree that payment shall be made in the following manner:

1.	25% of contract price billed upon contract execution	\$249,480.00
2.	25% of contract consideration due by June 30, 2017	249,480.00
3.	25% of contract price due January 2, 2018	249,480.00
4.	25% of contract price due January 2, 2019	<u>249,480.00</u>
TOTAL CONSIDERATION		\$997,920.00

The consideration stated herein shall be for all Work performed by the Contractor. Acceptance of the services performed is contingent upon approval of the Work by the Authority's Project Manager. At the conclusion of the first year of the contract, the Authority shall cease withholding the 10% retainage on progress payments per Clause 12 (c) of the Professional General Contract Terms (Appendix A).

The Authority shall be responsible for all taxes, duties and fees associated with importing the Equipment into the Virgin Islands and any other taxes associated with the Equipment being in the Virgin Islands, if any.

3. GROSS RECEIPT TAXES: Title 33, Section 44 of the Virgin Islands Code, as amended, requires the Authority when making a payment under this Contract, to deduct and withhold from such payments, gross receipts taxes as required by law at 33VIC Section 43(a) for each payment for Work performed in the Virgin Islands. It is

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agreed between the Parties that for the purposes of complying with Title 33, Section 44 of the Virgin Islands Code, the Authority shall withhold and forward to the Virgin Islands Bureau of Internal Revenue ("VIBIR") such amount as required by the law at 33 VIC Section 43(a) or any changes thereto.

Despite the requirements under Title 33, Section 44, the Contractor and/or Consultant agree that calculation and payment of gross receipts taxes shall be its sole responsibility. The Authority shall not be responsible in any way for any miscalculation, or additional assessments by the VIBIR resulting from Work performed under this Contract. In the unlikely event any overpayment or underpayment is made to the VIBIR, the Contractor and/or Consultant shall resolve such matter with VIBIR and not the Authority.

4. TERMS/PROGRESS REPORTS: This Contract shall commence upon full and final execution by the Parties. . The Contract shall terminate March 15, 2020. The Authority and Consultant may extend, in writing, the term of this agreement.

5. BUSINESS LICENSE: Contractor must comply with all Virgin Islands' laws with respect to licensing which must be obtained in connection with its business operation(s). All necessary and applicable license(s) shall be obtained by the Contractor and copies presented to the Authority's Contracting Officer at the time of contract execution. Failure by Contractor to present its license(s) shall be grounds to consider the Contract void.

6. EMPLOYMENT OF U.S. VIRGIN ISLANDS RESIDENTS:

Contractor shall comply with 24 VIC §126 which requires the following preference for resident workers (i.e. any person capable of performing services or labor and who is a citizen of the United States or an immigrant alien admitted to the United

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States for permanent residence under the provision of the Immigration and Nationality Act as amended):

Resident workers shall be given preference in employment in the Virgin Islands in any industry or occupation for which such workers are qualified and available. Nonresident workers shall be employed only to supplement the labor force of available and qualified workers. No resident workers shall suffer any reduction in workweek below 40 hours a week by reason of an employer employing a non-resident worker. No employer shall employ a non-resident worker except in strict accordance with the provisions of this chapter and regulations hereunder. Nothing contained herein shall be construed to interfere with the policy of the Employment Services in canvassing of affiliated state employment services to obtain workers before issuing clearance certification for alien workers.

Contractor shall comply with requirements of 31 VIC §§ 271 and 272 and Title 24, Chapter 6 (Protection of Resident Workers) and hire Virgin Islands Residents and Resident Workers for work in connection with this contract. Contractor shall also ensure that its subcontractor(s) comply with the legal requirement to hire Virgin Islands residents and Resident Workers in connection with this projects, and shall require such in their contract(s) with their subcontractor(s). Upon request of the Authority, Contractor shall provide a report and/or information regarding its compliance, and its subcontractor's compliance, with the requirement to hire Virgin Islands Residents and Resident Workers.

Before any vacancies are filled with an individual that is not a resident of the Virgin Islands, Contractor and its subcontractor(s) shall notify the Employment Security Agency of the Virgin Islands Department of Labor in accordance with the requirements of 31 VIC §272 and 27 VIC §303b.

Contractor understands that its failure to adhere to the requirements referenced herein may result in the application of penalties as imposed by the Department of Labor as outlined in 31 V.I.C. §272 (c)(d). Additionally, Contractor's failure to comply with the

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requirements herein may result in termination of this agreement in accordance with the Authority's General Contract Terms. Further, the Authority shall consider Contractor's non-compliance with the provisions of this section in the award of future contracts.

