



Sales Quote/ Proposal

HydroPoint Data Systems, Inc
 1720 Corporate Circle
 Petaluma, CA 94954
 (707) 769-9696 voice / (707) 769-9695 fax

Bill To	Ship To	Quote Number: Monterey USD_Phase 2
Monterey Peninsula USD John Silvestrini, Director of Facilities Monterey Peninsula Unified School District 700 Pacific St. , Monterey, CA 93940 831- 645-1261	John Silvestrini, Director of Facilities Monterey Peninsula Unified School District 700 Pacific St. , Monterey, CA 93940 831- 645-1261	

Account Executive	Project	Payment Terms	Quote Expiration Date
Ben Slick - 408.981.3616	8 more schools	Net 30	12/6/2013

Quantity	Part #	Description	Unit Cost	Total
11	WTPRO3-C-12-CWM	WeatherTRAK ET Pro3 - 12 Station Wall Mount incl. 1 Year WeatherTRAK Central Service	\$ 1,516.16	\$ 16,677.76
2	WTPRO3-C-18-CWM	WeatherTRAK ET Pro3 - 18 Station Wall Mount incl. 1 Year WeatherTRAK Central Service	\$ 1,733.76	\$ 3,467.52
13	WT-WRS	Rain Sensor – Wireless Model	\$ 114.56	\$ 1,489.28
Controllers for the following schools:				
Bayview, Foothill, Del Monte, Monte Vista, Del Ray Woods, Ord Terrace, Seaside, Cabrillo				
Wireless valves not included on this estimate				
13	CIM-5YA	5 additional Years WeatherTRAK Central Internet & ET Service <i>Daily ET Weather Data, accurate to 1 square kilometer, for 5 years</i> <i>Central Internet Management Portal - http://WWW.WeatherTRAK.net</i> <i>All GPRS wireless communication between controller and server</i> <i>Real time Alarms and Alerts delivered to cell phone, smart phone, email or text</i> <i>Real time ability to remotely program, pause or make changes to each controller</i> <i>Real Time Reports</i> <i>Technical Support via 1-800-362-8774 for entire term of Subscription</i>	\$ 1,069.00	\$ 13,897.00
		Professional Services as described below: Program / Project Management Landscape Contractor Coordination Training Program Worksheet and Controller Programming Management Post Installation Verification & Controller Inspection Report Contractor Installation		\$ 22,290.00
		Estimated Freight - Subject to Change		\$ 715.00
		Estimated Sales Tax (actual taxes will be billed when invoiced)		\$ 2,067.33
				\$ 60,603.89

Applicable sales tax and actual freight charges will be billed upon invoicing. If you are tax exempt, please supply a tax exemption certificate. All orders are subject to HydroPoint's standard sales terms and conditions (see reverse) and order acceptance policy.

By signing below, customer understands that this is a binding order and agrees to the terms and conditions attached.

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Customer

Date

Rev 8/22/2013

Terms and Conditions

SECTION 1 General.

In these Terms and Conditions (“Conditions”) “Client” means the person, company or other entity that orders or buys goods and services from HydroPoint Data Systems, Inc. (“HydroPoint”). HydroPoint sells, and Client receives, products ordered by Client subject to these Conditions. These Conditions, together with a Client purchase order or signed quotation accepted by HydroPoint identifying the quantity and requested delivery dates of Products that are consistent with these Conditions, constitute the entire contract between Client and HydroPoint, each such contract shall be deemed a “Contract”, and supersede all prior agreements and understandings between the parties, whether written or oral.

SECTION 2 Orders for Products and Services.

