

AURORA BOREALIS INSTRUMENTS, LLC Cuenta Núm: 534061
Sales and Consulting Agreement

This Agreement is entered into as of November 14, 2011, by and between Aurora Borealis Instruments, LLC, (the "Consultant") and the Mayagüez Campus of the University of Puerto Rico (the "Purchaser"), represented by its Acting Chancellor, Jorge Rivera Santos, or whomever he designates.

Recitals

1. The Consultant has expertise in the preparation and shipment of Cameca SX50 electron microprobe instruments internationally, and in the assembly and adjustment of these instruments in the user's laboratory, to produce optimal microanalytical performance.
2. Aurora Borealis Instruments, LLC, is a Wisconsin Corporation, with a mailing address of P.O. Box 45781, Madison, WI 53744 and physical address of 2765 Raritan Road, Madison, WI 53711.
3. The Mayagüez Campus of the University of Puerto Rico is an institution of higher education created under the Law of the University of Puerto Rico, approved January 20, 1966 as amended, with a mailing address of CALL Box 9000, Mayaguez PR 00681-9000, and physical address of 259 Blv. Alfonso Valdez, Mayaguez PR 00680.
4. The parties desire to enter into an agreement for the acquisition and installation of a microanalytical instrument.

Agreement

In consideration of the foregoing and of the mutual promises set forth herein, and intending to be legally bound, the parties agree as follows:

1. Engagement

(a) The Mayagüez Campus of the University of Puerto Rico hereby engages the Consultant to render, as an independent contractor, the necessary equipment and services described in Exhibit A (the "Services"), on the terms and conditions set forth herein.

(b) The Consultant hereby accepts the engagement to provide the Services to Purchaser on the terms and conditions set forth herein.

2. Term. This Agreement will commence on the date first written above, and unless modified by the mutual agreement of the parties, shall continue until the satisfactory installation of the instruments set forth in Exhibit A, to be completed no later than January 31, 2012.

and this created relationship in no way prohibits or inhibits the Consultant from advertising Consultant's services to others or from Consultant holding itself out to the public as such.

7. Taxes. Consultant agrees to pay all appropriate local, state, commonwealth and federal taxes.

8. Non discrimination. Both parties agree that there will be no discrimination by reason of age, sex, race, color, birth, origin or social condition, physical or mental impairment, political or religious belief or veteran status in employment, contracting, and subcontracting practices.

9. Notices. All notices, requests, demands, and other communications provided for by this Agreement shall be in writing and shall be deemed to have been given when mailed in a certified post paid envelope and addressed to the address of the respective party stated below or to such changed address as the party may have fixed by notice:

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MS
To Consultant: 2765 Raritan Road
Madison, WI 53711

MS
To Purchaser: Dr. Walter Silva
Director
R&D Center
UPRM
CALL Box 9000
Mayaguez PR, 00681-9000

10. Severability. If any provision of this Agreement shall be held invalid or unenforceable for any reason, then such invalidity or unenforceability shall not affect any other part of this Agreement and the parts of this Agreement not invalid or unenforceable shall remain in full force and effect.

11. The Contractor states that it has knowledge and has received a copy of, and that it agrees and accepts to bind itself to the terms and conditions imposed by, Puerto Rico Public Law number 84 of June 18, 2002, known as the "Code of Ethics for Contractors Suppliers and Applicants for Economics Incentives of the Executive Agencies of the Commonwealth of Puerto Rico"; and to include in all of its invoices the following certification required by law.

"Under penalty of absolute nullity, I certify that no public servant of THE UNIVERSITY is a part to or has an interest in the profits or benefits resulting from the Agreement subject of this invoice, and to be a party to or have interest in the profits or benefits resulting from the Agreement, under this invoice, a prior dispensation has been issued. The sole consideration to furnish the contracted goods or services subject of the Agreement is the payment agreed upon with the authorized representative of THE UNIVERSITY. The amount

3. Compensation. In consideration of the services to be performed by the Consultant, the Mayagüez Campus of the University of Puerto Rico agrees to pay Consultant in the manner and amount set forth in Exhibit A.

4. Compliance with Law. In connection with the services rendered hereunder, Consultant agrees to abide by all federal, state, commonwealth and local laws, ordinances and regulations.

5. Warranties and Representations. Upon acceptance by Purchaser, the equipment is sold in "as is" condition. Purchaser has been informed and accepted that the equipment has been used. All information regarding the equipment is from sources deemed reliable, but no warranty or representation is made as to fact, promise, information or the like regarding condition, use or description of the equipment, unless confirmed explicitly in writing by the Consultant in this Agreement.

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Consultant guarantees that the equipment is free from any encumbrance, mortgage, pledge or rights of any third party. NO OTHER WARRANTIES OF ANY KIND ARE GIVEN, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY, FITNESS FOR PURPOSE, OR OTHER WARRANTY OF QUALITY, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED.