7. **CONSIGNMENT:** The Contractor shall consign the parts, materials and equipment that are the subject of the Contract to the Authority. The Authority will accept any consignment of the parts, materials and equipment delivered CIP (Carriage and Insurance Paid, according with INCOTERMS 2000), at a port in the Virgin Islands for the sole purpose of the Contractor not being subject to excise, customs, and other duties. The Contractor must clearly state the cost of the transportation or shipment from such foreign port, and Title Transfer (herein known as "Title").

Title to the parts, materials and equipment shipped from the U.S. shall pass to the Authority immediately after each part, material and equipment departs from the territorial land, seas and overlying airspace of the U.S. For this purpose, the Parties acknowledge that the territorial seas of the U.S. extend to twelve nautical miles from the baseline of the country determined in accordance with the 1982 United Nations Convention of the Law of the Sea. Title to the Authority shipped directly from a European Union ("EU") manufacturer or a EU storage facility outside the country where the parts, materials and equipment will be installed shall pass to the Authority the earlier of the port of export immediately after the parts, materials and equipment have been cleared for export or (ii) immediately after each item departs from the territorial land, seas and overlying airspace of the EU sending country. Title to the parts, materials and equipment to be shipped from any other country shall pass to the Authority at the port of export immediately after the parts, materials and equipment have been cleared for export.

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The Contractor shall be liable for any loss of the parts, materials and equipment until the parts, materials and equipment are received at the designated port in the Virgin Islands.

8. ENVIRONMENTAL RESPONSIBILITY: The Contractor shall be responsible for complying with all applicable Rules, Regulations and Guidelines issued by the U.S. Environmental Protection Agency (EPA), V.I. Department of Planning and Natural Resources (DPNR), and any other federal, state or local regulatory agencies with regard to the discharge or spilling of oil, petroleum products, or other prohibited or hazardous contaminants during the performance of the Work pursuant to this Contract. Contractor shall also become familiar with and adhere to the policies and practices of the Authority regarding the discharge or spilling of oil, petroleum products, etc.

The Contractor shall indemnify the Authority for any and all fines, assessed the Authority as a result of the Contractor's failure to adhere to EPA, OSHA, DPNR and Coast Guard's regulations and directives, and shall further pay all costs, expenses and attorney's fees assessed or incurred by the Authority, in connection therewith, and for the costs associated with remedying any breach contained herein.

9. INSURANCE: Contractor shall provide the insurance certificate in conformance with Clause 14 of the Professional General Contract terms. A copy of this certificate must be presented to the Contracting Officer of the Authority upon Contract execution. Further, failure by Contractor to present its certificate upon contract execution may, at the sole option of the Authority, be grounds to rescind the contract award. If scope of work under this Contract is changed to require additional work which

results in an increase in the Contract's consideration, the certificate, at the Authority's option, may be increased to adequately cover the additional work.

10. EQUIPMENT WARRANTY: The Contractor warrants, except as otherwise provided in this clause, that all equipment manufactured or furnished by it, its subsidiaries, its manufacturers, and its suppliers, and all construction and workmanship included in the Work, shall be of the kind and quality called for in the specifications and shall be free from defects resulting from poor workmanship, materials or selection of materials.

The attached Teledyne Monitor Labs Limited Warranty, identified as Exhibit "C" shall be incorporated herein by reference and apply to all Goods and Services provided under this Contract.

11. DESIGNATED PERSONNEL: The Parties reserve the right to designate personnel to provide information and to coordinate the Work between the Parties.

The Authority designates the following individual:

Maxwell George, Project Coordinator
V.I. Water and Power Authority
P.O. Box 1450
St. Thomas, VI 00804
(340) 774-3552 x 2240

The Contractor designates the following individual:

Jason Muckley, Project Manager
Teledyne Monitor Labs
35 Inverness Drive East
Englewood, CO 80112
(303)-792-4321

12. CHANGE ORDERS/ADDITIONAL SERVICES: Per Section 7 of the Professional General Contract Terms, the Contracting Officer must approve in writing all

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change orders or requests for additional services. In the absence of such written approval, the Authority shall not be liable for the payment of any services performed outside the scope of the Contract.

