



AGR17-938

INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **VOITH HYDRO, INC. a Pennsylvania corporation**, ("Contractor") to be effective for all purposes April 1, 2017.

WHEREAS, the County's Department of Public Utilities ("DPU"), recently completed a refurbishment of the 8.0 MW Voith Kaplan turbine and National Industry generator ("Generator" or "Unit") which was originally commissioned in 1987 and located in El Vado, New Mexico; and

WHEREAS, in May 2016, during start-up of the refurbished Unit, the Generator's lower shaft seal experienced excessive leakage; and

WHEREAS, commissioning of the generator was then terminated as the leakage overwhelmed the Unit's head cover pumps leading to the Unit's shutdown tripping due to head cover flooding; and

WHEREAS, Contractor was the original designer of the Unit and has the knowledge, experience, and expertise to assist the County and its refurbishment contractor in completing the Unit's refurbishment and making the Generator operational; and

WHEREAS, Contractor will provide the Services, as described below, to County.

NOW, THEREFORE, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. SERVICES: Contractor shall provide the following services:

1. **Onsite Technical Supervision and Assistance:** Contractor will provide the following on-site technical supervision and assistance as follows:
 - a. Contractor shall provide on-sight supervision and technical assistance at the County's El Vado Hydroelectric Dam Generating Facility ("Facility") during the generator shaft seal repair and replacement being performed by the County's refurbishment contractor.
 - b. Contractor agrees to provide adequately qualified onsite staff at the Facility for a minimum of three (3) days not including at least two (2) days of travel to Facility from Contractor's place of business pursuant to the rates as found in Section C below. County shall issue to Contractor, prior to Contractor incurring any cost or expense, written authorization to proceed.
 - c. Contractor's staff will provide Unit and Generator technical advice and assistance to County and DPU staff for work being performed on the Facility, including but not limited to Unit component (e.g., shaft seal) disassembly, installation of new shaft seal and related

parts including springs, studs, nuts, sliding ring, etc. (provided by Contractor under separate agreement), assisting and advising County, DPU, and refurbishment contractor on measure to bring any observed shaft seal leakage to original Contractor's original designed rate(s), and bringing the Unit to operational status.

- d. In accordance with Exhibit A, the County or its agents or contractors shall provide all personal protective equipment, tools, supplies, equipment, etc. necessary to complete the shaft seal repair. The Contractor's Field Service Representative shall provide specialty tools for measurement and/or quality assurance during this portion of the proposed scope of work
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2. **Optional Task Order Work:** The Contractor, agrees to provide, at the written request of the County, the following additional services:
 - a. In the event that the County is unable, via the work of the refurbishment contractor, to make the shaft seal meet Contractor's original operational parameters during the initial work in paragraph A.1. above, Contractor agrees to provide adequate and qualified on-sight staff, supervision, and millwrights to perform the shaft seal replacement in its entirety.
 - b. Contractor will provide, at minimum, staff for at least three consecutive days of onsite work and two days of travel pursuant to the rates as found in Section C below.
 - c. Contractor's work to be performed under this part includes provision of all necessary staff, equipment, and tools to install and make functional the shaft seal and related parts (as provided and manufactured by Contractor under separate agreement) to make the shaft seal functional by bringing the seal leakage within original manufacturer designed specifications and rates. County will make available all tools, instruments, cranes, etc. that is available onsite and at the Facility. Contractor and County shall coordinate appropriate resources prior to County giving written authorization to work. Contractor shall provide specialty tools, test equipment and devices that are specific to the specialized services provided by Contractor.
 - d. All work to be performed under this subsection, A.2., shall only begin only after receiving the County's written authorization to proceed and all work shall be in paid in accordance with the rates and fees set out in Exhibit A, attached hereto.
 3. Contractor shall provide any additional technical or building services support in accordance with Exhibit A related to shaft seal repair or if otherwise requested in writing by County. Any additional requested work or services hereunder shall require a written estimate of the additional work and written authorization to proceed by the County prior to Contract incurring additional

SECTION B. TERM: The term of this Agreement shall commence April 1, 2017 and shall continue through March 31, 2020, unless sooner terminated, as provided herein. The parties may, by mutual written amendment, extend the term for up to three one-year terms.

SECTION C. COMPENSATION:

- 1. Amount of Compensation.** County shall pay compensation for performance of the Services in an amount **NOT TO EXCEED ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (US \$120,000.00)**, including reimbursable expenses, but which amount does not include applicable New Mexico gross receipts taxes ("NMGRT"). Compensation for work performed and for reimbursable shall be paid in accordance with the rate schedule set out in Exhibit "A," attached hereto and made a part hereof for all purposes.
- 2. Monthly Invoices.** Contractor shall submit itemized invoices to County's Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice. All disputes related to performance and payment shall be governed by the County's Procurement Code, Chapter 31.

SECTION D. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and will not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

SECTION F. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of the County.

SECTION H. INTELLECTUAL PROPERTY: Contractor retains all ownership of Intellectual Property on this contract. Contractor provides a non-transferable non-exclusive license to County to use, reproduce, or display the technical data on this contract. This license does not permit the County to reverse engineer the technical data; nor to release, perform, display, disclose, or authorize the use of the technical data to others; nor to use the technical data to manufacture additional quantities of the items on this contract.