Consultant's performance shall be complete upon delivery and installation of the equipment such that the instruments are able to acquire secondary and backscattered electron images and x-ray signals on all four wavelength spectrometers. After successful performance by Consultant, Purchaser shall have 30 days to inspect the equipment and raise any concerns or issues in writing (the "inspection period"). Purchaser shall accept any equipment that complies with this description of Services to be rendered. Should Purchaser fail to provide written notice of acceptance or rejection within the inspection period, then the Purchaser will be deemed to have accepted the equipment and Services.

6. Independent Contractor. This Agreement calls for the performance of the Services of the Consultant as an independent consultant and Consultant will not be considered an employee of the Purchaser for any purpose. Purchaser is hereby contracting with Consultant for the Services, and Consultant reserves the right to determine the method, manner, and means by which the Agreement will be performed. This Agreement cannot be terminated or cancelled short of completion except as provided by this Agreement or for Consultant's failure to perform the Services as required hereunder. Purchaser shall not provide any insurance coverage of any kind for Consultant or Consultant's staff, and Purchaser will not withhold any amount that would normally be withheld from an employee's pay.

It is expressly acknowledged by the parties that Consultant and Consultant's employees, agents, and representatives, if any, are independent consultants with respect to the Purchaser and that nothing in this Agreement is intended, nor shall be construed, to create an employer/employee relationship or a joint venture relationship. Purchaser recognizes and acknowledges the independence of Consultant's own business activities,


that appears in the invoice is fair and correct. The work has been performed, the products have been delivered and the services rendered, and no payment has been received for them.”

12. Miscellaneous.

(a) Attorney Fees. In the event of any dispute arising under this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorney fees incurred to enforce its rights hereunder.


(b) Force Majeure. Neither party shall be liable to the other for any damages as a result of any delay or failure to perform its responsibilities hereunder, to the extent caused by factors beyond its reasonable control, including, but not limited to, any act of God, act of nature, act of the other party, embargo, or other governmental act, regulation or request, fire, accident, strike, slow-down, war, riot, delay in transportation or delays or failures to deliver by its suppliers; provided, however, that nothing herein shall relieve either party of its obligations to make payments for goods sold hereunder as and when due; provided further, in the event the force majeure continues for a period of twenty consecutive days, or for thirty days in any sixty-day period, then the party not claiming the application of the force majeure may terminate this Agreement.

13. Entire Agreement. This instrument constitutes the entire and only Agreement between the parties respecting the subject matter thereof, and any of the provisions hereof shall be binding upon both parties. This Agreement may only be modified or amended by a writing signed by both parties. We, the undersigned, acknowledge and agree to this.




John Fournelle, Principal for
Aurora Borealis Instruments, LLC

11/4/2011
Date



Jorge Rivera Santos
Acting Chancellor, UPR-Mayagüez

11/14/2011
Date



Walter Silva
Director
R& D Center

11/10/11
Date

Exhibit A.

1. Description of Services to be Rendered

- a. Consultant will provide the Geology Department of the University of Puerto Rico, Mayagüez, with a previously used and in top operational condition Cameca SX50 electron microprobe (SN#443, under Cameca maintenance for its 16 year life, currently located in London, England), with 4 spectrometers, 2 vacuum pumps, 4 flat screen monitors, and 2 UNIX computers, and the original PGT EDS detector and associated hardware and software.
- b. The Consultant is responsible for the acquisition of the instrument, arranging the secure packing in London and transportation of this instrument via air freight to San Juan and truck transport to UPR-Mayagüez, insuring the instrument, setting up of the instrument in the appropriate laboratory at the Mayagüez Campus of the University of Puerto Rico, testing operation and making adjustments to the satisfaction of the responsible party at the Mayagüez Campus of the University of Puerto Rico.
- c. The Consultant will be responsible for all payments, including the current owner of the SX50, and to all subcontractors and all arrangements and payments for necessary transportation, lodging and subsistence during both preparation and then installation of the instrument.

2. Compensation

The Mayagüez Campus of the University of Puerto Rico agrees to pay Aurora Borealis Instruments, LLC, a total of \$80,000 for the delivery of the SX50 electron microprobe detailed above, its installation in the Geology Department, and its testing and adjustments to the satisfaction of responsible party of the Mayagüez Campus of the University of Puerto Rico.

3. Schedule of payments:

- a. Upon receipt of invoice, following signing of this Agreement: 20% (\$16,000) shall be paid to the Consultant.
- b. Upon receipt of invoice, following the delivery and installation at the Mayagüez Campus of the University of Puerto Rico: 70% (\$56,000) shall be paid to the Consultant.
- c. Upon receipt of invoice, following the acceptance by the responsible party: 10% (\$8,000) shall be paid to the Consultant.

Terms are net thirty (30) days from date payment is due.