13. RELATIONSHIP: The Parties acknowledge and agree that Contractor's relationship with the Authority hereunder shall be that of an independent contractor, and under no circumstances shall either Party, or any of its employees or agents, be deemed employees, partners, agents, or joint ventures of the other Party or such other Party's affiliates unless otherwise specifically agreed in writing by the other Party or such affiliate. Neither Party, nor any of its employees or agents shall have any power or authority to, and shall not, bind, or enter into agreements on behalf of, or otherwise create any debts or liabilities for or on behalf of the other Party or such other Party's affiliates unless otherwise specifically agreed in writing by the other Party or such affiliate.

14. PROFESSIONAL STANDARDS: The Contractor shall observe and maintain the professional standards and good practices applicable to its profession and to Contractors doing business in the U.S. Virgin Islands.

15. LIABILITY OF OTHERS: Unless otherwise provided in the Contract, nothing in this Contract shall be construed to impose any liability against the Authority to or against the Contractor to persons, firms, associations, or corporations engaged by the other as servants, agents, or independent contractors, or in any other capacity whatsoever or make the Authority or the Contractor liable to any such persons, firms, associations or corporations for the negligent acts, omissions, liabilities, obligations and taxes of whatsoever nature, including but not limited to employment insurance and social security taxes for its servants, agents, employees, or independent Contractors.

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16. CONTRACT DOCUMENTS: The Contractor shall perform and complete the Work in accordance with the Contract. The "Contract Documents" include:

- i) The Authority Professional General Contract Terms, dated May 30, 2012, attached hereto, made a part hereof and identified as Appendix "A";
- ii) The Authority's Request for Proposal, PR-22-16, dated June 22, 2016 and cover letter dated June 28, 2016, combined and attached hereto, made a part hereof and identified as Appendix "B";
- iii) The Authority's Clarification I dated July 18, 2016, attached hereto, made a part hereof and identified as Appendix "C";
- iv) The Contractor's response dated January 30, 2017 (Quote 1502031-5), attached hereto, made a part hereof and identified as Exhibit "A";
- v) The Contractor's Warranty, attached hereto and made a part hereof and identified as Exhibit "B";
- vi) The Evaluation Committee's Clarification 1 dated September 6, 2016 and attachment dated September 2, 2016, combined and attached hereto, made a part hereof and identified as Appendix "D"; and
- vii) The Contractor's response to Evaluation Committee's Clarification I dated September 8, 2016, attached hereto, made a part hereof and identified as Exhibit "B".

In the event of any conflict, the terms of this Contract will govern over the provisions of any documents referenced herein and then the Contract Documents above will govern as listed. This Contract and Contract Documents constitute the entire agreement between the Parties hereto, and all prior understandings or communication, written or oral, with respect to the subject matter of this Contract are merged herein.

17. GENERAL CONTRACT TERMS: This Contract is subject to the Authority's Professional General Contract Terms, attached hereto and made a part of this Contract



as Appendix "A". The following provisions of the Authority's General Contract Terms are modified as indicated:

Clause 3(b) – Delete the text up to and including the colon (;) on line three and insert "The Contractor shall furnish at the site competent representative who shall provide the on-site services in Exhibit "A".

Clause 9(a) – 15-16. The phrase "and for liquidation damages for delays as fixed in Clause 10 hereof" - Delete

Clause 10 (b) (c) – Delete

Clause 12 (a) - Delete

Clause 12(b) – delete and insert a new 12(2) as follows: "Payments will be made in accordance with Exhibit A".

Clause 14 (1) (a) delete and insert a new 14 (1) (a) as follows:
Workmen's Compensation covering all employees engaged directly or indirectly in the performance of Work in accordance with applicable statutory requirements.

Clause 14 (1) (b) (i) and (ii) Delete and insert a new 14 (b) (i) & (ii) as follows: (i) Public Liability (per occurrence) (not in the aggregate) \$1,000,000.00
(ii) Property Damage (per occurrence) (not in the aggregate) \$1,000,000.00

Clause 14 (1) (c) (i) & (ii) Delete and insert a new 14 (c) (i) as follows:
(i) Public Liability (per occurrence) (not in the aggregate) \$1,000,000.00

Clause 14 (1) (c) (i) & (ii) – Delete and insert a new 14 (1) (c) (i) & (ii) as follows: Public Liability (per occurrence) (not in the Aggregate)...\$1,000,000.00

Clause 14 (1) (d) - Delete

Clause 14 (2) – Delete "The Certificates thus required and change the number "sixty (60)" on line two to the number "thirty (30)" and add "by Contractor" at the end of the sentence.