HydroPoint provides products (“Products”), professional installation services (“Professional Services”), and subscription services to its WeatherTRAK ET Everywhere™ Controllers (“Subscription Services”) and, together with professional Services, the “Services”) in accordance with the relevant Contract. Client shall order Products and Services by submitting to HydroPoint written purchase orders that set forth the price and configuration of the ordered Products (i.e., type and quantity of materials and devices, and term of Subscription Services, all in accordance with the Purchase Order or Signed Quotation (“Order”). Client shall work with HydroPoint sales personnel to mutually determine details prior to submitting Orders. HydroPoint may reject or request modification and resubmission of any Order prior to the installation date. ONLY ORDERS ACCEPTED BY HYDROPOINT SHALL BE BINDING UPON HYDROPOINT. ALL ORDERS SHALL BE BINDING UPON CLIENT, AND SHALL CEASE TO BE BINDING UPON CLIENT ONLY IF AND WHEN EXPRESSLY REJECTED BY HYDROPOINT. Any terms of an Order that conflict with, or in any way purport to amend, any of these Conditions or a Purchase order or Signed Quotation are hereby specifically objected to and will be of no effect except as expressly provided herein. HydroPoint’s failure to object to provisions contained in any Order or other form or document from Client shall not be construed as a waiver of these Conditions nor an acceptance of any such provision.

SECTION 3 HydroPoint Obligations

3.1 Performance of Services. HydroPoint may engage third parties to perform any or all portions of the Services, and shall be responsible for such third parties’ performance of such Services. HydroPoint shall use commercially reasonable efforts to minimize disturbance to Client’s ongoing business operations while performing Professional Services at Client properties, and the parties shall cooperate in good faith to schedule the performance of Professional Services to minimize disturbance to Client’s property operations.

3.2 Subscription Services. Upon activation of the Service and so long as Customer performs its obligations under this Agreement, HydroPoint shall provide Customer access to the Service during the Term; provided, however, that HydroPoint shall have no obligation to provide the Service in any particular geographical location and may discontinue the Service in any geographical location in its sole discretion.

3.3 Insurance. HydroPoint shall furnish and maintain insurance policies and coverages as follows: Worker’s Compensation Insurance insuring HydroPoint’s full liability under the worker’s compensation and occupational disease laws of the state where Professional Services performed, and Commercial General Liability Insurance with coverage on an “occurrence” basis with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 aggregate; in each case to insure HydroPoint for work performed under a Contract. Insurance for operations of all hired and non-owned vehicles with limits for each accident of not less than \$1,000,000 combined single limit with respect to bodily injury, death and property damage.

SECTION 4 Term for Subscription Services

Client’s subscription for the Subscription Service shall continue for the duration of the subscription period selected by the Client (e.g., one year, two years, or five years) (Initial Term”) and Client shall be obligated to pay the entire subscription fee for the Initial Term in accordance with SECTION 5.2. If no subscription period is selected by the Customer, the default Initial Term is one year. For purposes of determining the duration of the subscription period, the Initial Term shall begin on the day Customer activates the Service. The

subscription for the Service shall be automatically renewed for successive one-year periods (each a “Renewal Term”) at the end of the Initial Term unless either party provides at least thirty (30) days written notice of termination of the Service to the other party prior to the end of the Initial Term or the then-current Renewal Term. The Initial Term and all Renewal Terms are collectively referred to herein as the “Term.” This Conditions shall remain in full force and effect throughout the Term.

SECTION 5 Fees and Other Client Obligations.

5.1 Products and Professional Services. HydroPoint will invoice Products at time of shipment. Client must make any good faith claim for shipment shortfall or damage within 5 days of receipt of shipment, otherwise Client waives such dispute. HydroPoint will invoice Professional Services upon completion of the associated Product installation as verified in HydroPoint’s Controller Inspection Report (“Installation”).

5.2 Subscription Services. Unless the subscription fee for the initial Term is pre-paid, Customer shall pay HydroPoint the applicable subscription fee for the Initial Term within 30 days of receipt of an invoice from HydroPoint. Any good faith invoice disputes must be brought by Client within 30 days of receipt, otherwise Client waives such dispute.

