



PO #: 0910913
PROJECT #: 707956

Monterey Bay Aquarium Research Institute

INDEPENDENT CONTRACTOR AGREEMENT

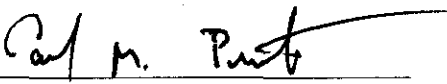
Contractor: Airflow Sciences Corporation

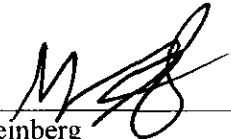
This agreement is entered into in Moss Landing, California as of the date set forth in Exhibit A to this agreement between the independent contractor named above ("Contractor") and Monterey Bay Aquarium Research Institute ("MBARI") for the purpose of engaging Contractor to perform services for MBARI as described herein. In consideration of the mutual promises herein, the parties, agree, as follows:

- 1) Services: Contractor shall perform the services described in Exhibit A to this agreement. Contractor shall determine the method, details and means of performing these services. MBARI shall have no right to, nor shall it, control the manner or determine the method of accomplishing Contractor's services.
- 2) Term: The term of this agreement shall be set forth in Exhibit A to this agreement. Either party may terminate this agreement earlier for any reason upon thirty days' written notice.
- 3) Compensation: For the satisfactory performance of services under this agreement, MBARI shall pay Contractor the fees specified in Exhibit A to this agreement. Payment will be made upon presentation of Contractor's invoice following completion of services, or on a pro-rated basis upon successful completion of milestones identified in Exhibit A, if any.
- 4) Expenses: Independent Contractor shall be responsible for all costs and expenses incurred in performing the services under this agreement, including but not limited to, costs for transportation, office, telephone, supplies, equipment and all other costs of doing business.
- 5) Independent Contractor: The relationship between Contractor and MBARI established by this agreement is that of an independent contractor, not one of employment, agency, partnership, or joint venture, and nothing in this agreement shall be construed otherwise. Contractor shall determine his or her own schedule for performing services and shall retain the right to perform services for others during the term of this agreement. Contractor shall be solely responsible for his or her own health, medical and liability coverage, Social Security, workers' compensation and other taxes and withholdings. MBARI shall make no withholdings from payments due Contractor or on Contractor's behalf pursuant to this agreement.
- 6) Liability: Contractor agrees to defend, indemnify and hold MBARI harmless against all claims and damages arising from Contractor's performance of services under this agreement.
- 7) Ownership rights: Products, programs, documents and all other materials developed by Contractor pursuant to this agreement will belong to MBARI, unless specified otherwise. Products, programs, copyrighted works and other materials belonging to MBARI shall remain the sole property of MBARI, as the case may be. Contractor agrees not to use or copy materials belong to MBARI without first securing prior written approval.

- 8) Confidentiality: Contractor agrees that s/he shall not disclose any confidential or proprietary information belonging to MBARI to any other party or to use such information for the benefit or any party other than MBARI without the express written consent of MBARI.
- 9) Use of Name: Contractor agrees not to use the name of Monterey Bay Aquarium Research Institute (MBARI) or any related organization or to quote the opinion of any of MBARI's agents or employees in any advertising, promotion or other written or oral disclosure without the prior written consent of MBARI.
- 10) Invoices: In accordance with Exhibit A, Description of Services, payments will be made for services rendered within the time period specified in Term of Service and within the amount so authorized, upon receipt of itemized invoices, to be submitted no more frequently than monthly on Contractor's own business letterhead. Invoices must be addressed to MBARI and reference the Purchase Order number assigned by MBARI on the first page of this agreement.
- 11) Audit: MBARI, the Federal Sponsoring Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers or records of the Seller which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.
- 12) Federal Funds: Agreements made with Federal grant funds are subject to compliance with the standards and requirements as set forth in OMB Circular A-110, section 48, Contract Provisions and Appendix A, and OMB Circular A-133 paragraph 5. All procurement requirements contained in the above referenced Circulars are incorporated here in by reference.
- 13) Miscellaneous: This is the entire agreement between the parties on the subject and may not be modified except in writing signed by both parties. The rights and obligations of the parties are to be governed by and construed in accordance with California law. Neither party shall assign this agreement or any obligations hereunder without the express written consent of the other. In any action to enforce or interpret this agreement, the prevailing party will be entitled to recover reasonable attorney's fees from the other party.

Monterey Bay Aquarium Research Institute:


C. Mike Pinto
Chief Fiscal Officer
5/19/09
Date


Norm Steinberg
Director of Human Resources
5-20-09
Date

Independent Contractor:


Airflow Sciences Corporation
26 May 2009
Date

INDEPENDENT CONTRACTOR AGREEMENT
EXHIBIT A, Part II (Federal funding source)
Page 1 of 2

Purchases made with federal funds may be subject to Audit at any time. Fair and reasonable pricing is mandatory.