Clause 14 (3) - Delete

Clause 14 (5) On line one, delete the words "Each listed policy shall be endorsed to reflect the company's obligation to" and replace with "Contractor shall"; On line two, delete the number "60" and replace with "30". On line five, delete the word "policy" and insert the word "coverage".

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On line seven, delete the word "policy" and replace with the word "coverage". On line nine, delete the word "policy" and replace with the word "coverage".

Clause 14 (6) - Delete

Clause 15 - Delete

Clause 16 (a) - Delete

Clause 17 - Delete

Clause 25 – Delete the words "The Authority's Project Coordinator" and replace with the words "The Authority".

Add the following: "The Contractor shall include the Authority's right to audit provisions in contracts of all subcontractors, insurance agents, material supplies, or any other business entity providing good and services. The Contractor shall permit the Authority to interview any of the Contractor's current and former employees during the audit. The Contractor shall provide adequate work space and access to photocopy machines. The Authority shall recoup the costs of the audit if the audit detects over charges greater than 0.5% of the total contract billings."

Clause 28 - Delete

Clause 29 – Add the following:

"Standard of Care: The standard of care applicable to the Consultant's services will be the degree of skill and diligence normally practiced by professional engineers or consultants performing the same or similar services. No other warranty or guarantee, expressed or implied, is made with respect to the services furnished under this Contract and all implied warranties are hereby disclaimed."

Clause 30 – Add the following:

"Limitation of Liability: Notwithstanding any other provision herein, under no circumstances shall either party be liable to the other for any consequential, special, incidental, indirect, multiple, administrative, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to its performance under this Contract, including without limitation, loss of use, loss of revenues, loss of anticipated profits, and cost of capital, whether based upon breach of this Contract, warranty, negligence, or any other type of claim, and whether grounded in tort, contract, civil law, or other theories of liability, including strict liability, even if advised in advance of the possibility of such damages. Each party's

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total liability to the other party arising from or related to this Contract, including, but not limited to its liability for indemnity, defense, and hold harmless obligations exclusive of third party claims, is limited to no more than the amount paid by the Authority to Contractor under this Contract. To the extent that this limitation of liability conflicts with any other Section or provision herein, such provision shall be regarded as amended to whatever extent required to make such provision consistent with this clause."

18. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original and the same instrument, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof

19. GOVERNING LAW: The laws of the Virgin Islands shall govern the interpretation and construction of this Agreement to the extent applicable. The Parties agree that all causes of action against either Party shall be brought in the court of competent jurisdiction in the Virgin Islands. The Authority shall not invoke the defense of sovereign immunity in any litigation arising under the Contract.

20. ORDER OF PRECEDENCE: In the event of any conflicts or inconsistencies between the written Agreement and the attachments comprising the Contract, such conflict will be resolved according to the following descending order of precedence: (1) This Contract; (2) The Authority's Professional General Contract Terms and (3) Contractor Document.

21. WAIVERS AND AMENDMENTS: No waiver, modification, or amendment of any term, condition, or provision of this Contract shall be valid or of any force or effect

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unless made in writing, signed by the Parties or by their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification, or amendment. Any such waiver, modification, or amendment in any instance or instances shall in no event be construed to be a general waiver, modification, or amendment of any of the terms, conditions, or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

22. NOTICE: Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid, or personally delivered, addressed to the Parties as follows:

The Authority: Lawrence Kupfer
Executive Director (CEO)
V.I. Water & Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804

The Contractor: Robert Bott, Vice President
Teledyne Monitor Labs, a business unit of
Teledyne Instruments, Inc.
35 Inverness Drive East
Englewood, CO 80112

23. ENTIRE AGREEMENT: This Contract and the Contract Documents constitute the entire agreement of the Parties hereto, and all prior understandings or communications, written or oral, with respect to the subject matter of this Contract are merged herein.


IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the day, month and year first above-written.

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**TELEDYNE MONITOR LABS, A
BUSINESS UNIT OF TELEDYNE
INSTRUMENTS, INC.**


WITNESS

By:


Stephen DeVita, VP and General Manager

V.I. WATER & POWER AUTHORITY


WITNESS

By:


Lawrence Kupfer
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:


Lorlei Farrington
General Counsel

Attachments