



EDWARDS AQUIFER  
AUTHORITY

CONTRACT No. 16-814-AM  
BETWEEN THE  
EDWARDS AQUIFER AUTHORITY  
AND  
MOUNT SOPRIS INSTRUMENT COMPANY, INC.  
FOR THE PURCHASE AND INSTALLATION OF GEOPHYSICAL WELL LOGGING  
EQUIPMENT

This Contract is made and entered into by and between the EDWARDS AQUIFER AUTHORITY, ("EAA"), a political subdivision of the State of Texas, with its principal place of business located at 900 E. Quincy Street, San Antonio, Texas 78215, and MOUNT SOPRIS INSTRUMENT COMPANY, INC. ("Contractor"), a manufacturing company with its principal place of business located at 4975 East 41<sup>st</sup> Avenue, Denver, Colorado 80216. Each of these entities is, at times, referred to in this Contract individually as a "Party," and both are referred to collectively as "Parties."

RECITALS

WHEREAS, the EAA was created by the Edwards Aquifer Authority Act, Act of May 30, 1993, 73<sup>rd</sup> Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350, as amended ("Act"); and

WHEREAS, under Section 1.02 of the Act, the EAA is a conservation and reclamation district created by virtue of Article XVI, Section 59, Texas Constitution, and is a governmental agency and body politic and corporate vested with the full authority to exercise the powers and to perform the functions specified in the Act, and other applicable law; and

WHEREAS, under Section 1.08(a) of the Act, the EAA has all the powers, rights and privileges necessary to manage, conserve, preserve, and protect the Edwards Aquifer ("Aquifer") and to increase the recharge of, and prevent the waste or pollution of water in, the Aquifer; and

WHEREAS, under Section 1.11(d)(2) of the Act, and other applicable laws, the EAA may enter into contracts; and

WHEREAS, the EAA Board of Directors approved this Contract on September 13, 2016, and authorized the EAA General Manager to execute the Contract; and

WHEREAS, the Contractor is a leading manufacturer of geophysical borehole logging systems for groundwater, mining, research, geotechnical and other applications and is qualified to manufacture the geophysical logging equipment sought by this Contract and provide the equipment training and other services described in Exhibit A; and

WHEREAS, the EAA wishes to update its aging geophysical logging equipment; and

WHEREAS, it is in the public interest that the EAA enter into this Contract.

## AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth in this Contract, the EAA and the Contractor agree as follows:

### ARTICLE I - TERM; DESCRIPTION OF EQUIPMENT

Section 1.1. Term. This Contract is effective and commences on September 14, 2016 ("Effective Date"), and terminates on December 31, 2016 ("Expiration Date").

Section 1.2. Equipment. Subject to the terms and conditions of this Contract, the Contractor agrees to sell to the EAA the Equipment meeting the specifications and performance capabilities described in Exhibit A ("Terms and Description of Equipment"), attached hereto. The EAA agrees to purchase the Equipment and engages the Contractor to provide the Equipment on the terms and conditions and at the cost as set forth in Exhibit A. The Contractor accepts this Contract and agrees to devote its best efforts and abilities in furtherance of providing the Equipment.

Section 1.3. Services. Subject to the terms and conditions of this Contract, the EAA engages the Contractor to perform, for the benefit of the EAA, the services described in Exhibit A. The Contractor accepts such engagement and agrees to devote its best efforts and abilities, and furnish all necessary labor, machinery, equipment, tools, and transportation necessary in furtherance of its engagement under this Contract.

Section 1.4. The Contractor will commence the delivery and, as requested by the EAA, the installation of the Equipment, as well as the performance of the services, immediately upon the date of receipt of the written notice to proceed issued by the EAA's General Manager. The delivery and installation of the Equipment, and the performance of the services, will be completed by the Expiration Date, and shall be completed in compliance with the specifications, performance capabilities, terms, conditions, and at the costs contained in Exhibit A. The Contractor shall deliver and install the Equipment in the EAA vehicle at the Mount Sopris Instrument Company facility in Denver Colorado, or to such other location specified herein. It shall be the Contractor's responsibility to ensure that the completion times for the equipment and services required are met. Time is of the essence in the performance of this Contract.