5.3 General. Client shall pay HydroPoint within thirty (30) days of Client’s receipt of each invoice and shall send payment to the address identified in such invoice. All billing and payment will be in United States dollars only. All invoices are exclusive of all taxes, and Customer shall pay any taxes, whether federal, state or local, or municipal that may be imposed upon or with respect to the Service, exclusive of taxes on HydroPoint’s net income. Title and risk of loss of Products shall pass to Client upon HydroPoint’s delivery of Products to the commercial carrier, and HydroPoint shall retain a purchase security interest in each Product until receipt of final payment in full for such Product. Unless otherwise stated in the signed quotation, Client shall obtain and pay for all applicable state and local permits and other local approvals deemed necessary for installation. Any payments by HydroPoint related to an accepted Order are not included in the fees and will be billed to Client as a separate item. Client may make no offset for any amounts due regardless of the justification for such intended offset.

5.4 Remedies. Without prejudice to any of its remedies available hereunder or at law or equity, if any payment is not received by HydroPoint by the date it is due, then such unpaid amount shall bear interest, accruing on a daily basis, at the lesser of (i) 1.5% per month, or (ii) the highest rate permitted by law; and furthermore, HydroPoint may defer delivery of Products and/or suspend access to Subscription Services until all amounts are paid; and with respect to the Subscription Service, HydroPoint may declare the entire amount remaining unpaid for the balance of the then current Initial Term or Renewal Term, as applicable, at once due and payable, without notice or demand. The Client shall pay all reasonable costs of collection and expenses including, without limitation, attorneys’ fees, in the event of any default of these Conditions that requires legal action against Client by HydroPoint.

5.5 Client Obligations and Representations. Without limiting HydroPoint’s obligations in Section 8.1, Client shall, upon Installation, assume responsibility for all costs and expenses to maintain Products in good order, condition, and repair. Other than as disclosed in the Quotation or the applicable accepted Order, Client represents and warrants that there are no potentially hazardous substances, environmental contamination, or conditions in, on, or near the properties which HydroPoint will enter under an accepted Order that presents a potential danger to human health or the environment. Client shall promptly notify HydroPoint upon learning of the possibility of any such environmental condition. HydroPoint shall not be responsible for remedying any pre-existing hazardous materials, pre-existing hazardous conditions or pre-existing violations of laws or regulations affecting the site where Professional Services are performed, and Client shall indemnify and hold harmless HydroPoint from any liability or damage arising from such pre-existing hazardous materials, hazardous conditions, or violations of laws or regulations.^{3 of 7}

for operations or all hired and non-owned vehicles with limits for each accident of not less than \$1,000,000 combined single limit with respect to bodily injury, death and property damage.

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Section 4. Term for Subscription Services
Client's subscription for the Subscription Service shall continue for the duration of the subscription period selected by the Client (e.g., one year, two years, or five years) (Initial Term") and Client shall be obligated to pay the entire subscription fee for the Initial Term in accordance with SECTION 5.2. If no subscription period is selected by the Customer, the default Initial Term is one year. For purposes of determining the duration of the subscription period, the Initial Term shall begin on the day Customer activates the Service. The

Section 6 Termination.

6.1 Termination of Contract. Client may terminate a Contract if HydroPoint materially breaches any provision of the Contract upon fifteen (15) business days notice to HydroPoint, unless HydroPoint in such time cures such breach or commences to cure such breach and thereafter diligently pursues such cure. HydroPoint may terminate a Contract if Client fails to pay any amount hereunder when due and such failure continues for ten (10) days after notice from HydroPoint to Client. HydroPoint may terminate a Contract upon sixty (60) days notice to the other party.

6.2 Effect of Termination. Upon expiration or termination of a Contract, all unaccrued rights, duties and obligations of the parties under the Contract shall terminate, and HydroPoint shall remove any and all of its equipment (other than Products paid in full) from the Client's property. Client will pay HydroPoint for all outstanding invoices, including for Services rendered up to the date of termination and including the balance of the then-current term of the Subscription Service. All rights and remedies of HydroPoint hereunder are cumulative and may be exercised concurrently or separately. The indemnity set forth in the last sentence of SECTION 5.5, and SECTION 4, SECTION 5.4, SECTION 6.2, SECTION 7, SECTION 8, SECTION 9, SECTION 10, SECTION 11, SECTION 12 shall each survive expiration or termination of a Contract.