A. To be completed by the Contractor

Name: Airflow Sciences Corporation
Address: 12190 Hubbard Street
Livonia, MI 48150USA
~~Morgan Hill, CA 95037~~ *AKV*
Telephone: (734) 525-0300
Fax: (734) 525-0303
Email: jpaul@airflowsciences.com

In what capacity will you be working, check any that apply -

Individuals (provide SSN):

Corporation/Company (provide TIN): 38-2083056

Sole Proprietor (provide SSN):

Foreign National:

If yes, Are you a nonresident alien (i.e., do you not have an Alien Registration Receipt Card or "Green Card")? If yes what is your visa type ?

Attach a resume or corporate brochure.

Date of Agreement (This is the date the ICA is signed by both parties):

Term: 2 February 2009 through 1 June 2009

Description of services to be performed: Support for DARPA funded project " Energy producing buoy for strategic applications: Design Trade Study".

Deliverables:

1. Research into reaction foil modeling.
2. Preparation for project kick-off meeting held in Moss Landing on 11 March 2009.
3. Participation in kick-off meeting with MBARI, Marine Innovation and Technology, and Bill Webster in Moss Landing on 11 March 2009.
4. Review of collected papers on flapping foils, dynamic stall, power extraction methods, etc., and interviews with researchers in this field.
5. Preparation for project review meeting with DARPA sponsors.
6. Participation in DARPA review meeting in Moss Landing on 16 April 2009.
7. Follow-up e-mails and discussions with DARPA consultants and other researchers on flapping foil dynamics and modeling.

Fee: \$15,966.15.

Payment Method: Invoice, no more frequently than monthly.

Exhibit B.1. OMB Circular A110 - Provisions.

All purchases made by MBARI under federal grants awards, including small purchases, hereby incorporate the following provisions as applicable:

1. Equal Employment Opportunity - All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) - When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) - Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. Rights to Inventions Made Under a Contract or Agreement - Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended - Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. Debarment and Suspension (E.O.s 12549 and 12689) - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

12190 Hubbard Street
Livonia, MI 48150-1737
Phone: 734-525-0300 x228
Fax: 734-525-0303
asc@airflowsciences.com
www.airflowsciences.com

May 26, 2009

Patrice A. Carroll
Senior Grants & Accounting Specialist
Monterey Bay Aquarium Research Institute
7700 Sandholdt Road
Moss Landing, CA 95039-9644

Re: Independent Contractor Agreement

Enclosed please find the executed copy of the Independent Contractor Agreement. I have included our Federal EIN number on page 3 and also please note the change made to the address line on this page also. Thank you for your interest in Airflow Sciences Corporation.

Sincerely,



Tricia A. Trombley
Administrative Assistant

enc.

707956-ICA MBARI Copy
DARPA - Hamilton



May 20, 2009

Mr. Jim Paul
Airflow Sciences Corporation
12190 Hubbard Street
Livonia, MI 48150

RE: Independent Contractor Agreement

Dear Mr. Paul:

I am pleased to send, on behalf of the Monterey Bay Aquarium Research Institute, two (2) duly executed copies of the Independent Contractor Agreement. The Agreement details work to be performed in collaboration with Dr. Andy Hamilton on the project entitled "*Energy Producing Buoy for Strategic Applications: Design Trade Study*" funded by the Defense Advance Research Projects Agency.

If this Agreement meets with your approval, please sign both originals. Retain one copy for your records and return one original to:

Grants Office
MBARI
7700 Sandholdt Road
Moss Landing, CA 95039-9644

MBARI purchase order **#PO-0910913** has been executed for this work. Please reference the Purchase Order number on your invoices for work performed under this agreement.

Should you have any questions or require further information, do not hesitate to contact me at telephone 831-775-1803 or by email to pcarroll@mbari.org.

Sincerely,

A handwritten signature in dark ink, appearing to read "Patrice A. Carroll".
Patrice A. Carroll

Senior Grants & Accounting Specialist

N.B. kindly include your
Federal EIN number
on page 3.

Enc

**MONTEREY
BAY
AQUARIUM
RESEARCH
INSTITUTE**



PURCHASE ORDER

Purchase Order Invalid Without PO#

PO#: 0910913

Date: 5/19/2009

VENDOR

Airflow Sciences Corporation
12190 Hubbard Street
Livonia, MI 48150 USA
Phone: (734) 525-0300
Fax: (734) 525-0303
Email: jpaul@airflowsciences.com
Contact: Jim Paul
Payment Terms: NET 30
Customer Number:

SHIPPING

No shipping required.