### ARTICLE II - AMENDMENTS

Section 2.1. This Contract may be amended only by written agreement of the Parties.

Section 2.2. Amendments by the General Manager. The Board of Directors of the EAA delegates the authority to the General Manager to enter into amendments to this Contract without further authorization by the Board consistent with the General Manager's authority to enter into contracts under Section 4.01 of the EAA's Bylaws.

### ARTICLE III - PURCHASE PRICE; AND COMPENSATION

Section 3.1. Purchase Price for Equipment. The EAA agrees to pay the Contractor the Purchase Price for the Equipment in accordance with Exhibit A, but in no event shall payments to the Contractor for equipment exceed \$124,705. The Contractor may not exceed this amount and will be responsible for the payment of all of its other and additional costs and expenses. The Contractor is not authorized to expend any additional funds in excess of this amount, or deliver and install any other Equipment, without the prior written approval from the EAA. The EAA will not be held accountable for any unauthorized equipment delivered and installed, work performed, or funds expended by the Contractor in providing the Equipment.

Section 3.2. Fees and Expenses. The EAA agrees to pay the Contractor for the services rendered in accordance with Exhibit A, but in no event shall payments to the Contractor for services exceed \$10,000. The Contractor may not exceed this amount and will be responsible for the payment of all of its other additional costs and expenses. The Contractor is not authorized to expend any additional funds in excess of this amount without the prior written approval from the EAA. The EAA will not be held accountable for any unauthorized work performed or funds expended by the Contractor in providing the services.

Section 3.3. Payment. All invoices from the Contractor to the EAA, for the Equipment delivered and installed, and for services, shall be sent monthly and shall provide an itemization of the Equipment installed and delivered, services rendered, and costs and expenses incurred. The terms of each invoice shall be net thirty (30) days upon EAA receipt and approval of that invoice, and the delivery, and approval by the EAA of the Equipment and its installation.

### ARTICLE IV - INDEPENDENT CONTRACTOR

Section 4.1. No Employment Relationship. The Parties understand and agree that this Contract does not create a fiduciary relationship between them, that they are separate entities, that the Contractor is an independent contractor with respect to delivery and installation of the Equipment, and any services performed, and is not subject to the direct or continuous control and supervision of the EAA, and that nothing in this Contract is intended to make either Party a subsidiary, joint venturer, partner, employee, agent, servant, or representative of the other Party for any purpose whatsoever. The Contractor shall provide any and all equipment, materials, and personnel necessary for the delivery and installation of the Equipment. The EAA shall have no right of direction or control of the Contractor, or its employees and agents, except in the results to be obtained, and in a general right to order the delivery and installation of the Equipment to start or stop as agreed to herein, to inspect the progress of the delivery and installation of the Equipment, and to receive reports. The Contractor shall accommodate reasonable requests from the EAA to allow EAA employees, agents or representatives to accompany and observe the Contractor's personnel, and subcontractors, in carrying out the delivery and installation of the Equipment, and performing the services.

## ARTICLE V - CONTRACTOR PERSONNEL AND SUBCONTRACTORS

Section 5.1. Personnel. The Contractor will provide any and all personnel necessary for its performance in the delivery and installation of the Equipment, and the performance of the services. The Contractor will be responsible for its employees and agents in all respects, including, without limitation, their compliance with applicable laws and their safety, including without limitation, all OSHA standards, requirements, and regulations. The Contractor indemnifies and holds harmless the EAA, its officers, employees, and directors from and against any claims brought by any employee, subcontractor, or other agent of the Contractor relating in any way to the delivery and installation of the Equipment performed, or performance of the services.