Section 7 Indemnification.

7.1 Indemnification by HydroPoint. Except as set forth in the last sentence of SECTION 5.5, and subject to the limitations in SECTION 9, HydroPoint shall defend, indemnify and hold harmless Client and its officers, directors, agents, and employees from and against any and all losses, suits and damages (including reasonable attorney's fees and legal expenses) to the extent arising out of third party claims for death or injury or property damage caused by (i) HydroPoint's performance of Professional Services to the extent not performed in accordance with or based upon Client's instructions or specifications, or (ii) HydroPoint's gross negligence, or willful, reckless or criminal misconduct; and except in each case to the extent any such loss, suit, or damage was caused by the negligence or misconduct of an indemnitee hereunder.

7.2 Process. Client shall notify HydroPoint immediately upon becoming aware of a claim or proceeding that is indemnifiable by HydroPoint hereunder, and shall immediately forward to HydroPoint every demand, notice, summons or other process received with respect to such claim or legal proceeding. Client shall have the right, at its option and expense, to participate in such defense. HydroPoint shall have the sole right to control the defense of an indemnifiable claim or proceeding. The failure of Client to give notice as provided herein shall relieve HydroPoint of its obligations under this Section to the extent that such failure prejudices HydroPoint or its insurer.

Section 8 Warranty and Disclaimer.

8.1 Express Warranties. HydroPoint warrants to Client that HydroPoint shall use commercially reasonable and diligent efforts to perform Professional Services in accordance with the relevant Contract, and shall perform Services in a good and workmanlike manner and in compliance with all applicable federal, state and local statutes and regulations ("Service Warranty"). HydroPoint warrants to Client that installed Products will perform in accordance with their respective manufacturing specifications as published in the relevant HydroPoint user manual for the following time periods: (a) for WT plus Series and LC Series – 3 years, and (b) for WT ET Pro Series – 5 years, and in each case from the date of Installation ("Product Warranty").

8.2 Client Remedy. Client may make a claim for breach of the Service Warranty within thirty (30) days from the date of the relevant Installation. If Client notifies HydroPoint during the applicable warranty period (*i.e.*, 3 or 5 years for Products (as applicable) or 30 days for Professional Services) that Products or Professional Services (as applicable) do not meet the Product Warranty or Service Warranty, respectively, then HydroPoint will use commercially reasonable efforts to repair or replace the nonconforming Product, or to re-perform the nonconforming Professional Services (as applicable), at its own cost. If HydroPoint determines it cannot repair or replace the Product, or cannot re-perform the Professional Services (as applicable), then HydroPoint shall refund amounts paid by the Client for the nonconforming Product or the nonconforming portion of the

Professional Services (as applicable). The foregoing repair/replacement/refund obligation is Client's sole and exclusive remedy, and HydroPoint's sole and exclusive liability for breach of any of the foregoing warranties. All Product returns must be authorized by HydroPoint. Returned Products must be properly packaged to avoid damage in shipment, and shipped to HydroPoint at Client's expense, and Client shall bear the risk of loss or damage in transit.

8.3 Exclusions from Warranties. HydroPoint shall not be responsible for defects or problems in Products or Professional Services to the extent such defects or problems are unrelated to the equipment installed by HydroPoint or to HydroPoint's installation, or to the extent such defects or problems are a result of tampering with equipment (including without limitation unplugging of equipment, abuse, misuse, accident, alteration, neglect, unauthorized repair, relocation of the equipment, or resident interference). Without limiting the foregoing, the following are excluded from HydroPoint warranties: failures due to lightning strikes, misuse, electrical power line surge damage, infestation of pests, improper installation by user, improper power supply attachment, short circuiting of valve wire outputs, water damage and physical abuse. Notwithstanding anything to the contrary herein, HydroPoint makes no warranty with respect to qualification under State Licensing Provisions (defined in SECTION 11).