SECTION I. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

SECTION J. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.

SECTION K. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION L. APPLICABLE LAW: Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

SECTION M. NON-DISCRIMINATION: During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the

performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

SECTION N. INDEMNITY: Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

SECTION O. FORCE MAJEURE: Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

SECTION P. NON-ASSIGNMENT: Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

SECTION Q. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION R. PROHIBITED INTERESTS: Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION S. TERMINATION:

1. **Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
2. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by the County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION T. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

James Alarid, PE
Incorporated County of Los Alamos
1000 Central Avenue, Suite 130
Los Alamos, New Mexico 87544

Contractor:

David Sandquist
Voith Hydro, Inc.
16789 West 69th Circle
Arvada, Colorado 80007

SECTION U. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

SECTION V. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY: _____
TIMOTHY A. GLASCO, P.E. **DATE**
UTILITIES MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

VOITH HYDRO, INC.

BY: _____
DATE

Exhibit "A"
AGR17-938
RATE SCHEDULE



Voith Hydro Inc., 760 East Berlin Road, York, PA 17408-8701

Voith Hydro Inc.
P. O. Box 15022
York, PA 17405-7022
Tel. 717-792-7000
Fax: 717-792-7263
www.york.voithhydro.com

A Voith and Siemens Company

HOURLY BILLING RATES FOR SERVICE PERSONNEL

Effective January 1, 2016

Classification of Service Personnel:	For Work Performed: 1/1/2016 through 12/31/2016	For Work Performed: 1/1/2017 through 12/31/2017	For Work Performed: 1/1/2018 through 12/31/2018
Group I - Field Service Representative: Project Type Job, Turbine, Generator, Governor or Balance of Plant	US\$ 238 / hr	US\$ 245 / hr	US\$ 250 / hr
Group II - Engineer: Hydraulic, Mechanical, Electrical, Welding or Field (Commissioning, Testing, Diagnostic Services) and Project Management	US\$ 286 / hr	US\$ 294 / hr	US\$ 300 / hr
Group III - Working Foreman	US\$ 175 / hr	US\$ 180 / hr	US\$ 185 / hr
Group IV - Skilled Craftsmen Mechanics, Welders, Winders, Electricians, etc.	US\$ 155 / hr	US\$ 160 / hr	US\$ 165 / hr

EXPENSES:

A.	Transportation to and from job site	Cost + 20%
B.	Transportation at site	IRS Business Standard Mileage rate in effect + 20%
C.	Minimum Daily Living Expense	US\$ 145.00 / day

NOTES:

Above mentioned rates are for Straight Time as defined in the attached terms.

For Emergency Mobilization (7 days or less from contract award), the above rates will be increased by 50%.



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A. FIELD OPERATIONS REPRESENTATIVE

If the services of two or more Field Operations Representatives are to be furnished, the term "Representative" or any corresponding pronoun used herein shall be deemed to refer to each such Field Representative.

B. SCOPE OF REPRESENTATIVE'S SERVICES

1. Unless indicated otherwise, the representatives shall act only in an advisory capacity. He will interpret the Seller's drawings, advise the Buyer regarding the sequence of steps in erection, installation, inspection, start-up, dismantling, or repairs, as the case may be, and explain features and components of the Seller's products and their functions. If the Representative will act in another capacity, he will do so in accordance with normal standards of the industry for that type of work.
2. The Representative shall not be required to superintend or supervise personnel supplied by the Buyer or train them in their respective crafts in connection with the performance of their work.
3. Neither the Seller nor the Representative shall be responsible for any acts, omissions or workmanship of employees, contractors, subcontractors, or agents of the Buyer or for their failure to follow the advice or instructions of the Representative, or for performing any work or giving any advice in respect to equipment manufactured or services sold to the Buyer by others.
4. The Seller's Field Operation Representatives are not authorized or licensed to operate equipment and all such responsibility is the Buyer's.
5. The Seller's Field Operation Representatives shall comply with the Buyer's rules for visitors pertaining to safety, plant protection and the operation and parking of vehicles.

C. BUYER'S RESPONSIBILITIES

1. Labor, Material, Tools and Equipment - Unless otherwise specified the Buyer shall furnish at his own expense and responsibility all cranes, rigging, tools facilities and equipment, material and repair or replacement parts, together with sufficient skilled and common labor and foremen, supervisors and interpreters for the efficient performance of the work, and all fuel, lubricating oil, water, electric power, and other supplies and utilities that may be required in connection with the work.
2. Buyer's Representative - The Buyer shall designate a person in his organization fluent in the English language to represent him fully at the site in all contacts and dealings with the Representatives. The Buyer's representative shall be responsible for coordinating the work, and shall be in charge of the labor, material, supplies, tools, and facilities to be furnished by the Buyer. The Buyer's representative shall inspect and shall accept all details of the work as they are completed. Except in instances where the Seller has such right under the terms of the warranty covering the product involved, decisions with respect to repair or replacement of the Buyer's equipment or parts thereof shall remain solely with the Buyer.
3. Safety - The Buyer shall furnish the Representative a safe and healthful place to work, including first aid, washup, and toilet facilities at the site. If, in the opinion of the Seller, the Buyer fails to comply with the foregoing, or if in the Seller's opinion, the employee's health or safety is or would be jeopardized during the period of the assignment, the Seller may order its personnel to return to their headquarters at the Buyer's expense and the Seller shall not be obligated to have him or his replacement return to the work site until given satisfactory assurance of compliance by the Buyer of its obligations. All costs and expenses for the return to the job for the Representative or his replacement shall be for the account of the Buyer.