Section 5.2. Subcontractors. In performing the delivery and installation of the Equipment, and the services, the Contractor may retain and utilize as its subcontractors those individuals identified to and approved in writing by the EAA in advance. The EAA, in consultation with the Contractor, shall have the right to terminate, limit, or alter, at any time, the participation of any subcontractor utilized by the Contractor. No additional subcontractors may be retained by the Contractor to perform the delivery and installation of the Equipment, without the prior written consent of the EAA, provided that no such consent shall be necessary for the retention of any subcontractor previously approved in writing by the EAA and identified by the Contractor on the effective date of this Contract. The Contractor will be responsible for its subcontractors in all respects including their compliance with applicable laws and their safety, including without limitation, all OSHA standards, requirements, and regulations.

## ARTICLE VI - TERMINATION

Section 6.1. Termination. The EAA may terminate this Contract at any time, including at the expiration of each budget or payment period during the term of this Contract, with or without cause, upon ten (10) days prior written notice to the Contractor. Upon receipt of such termination notice, the Contractor shall immediately stop all work in progress, including all work performed by its employees, agents, or subcontractors. Insofar as possible, all work in progress will be brought to a logical termination point. Within 30 days of the final invoice following termination, the EAA shall pay the Contractor all moneys then due and owing for the delivery and installation of the Equipment, and costs and expenses reasonably incurred up to the time of termination.

## ARTICLE VII - OWNERSHIP OF MATERIALS

Section 7.1. Ownership. All information, documents, property, or materials produced, created, or supplied by the Contractor, its employees, agents, or subcontractors, or anyone else, and whether finished or unfinished or in draft or final form, will be the property of the EAA. The EAA shall have unlimited rights to technical and other data resulting directly from the delivery and installation of the Equipment, and performance of the services. Additionally, the Contractor will furnish the EAA with all manufacturer owner manuals and specifications for the Equipment, and copies of all warranty information.

Section 7.2. Delivery of Documents upon Termination. Upon termination of this Contract under Sections 1.3 or 6.1, the Contractor will promptly deliver to the EAA all information, property, or materials not already in the possession of the EAA.

Section 7.3. Nondisclosure of Documents. The information, documents, property, or materials produced, created, or supplied by the Contractor, including preliminary technical reports and studies, shall not be disclosed by the Contractor to any third-party without the prior written consent of the EAA. The Contractor shall immediately advise the EAA of any requests for any such information, document, property, or materials by a third-party. The unauthorized disclosure of such information, documents, property, or materials in violation of this section shall, in the sole judgment of the EAA, constitute a breach of this Contract and shall be subject to all applicable remedies at law or equity.

Section 7.4. Record Copies. The Contractor shall retain a record copy of all information, documents, property, or materials developed in the course of the delivery and installation of the Equipment. Upon request of the EAA, such information, documents, property, or materials will be promptly supplied to the EAA, including after the Expiration Date or termination of the Contract under Section 6.1. The EAA will reimburse the Contractor for actual cost of time and expenses of reproduction of such materials when requested.

#### ARTICLE VIII - NON-PERFORMANCE

Section 8.1. The Contractor warrants that it will deliver and install the Equipment, and perform the services in a good and workmanlike manner, and as otherwise provided in this Contract and the Exhibits attached hereto. The Contractor's failure to deliver and install the Equipment, and perform the services, to the specifications called for herein, or to timely perform the delivery and installation of the Equipment, or any of the services identified in Exhibit A, shall constitute a breach of this Contract and shall be subject to all applicable remedies. Judgment of nonperformance shall rest solely with the EAA.