MBARI CONTACT

Name: Andy Hamilton
Phone: (831) 775-1861
Fax: (831) 775-1646
Email: hamilton@mbari.org

SEND INVOICES TO

MBARI Accounts Payable
7700 Sandholdt Rd.
Moss Landing, CA 95039-9644
Phone: (831) 775-1700 Fax: (831) 775-1630

PROJECT

Project	Account	RefNum	Amount
707956.00	5130-000		\$15,966.15

REMARKS

ITEM DETAIL

#	Description	Part #	Quantity	U/M	Unit Cost	Ext Amount
1	Engineering Consulting Services					\$15,966.15

C. Michael Panto

Shipping Cost: \$0.00

Sales/Use Tax: \$0.00

Purchase Order Amount: \$15,966.15

ATTACHMENTS

Description	FileName	Action
Description of work performed	ASC_Invoice_April30-2009.txt	Download

MBARI is an Affirmative Action/Equal Opportunity employer. MBARI does not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. MBARI will comply with the provisions of Executive Order 11246 of 9/24/65, and relevant rules and regulations as required by law. Please be advised that all contractors and subcontractors having 50 or more employees and a federal government contract or subcontract of \$50,000 or more must develop a written affirmative action plan under the federal guidelines.

OMB Circular A110 - Provisions. All purchases made by MBARI under federal grants awards, including small purchases, hereby incorporate the following provisions as applicable:

1. **Equal Employment Opportunity** - All contracts shall contain a

EXHIBIT A, Part II (Federal funding source)

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B. To be completed by the Principal Investigator/Project Manager

For all purchases - section (a) – Cost/Price Analysis is required.

(a) Identify the basis for cost or price

- ☐ The price was obtained from a current catalogue or printed price list.
- ☒ The quoted price was reviewed in an MBARI proposal to a federal agency and was found acceptable.
- ☐ The vendor has stated the quoted price is no greater than that charged to vendor's most favored customer(s).
- ☐ The quoted price compares favorably to previous prices paid for the same or similar work done at MBARI.
- ☐ Other: _____

For all purchases over \$25,000 – Competitive bidding is expected for every purchase, complete sections (b) and (c) below:

(b) Briefly describe the selection criteria used for this Contractor (e.g., education, training, expertise). Include a justification for sole/selected source* selection or three price quotes.

*Sole Source: (no other professional/company is known to be fully capable of satisfying requirement).

Selected Source: alternative vendors exist, but vendor selection was based on a) technical requirements (e.g., precision, reliability, etc) or b) past performance of alternative vendors (poor service level, unavailability of parts, etc.).

(c) A Certification will be required in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension" must be completed and signed by the Contractor, and returned to MBARI.

For purchases above \$100,000 --

(d) A Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions in accordance with 31 USC 1352, and FAR 52.203-11 and FAR 52.203-12, must be completed, signed by the Contractor, and returned to MBARI.

ICA 707956

ASC_Invoice_April30-2009[1].txt

From: jimpaul@montereybay.com
Sent: Tuesday, May 05, 2009 7:47 AM
To: Hamilton, Andrew
Cc: Bellingham, James; kcharette@airflowsciences.com;
abanka@airflowsciences.com
Subject: Update on DARPA Station Keeping Project Business Arrangements

Andy,

I contacted ASC's Accounting Manager, Kim Charette, and she provided the accrued charges through 30 April 2009 for the Station Keeping Project (ASC Project Designation: MSK). You provided authorization to begin work on this project in an e-mail dated 11 February 2009. The following key tasks were completed during the time period (a full description of tasks completed will be included in the invoice to be submitted by ASC):

1. Research into reaction foil modeling.
2. Preparation for project kick-off meeting held in Moss Landing on 11 March 2009.
3. Participation in kick-off meeting with MBARI, Marine Innovation and Technology, and Bill Webster in Moss Landing on 11 March 2009.
4. Review of collected papers on flapping foils, dynamic stall, power extraction methods, etc., and interviews with researchers in this field.
5. Preparation for project review meeting with DARPA sponsors.
6. Participation in DARPA review meeting in Moss Landing on 16 April 2009.
7. Follow-up e-mails and discussions with DARPA consultants and other researchers on flapping foil dynamics and modeling.

The charges include engineering time and travel expenses and the accumulated amount through 30 April 2009 is \$15,966.15.

Please let Andy or me know if you have any questions. Thanks.

We are looking forward to the next phase of the modeling work.

Sincerely,

Jim

James C. Paul, P.E.
Senior Engineer
Airflow Sciences Corporation
Western Region Office
Tel.: 831-624-8700, e-mail: jpaul@airflowsciences.com