8.4 DISCLAIMERS. SUBSCRIPTION SERVICES ARE PROVIDED WITHOUT WARRANTY AND MADE AVAILABLE "AS IS", AND HYDROPOINT DOES NOT WARRANT THAT SUBSCRIPTION SERVICES WILL PERFORM IN COMBINATION WITH THIRD PARTY PRODUCTS, BE ERROR-FREE, OR BE PROVIDED OR BE AVAILABLE WITHOUT INTERRUPTION. OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 8.4, HYDROPOINT MAKES NO WARRANTIES, EXPRESS, STATUTORY, IMPLIED OR OTHERWISE WITH RESPECT TO ANY PRODUCTS OR SERVICES MADE AVAILABLE OR PROVIDED UNDER A CONTRACT, AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT, OR SYSTEM INTEGRATION.

Section 9 Exclusion of Damages and Limitation of Liability.

HYDROPOINT SHALL HAVE NO LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO A CONTRACT, INCLUDING WITHOUT LIMITATION WITH RESPECT TO ANY DEFECTS IN PRODUCTS OR SERVICES OR FROM THE PERFORMANCE OF ANY SYSTEMS INSTALLED OR MADE AVAILABLE BY OR FOR HYDROPOINT, (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, DAMAGE TO PLANTS OR FOLIAGE, DAMAGE TO BUILDINGS OR PROPERTY OR THE LIKE OR FOR LOSS OF THE TRANSMISSION OF INFORMATION OR DATA) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY), EVEN IF HYDROPOINT HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL HYDROPOINT'S TOTAL, AGGREGATE LIABILITY TO CLIENT UNDER ANY CONTRACT EXCEED ONE HALF OF AMOUNTS PAID BY CLIENT FOR PRODUCTS INSTALLED AND SERVICES PROVIDED BY HYDROPOINT FOR THE INDIVIDUAL PROPERTY UNDER WHICH THE LIABILITY AROSE.

Section 10 Ownership and Rights.

Effective and contingent upon HydroPoint's receipt of full and final payment for each Product, Client shall own and have title to such Product. Effective upon HydroPoint's receipt of payment for Subscription Services, HydroPoint hereby grants to Client a nontransferable, nonsublicensable and nonexclusive right to use and access the Subscription Services solely for Client's internal business purposes in connection with its use of Products. As between the parties, all aspects of the Subscription Services are and will remain exclusive property of HydroPoint, and HydroPoint will retain ownership of all copyrights, patents, trademarks, trade secrets, and other intellectual property rights relating to or residing in the Subscription Services, and any updates or improvements

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access the Subscription Services solely for Client's internal business purposes in connection with its use of Products. As between the parties, all aspects of the Subscription Services are and will remain the exclusive property of HydroPoint, and HydroPoint will retain ownership of all copyrights, patents, trademarks, trade secrets, and other intellectual property rights relating to or residing in the Subscription Services, and any updates or improvements

thereto (including without limitation any suggestions, ideas, improvements, modifications or enhancements made by Client). All designs, data, drawings, software, or other technical information supplied by HydroPoint to Client under a Contract shall remain HydroPoint's sole property. Client shall not by virtue of a Contract or either party's performance thereof obtain any intellectual property or other ownership rights in the Services or in any methods or processes used or developed by or for HydroPoint in or for the provision of Services or Products, or in any documentation, records, raw data, materials (other than Client materials), concepts, information, inventions, improvements, designs, programs, formulas, know-how, or writings related thereto. All rights not expressly granted to Client are reserved to HydroPoint.

Section 11 Limitation of Authority; Not a Licensed Contractor.