#### ARTICLE IX - LIQUIDATED DAMAGES

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#### ARTICLE X - BOND COVERAGE

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#### ARTICLE XI - INSURANCE

Section 11.1. Insurance Coverages. During the term of this Contract, the Contractor shall obtain and maintain in effect, at the Contractor's expense, appropriate insurance policies protecting the Contractor and the EAA, and their respective officers, directors and employees, against any loss, liability, personal injury, death, property damage, or any expense arising out of the delivery and installation of the Equipment, and the performance of the services, including, without limitation: (1) worker's compensation insurance in compliance with Texas law; (2) comprehensive

general liability insurance, insuring against property damage, personal injury and death, in an amount of no less than \$1,000,000.00 per occurrence; (3) automobile liability insurance in an amount no less than \$1,000,000.00; (4) umbrella liability insurance in an amount of no less than \$1,000,000.00. Said insurance policies shall be with insurance carriers licensed to do business in Texas. The Contractor shall be responsible for requiring that its subcontractors carry and maintain adequate insurance coverage and shall provide written evidence of such to the EAA.

Section 11.2. Additional Insureds. The Contractor shall name the EAA and its officers, directors, and employees as "additional insureds" on all of the insurance policies specified in Section 11.1 above, or with respect to the worker's compensation insurance, contain waivers of subrogation by the Contractor and the insurance carrier in favor of the EAA. Not later than the date of receipt of the written notice to proceed under Section 1.3, the Contractor must provide the EAA with certificates of insurance to be issued directly to the EAA by the Contractor's insurance agent, identifying the specified coverage. The Contractor, through its agent of record, shall notify the EAA of any changes in coverages within thirty (30) days prior to any effective date of such change.

Section 11.3. The Contractor's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by the EAA, nor shall the Contractor's performance of this obligation relieve it of liability under the indemnity provisions set forth in Section 12.2.

## ARTICLE XII - ASSUMPTION OF RISK AND INDEMNIFICATION

Section 12.1. Risk. The Contractor shall assume all risks associated with the Contractor's or its subcontractor's performance and shall waive any claim against the EAA and other participants for damages arising out of the performance of the delivery and installation of the Equipment, and the performance of the services.

Section 12.2. Indemnification. (a) The Contractor shall defend, indemnify, and hold harmless the EAA, its directors, employees, and agents from any and all damages, loss, or liability of any kind whatsoever, including the costs of litigation and attorneys' fees arising from: (a) contracts or other arrangements between the Contractor and any third-parties entered into to perform this Contract; (b) any claims brought by any person relating to this Contract, or the delivery and installation of the Equipment provided, or the services performed, or (c) the quality of the Equipment, or the performance of the delivery and installation of the Equipment, or the performance of the services.

(b) To the extent as may be allowed by law, the EAA agrees on behalf of itself and its successors and assigns to defend, save and hold harmless the Contractor from and against any and all claims, losses, expenses, costs, demands, judgments, causes of action, suits, and liability for personal injury or property damage resulting from the negligence or other wrongful acts or omissions of the EAA or an officer, director or employee of the EAA.

### ARTICLE XIII - NOTICES

Section 13.1. Notices to the EAA. All notices or communication to be mailed or delivered to the EAA shall be in writing and shall be sent to the EAA's principal place of business as follows, unless and until the Contractor is otherwise notified:

EDWARDS AQUIFER AUTHORITY  
900 E. Quincy Street  
San Antonio, Texas 78215  
ATTENTION: ROLAND RUIZ, GENERAL MANAGER

Section 13.2. Notices to Contractor. All notices or communication to be mailed or delivered to the Contractor shall be in writing and shall be sent to the address of the Contractor as follows, unless and until the EAA is otherwise notified:

MOUNT SOPRIS INSTRUMENT COMPANY, INC.  
4975 East 41<sup>st</sup> Avenue  
Denver, Colorado 80216  
ATTENTION: JAMES J. LOCOCO, DIRECTOR

Section 13.3. Effective Date of Notice. Any notices or communication required to be given in writing by one Party to the other shall be considered as having been given to the addressee on the date the notice of communication is posted by the sending Party.

### ARTICLE XIV - MISCELLANEOUS

Section 14.1. Entire Agreement. This Contract and the attached Exhibit constitutes the entire agreement between the Parties regarding the Equipment to be delivered or performed by the Contractor and there are no representations, warranties, agreements, or commitments between the Parties except as set forth herein. Unless otherwise authorized herein, no amendments or additions to this Contract shall be binding on the Parties unless in writing and signed by the Parties.