D. CHARGES

Invoices from the Seller for the time and expense of each Field Operations Representative and for tool rental and purchased material and services will be based on the conditions set forth below:

1. General
 - a. If the price for performing field service is fixed, such price shall apply only to the work called for at the inception of this contract, and shall be performed on a straight time basis only unless otherwise agreed in writing. If the Buyer requests changes in the scope of the work or an increase in the schedule of hours to be worked, additional charges shall be made pursuant to Paragraphs D1b through D6.
 - b. If the Contract is not on a fixed price basis, the Buyer shall pay the Seller for the straight time, overtime, standby and travel time as defined herein. Rates shall be those in effect at the time the work is performed and normally applicable to this type of work.
2. Definitions of Time
 - a. Straight Time - Straight time is defined as time worked on a regular schedule of 8 hours between 7:00 a.m. and 6:00 p.m., Monday through Friday, or for time worked on any other agreed upon schedule of 8 hours per day, Monday through Friday. Each hour of straight time shall be paid for at the straight time rate.



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- c. Seller and Personal Tools - Tools and equipment furnished by the Seller or the Representative shall remain the property of the Seller or the Representative at all times. All such tools and equipment shall be for the exclusive use of the Representative. If such tools and equipment are not returned to the Seller, the Buyer shall reimburse the Seller for their full replacement value.
- d. Purchased Tools and Equipment - If under the terms of the Contract the Seller is to provide tools, test instruments, vehicles or household equipment they will be procured and shipped by the Seller. Unless otherwise agreed and specified, the purchase price, packing and shipping expense, insurance, import licenses and duties, taxes and other expenses involved and pertaining to this equipment plus 15% handling charge will be for the account of the Buyer. Title, liability and maintenance responsibility passes to the Buyer upon delivery but right of exclusive use by the Representative is reserved by the Seller until the work is completed.
- e. Storage Facilities - The Buyer shall provide suitable locked storage facilities for the exclusive use of the Representative for the storage of personal or Seller property such as drawings, tools, instruments and other special equipment.

E. INVOICING AND PAYMENT

1. Invoicing - The Seller will submit monthly invoices on a net cash basis covering the time and expenses of the Representative, and a final invoice upon completion of his work. Separate or combination invoices for purchased material, repair parts, labor, engineering, services, tool rental, and other items furnished by the Seller will be issued on the same basis.
2. Payment - All payments shall be made by the Buyer in U.S. Dollars upon receipt of invoice. Invoices shall be paid within 30 days from the date of issuance.
3. Verification of Time and Expense - The Representative, if requested by the Buyer, will present a copy of his regular time and expense reports. The Buyer, when requested, shall indicate his approval of such reports by signing the same.

F. ENGINEERING INFORMATION

While the Seller will provide advisory assistance to its Field Operations Representative relating to routine engineering problems encountered in connection with the performance of this field service assignment, the Seller reserves the right to charge the Buyer at its regular rates for engineering services such as layout, design, drawings, engineering analysis, engineering reports and visits to the job site or elsewhere by Seller engineering personnel. However, no such engineering services will be undertaken without the authorization of the Buyer.

G. SERVICE PARTS AND FACTORY REPAIRS

During the performance of the service assignment the Seller may at the request of the Buyer furnish service parts or materials or perform repair work on the equipment or its components at a Seller manufacturing or repair facility. In such cases the Seller will separately invoice the Buyer at its current regular prices and under the Seller's current terms and conditions applicable to such parts, material or repair work.

H. LABOR PERMITS, TAXES, CERTIFICATIONS

The Buyer shall, at his own expense, secure any work permit, labor permit, tax exemption certificate, or any other authorization which may be required to permit the Representative to perform the requested services. If special certification, pre-qualification or other examinations are obtained at the Buyer's request, the cost incurred shall also be for the Buyer's account. Any loss of the Representative's services pending the procurement of any such permit, authorization, certification or examination shall be for the Buyer's account and shall be paid for by the Buyer as stand-by time as defined and specified herein.

I. MODIFICATIONS

It is recognized that the nature of field service is such that changes in the scope of it as originally contemplated often occur. The Seller will undertake additional services within the normal scope of field service but reserves the right to require the Buyer to confirm in writing any extension of the services originally ordered. The Seller shall be entitled, however, to rely upon oral orders, including instructions of the Buyer's representative at the site. Any additional services performed by the Seller pursuant to such written or oral orders or instructions shall be paid for on the basis set forth herein or as otherwise agreed to in writing between the parties.