Notwithstanding any provision of a Contract to the contrary, HydroPoint shall not, without prior approval by Client: (a) convey or otherwise transfer or pledge or encumber any property or other asset of Client; (b) retain attorneys on behalf of Client (except in accordance with its indemnification obligation under SECTION 7); (c) institute lawsuits or other legal proceedings on behalf of Client; (d) enter into any dealings concerning the Client's property or with tenants of space in the property for HydroPoint's own account; (e) pledge the credit of Client; (f) borrow money or execute any promissory note or other obligation or mortgage, security agreement or other encumbrance in the name of or on behalf of Client; or (g) execute any contracts for construction, remodeling, rehabilitation, landscaping or other work to be done on property other than as needed to perform the Services. Client acknowledges that HydroPoint is performing Services as an independent contractor, and that HydroPoint is a manufacturer of irrigation control systems and not a licensed contractor. Client acknowledges that HydroPoint will work with a third party installer (who, if required by applicable law, shall be licensed) to perform any installation services described in a Contract. Client acknowledges that HydroPoint is not a licensed contractor under California law or regulations or under the law or regulations of the State in which it will perform Professional Services (each are "State Licensing Provisions"). Client hereby waives any claim, and shall not raise any defense to enforcement of a Contract, on grounds that (i) HydroPoint is a contractor within the meaning of any State Licensing Provisions, or (ii) a license is required under any State Licensing Provisions.

Section 12 Miscellaneous.

12.1 Sale of Property. If Client sells an individual property identified in a Contract to a third party, Client may assign the affected Contract to the new property owner only in respect of such individual property, and only if the new owner agrees with HydroPoint in writing to be bound by such Contract insofar as it applies to such property. Such assignment shall not relieve Client of obligations or liabilities occurring and/or accruing under such Contract prior to the date of assignment, and Client shall continue to be bound by such Contract for all properties other than the sold property.

12.2 Restrictions on Exclusions. Some jurisdictions may limit the exclusion or limitation or disclaimer of warranties or incidental or consequential damages, so that the exclusions or limitations or disclaimers in these Conditions may not apply to Client. In such jurisdictions, HydroPoint's liability (and the liability of its affiliates and agents) shall be limited to the greatest extent permitted by applicable law.

12.3 Force Majeure. HydroPoint shall not be responsible for failure or delay in performance of its obligations hereunder due to causes beyond its reasonable control, including but not limited to, Client's or its employee's or agent's actions or omissions, acts of God, fire, flood, water shortage or drought, riots, material shortages, strikes, governmental acts, disasters, earthquakes, inability to obtain labor or materials through its regular sources, interruption of or delay in transportation, unavailability of interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power.

12.4 Other Terms. These Conditions may only be amended or modified in writing, as signed by both HydroPoint and Client. Each Contract shall be governed by the laws of the state of California without reference to conflict of law principles. The federal and state courts within the State of California will have exclusive jurisdiction to

adjudicate any dispute arising out of Contracts and the parties hereby irrevocably consent to the exclusive jurisdiction and proper venue of, the state and federal courts located in San Francisco County, California, U.S.A., and waive any objections thereto based on any ground including improper venue or forum non-conveniens. If any part of a Contract is found to be invalid or unenforceable, then that part shall not affect the validity or enforceability of the remainder of such Contract. The waiver or failure by either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder. A Contract may not be assigned by either party except as allowed in Section 12.1 and provided, however, that each party may assign a Contract (a) without the consent of the other party, to an affiliate or in connection with the transfer or sale of all or substantially all of its assets or business, or in the event of its merger or consolidation or change in control or similar transaction; and (b) in any other circumstance upon the prior written consent of the other party, such consent not to be unreasonably withheld. Each Contract shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The section headings set forth in these Conditions are for the convenience of the parties, and in no way define, limit, or describe the scope or intent of these Conditions. Such headings are to be given no legal effect. Notices hereunder shall be in writing and sent by overnight commercial courier or deposited in the US mail, certified or registered and postage prepaid and addressed to the party as set forth in the Quotation, and shall be deemed delivered when received. Notices to HydroPoint shall be sent to the Attention of its Chief Executive Officer.

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