Section 14.2. Non-Waiver. No delay or failure by either Party to exercise any right, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

Section 14.3. Headings. Headings in this Contract are for convenience only and shall not be used to interpret or construe its provisions.

Section 14.4. Governing Law. This Contract shall be deemed to have been executed and performed in the State of Texas and shall be construed in accordance with and governed by the laws of the State of Texas. Venue for any disputes or claims arising from this Contract shall be exclusively in the proper courts in Bexar County, Texas.

Section 14.5. Counterparts. This Contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 14.6. Binding Effect. The provisions of this Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, that the Contractor may not assign any of its rights nor delegate any of its duties without the EAA's prior written consent.

Section 14.7. Validity. The invalidity of any provision or provisions of this Contract shall not affect any other provision of this Contract, which shall remain in full force and effect, nor shall the invalidity of a portion of any provision of this Contract affect the balance of such provision.

Section 14.8. Non-Waiver of Immunity. Nothing in this Contract is intended as any waiver by the EAA of any immunity from suit to which it is entitled under Texas law.

Section 14.9. Survival. Termination of this Contract for breach shall not constitute a waiver of any rights or remedies available at law or in equity to a Party to redress such breach. All remedies, either or at law or in equity, or otherwise available to a Party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination. In addition, to these provisions, applicable provisions of this Contract shall survive any termination of this Contract.

Section 14.10. Attachments. Exhibits, schedules, and/or other documents attached hereto or referred to herein are incorporated herein and made a part of this Contract for all purposes. As used herein, the expression "Contract" means the body of this Contract and such attachments, Exhibits, schedules, and/or other documents, and the expressions "herein," "hereof," and "hereunder" and other words of similar import refer to this Contract and such attachments, Exhibits, schedules, and/or other documents as a whole and not to any particular part or subdivision thereof.

Section 14.11. Costs. If any legal action, arbitration or other proceeding is brought by a Party for the enforcement of this Contract or because of an alleged breach or default of this Contract, the prevailing Party or Parties shall be entitled to recover reasonable costs incurred, including but not limited to attorney's fees, in such action or proceeding in addition to any other relief to which it or they may be entitled.

Section 14.12. Authority to Contract. Each Party represents and warrants for the benefit of the other Party that: (1) it has the legal authority to enter into this Contract; (2) this Contract has been duly approved and executed; (3) no other authorizations or approvals are or will be necessary in order to approve this Contract and to enable that Party to enter into and comply with the terms and conditions of this Contract; (4) the person executing this Contract on behalf of each Party has the authority to bind that Party; and (5) the Party is empowered by law to execute any other agreement or documents and to give such other approvals, in writing or otherwise, as are or may hereafter be required to implement and comply with this Contract.

Section 14.13. Officers or Agents. No officer or agent of the Parties is authorized to waive or modify any provision of this Contract. No amendment to or rescission of this Contract may be made except by a written document signed by the Parties' authorized representatives.

IN WITNESS WHEREOF, this Contract is executed as of the day and date first written above, in Section 1.1.

EDWARDS AQUIFER AUTHORITY

MOUNT SOPRIS INSTRUMENT  
COMPANY, INC.

By: \_\_\_\_\_  
Roland Ruiz  
General Manager

By: \_\_\_\_\_  
James J. LoCoco  
Director

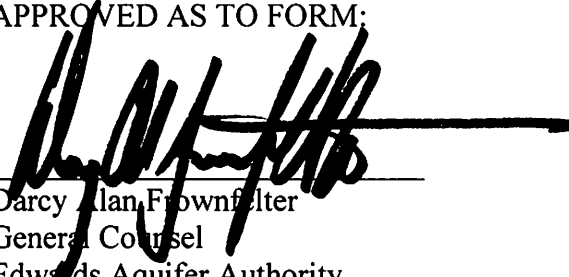
ATTEST:

ATTEST:

By: \_\_\_\_\_  
Jennifer Wong-Esparza  
Assistant to the Board Secretary

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Darcy Alan Frownfelter  
General Counsel  
Edwards Aquifer Authority

**EXHIBIT A**  
**TERMS AND DESCRIPTION OF EQUIPMENT**

**EQUIPMENT SCHEDULE AND SPECIFICATIONS**

The Contractor will provide the equipment and services listed in Table A1. All costs for equipment and services listed in Table A1 are fixed, except for the final task to integrate up to eight (8) existing Robertson Geologic logging tools to work with the Contractors equipment and Matrix data acquisition system. This task to be conducted on a time and materials basis at labor rate of \$95/hr, with total cost not to exceed \$10,000.

Table A1. Equipment and Services to be Provided by the Contractor

<b>Equipment and Description</b>	<b>Cost</b>
One new 4WFA winch assembly (WFA-2-1-1-4-1000) with 1,000 meters of ¼-inch coaxial cable and video cable head	\$35,600.00
One Laval 5150 downhole camera package, including CU500 control unit, centralizing band and accessories	\$28,940.00
One QL40-GR-CCL Total Count Natural Gamma with Casing Collar Locator logging tool	\$11,760.00
One QL40-CAL 3-Arm Caliper logging tool for recording borehole diameter up to 40.6 cm	\$7,800.00
One QL40-ELOG Electrical Resistivity logging tool	\$6,600.00
One QL40-ISL GO4 to QL Isolation Bridle	\$1,890.00
One QL40-FTC Fluid Temperature and Conductivity logging tool	\$5,390.00
Two QL40-GO4 Gearhart-Owen 4-Conductor Probe Top	\$2,720.00
Two QL40-BOT Standard QL Probe Bottom	\$1,980.00
One Matrix Data Acquisition System, including LoggerSuite software and all necessary cables	\$9,900.00
One WelCAD Basic Version 5.1 software package with Reader and Crossplot for LoggerSuite, single license dongle, installation CD, and documentation	\$3,120.00
One Pre-Loaded & Tested Data Acquisition Computer: item 17-101-913, notebook computer with Windows 10, and acquisition software installed	\$1,900.00
One Basic Winch Simulator, four conductor cablehead	\$390.00
One Basic System Toolkit: item 5TKA-1000, multimeter, cablehead grease gun, cablehead reheading tools, hand tools for logging operations, soldering iron and accessories	\$1,295.00
<b>Services</b>	<b>Cost</b>
Three-day training by the Contractor, to be conducted at EAA facilities; EAA staff to provide classroom facility and have a test well selected and ready for logging upon arrival of the Contractor; travel costs for the Contractor are included in this price	\$3,900.00

Installation of 4WFA Winch Assembly, Data Acquisition System, and all necessary cabling and connections to EAA logging van; EAA staff to deliver logging van to Mount Sopris Instrument Company facility in Denver, Colorado with existing winch system removed.	\$1,520.00
<b>Services</b>	<b>Cost</b>
Integrate up to eight (8) existing Robertson Geologic (RG) logging tools to work with Contractors equipment and Matrix data acquisition system; EAA staff to bring existing tools in working condition and with available wiring diagrams to Mount Sopris Instrument Company facility in Denver, Colorado; the Contractor makes no guarantee that all tools will be compatible.	Integration will be performed at a rate of \$95 per hour, in a total amount not to exceed \$10,000.
<b>Total equipment and services not to exceed</b>	<b>\$134,705.00</b>

#### TOTAL COSTS

Total payments made to the Contractor shall not exceed \$134,705.

#### DELIVERY LOCATION AND DATES

Installation of all equipment to be completed at the Mount Sopris Instrument Company facility located at 4975 East 41st Avenue Denver, Colorado 80216, not later than November 30, 2016. The Contractor will conduct a three-day training session to take place at EAA offices not later than December 15, 2016.