

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** The Honorable City Council

**FROM:** Jeremy Laurentowski,  
Landscape/Parks Maintenance Superintendent 34

**DATE:** May 10, 2011 (CC Meeting of May 18, 2011)

**SUBJECT:** Consider Replacement of Forty-four (44) Existing Irrigation Controllers with WeatherTRAK ET Pro2 Irrigation Controllers; Award of Sole Source Product and Installation Contract to HydroPoint Data Systems, Inc.; and Resolution Amending the Fiscal Year 2010/11 Budget

**BACKGROUND**

The City of Moorpark has been faced with stringent water-use requirements and increasing water rates. In 2009, the Department of Water Resources (DWR) initiated its 20x2020 statewide Water Conservation Plan in response to the State of California Assembly Bill 32 (AB32), which mandates a 20% reduction in irrigation water use by the year 2020. Per City Council directive and a mandate by the Metropolitan Water District of Southern California (MWD), the City of Moorpark has been required to immediately reduce water use by 15% citywide. In addition, water rates continue to rise and according to MWD, water rates will increase 6% annually over the next ten years. In response, it is likely that the Ventura County Water District (VCWD) will transfer these rate increases directly to its end users. In February, 2010 the VCWD Board increased water rates by 16% and a 12% rate increase and tier allocation adjustment was recently approved by the Board in April, 2011. It is clear that accelerated water conservation measures are necessary to curtail the direct fiscal impact on the City's operating budget, to comply with current State regulations and to protect this resource.

In July, 2010, staff initiated a 120-day pilot program with three major irrigation system manufacturers: Calsense, the Rain Bird Corporation (Maxicom) and HydroPoint Data Systems, Inc. (WeatherTRAK). The purpose of the pilot program was to determine which irrigation water management system would manage the City's water the most efficiently. Staff determined that the HydroPoint Data Systems, Inc. water management system and WeatherTRAK field controllers performed the best during the pilot program. The WeatherTRAK field controllers received daily weather messages with local evapotranspiration (ET<sub>o</sub>) data from HydroPoint's climate center. This weather data was used in an algorithm programmed into the system software to create daily irrigation schedules for each landscape zone and automatically set and

adjusted irrigation schedules without any staff interaction. The Hydropoint system was able to determine the amount of water to apply to each individual hydrozone based solely on environmental factors, such as plant and soil types, percentage of grade and root watering depth, virtually eliminating irrigation runoff. The other systems tested utilized traditional manual scheduling practices and were not capable of providing this function. Staff determined that HydroPoint Data Systems, Inc. is a sole source for this product.

On April 20, 2011, the City Council approved staff's recommendation to replace sixty-eight (68) existing irrigation controllers with WeatherTRAK ET Pro2 controllers in two phases over a two year period at selected Landscape Maintenance Districts (LMD's) and City Parks. The locations and controllers selected for replacement were based primarily on potential water savings and the ability to recover the initial installation and purchase costs within a reasonable time period. Staff determined that fifty-one (51) irrigation controllers in phase I and seventeen (17) irrigation controllers in phase II would benefit from the WeatherTRAK technology and recover the City's initial investment in less than 8 years based on a 15% reduction in irrigation water use. In addition, the City Council authorized staff to solicit a sole source product and installation contract with HydroPoint Data Systems, Inc. for the replacement of fifty-one (51) existing irrigation controllers with WeatherTRAK ET Pro2 Irrigation Controllers. A summary follows:

Phase I: (FY 2010/11) includes a total of fifty-one (51) controllers at several LMD Zones: 2, 5, 10, 12, 15 and 22; and two (2) City parks: Mammoth Highlands Park and Peach Hill Park. The total cost for Phase I follows:

Hardware and installation, subscription fees, 10% contingency:	\$449,038
<u>Additional staff/consultant or over time (approx. 8 hours/week ):</u>	<u>\$18,003</u>
Total Phase I:	\$467,041

Phase II: (FY 2011/12) includes a total of seventeen (17) controllers at several City parks: Glenwood Park, Tierra Rejada Park, Country Wood Park, Virginia Colony Park, Campus Park, Poindexter Park, Mountain Meadows Park, Miller Park, Campus Canyon Park and College View Park. The total cost for Phase II follows:

Hardware and installation, subscription fees, 10% contingency:	\$182,403
<u>Additional staff/consultant or over time (approx. 2 hours/week ):</u>	<u>\$6,001</u>
Total Phase II	\$188,404

**Total Phase I and Phase II** **\$649,440**

## **DISCUSSION**

Prior to the preparation of bid documents, staff assisted HydroPoint Systems, Inc. with a detailed site and equipment survey of the irrigation equipment that needed to be replaced at each of the fifty-one sites in Phase I. During this investigation, staff discovered that the as-built irrigation plans for Zone 15 (Championship Drive) that

were utilized to determine the initial cost summary were inaccurate. These plans identified the installation of master valves and flow meters at each of the seven (7) controller locations. However, staff was only able to field verify one location where the equipment was installed in its entirety, and two locations where only a master valve was installed. These devices are necessary to shut down the irrigation system when the flow meter senses a high flow reading, such as a mainline break, stuck valve or broken irrigation head. In addition, staff did not anticipate having to replace the controller enclosures within Zone 15 at this time, as this system was installed within the last five years. However, the existing enclosures are all severely rusted and it is staff's opinion that they should be replaced to protect the new irrigation controllers from the weather. In addition, all seven controllers in Zone 15 rely on solar power and need a moist free environment to house the electrical components and battery power source.

Staff also determined that several existing controllers initially proposed for replacement had limited water savings potential due to the type of the vegetation they irrigated and the overall size of the landscape areas. It is staff's opinion that one (1) controller in Zone 22 (Moorpark Highlands) and four (4) controllers located in Zone 12 (Spring and Miller) should not be replaced at this time due to the fact that the cost recovery would exceed fifteen years.

HydroPoint Systems, Inc. solicited bid proposals to perform the work and the following three cost proposals were received (see Attachment 3 – WeatherTRAK Professional Services RFP):

<u>Contractor</u>	<u>Bid Price</u>
• Gothic Landscape	\$178,850.00
• Valley Crest Landscape	\$79,534.00
• Metro Landscape	No bid was submitted

The lowest qualified bidder is Valley Crest Landscape. HydroPoint Systems, Inc. shall place an agreed upon markup (20%) for construction management services. They shall be responsible for overseeing all phases of construction, including contractor management and installation verification and that the installation contractors are licensed (C-27) by the State of CA to perform the work, and that they are paid prevailing wage rates. A summary of costs per area follows:

<b>COST SUMMARY - PHASE I (FY 10/11)</b>					
Location	Budget	Bid	Subscription Fees	Total Cost Phase I	Difference
MAMMOTH HIGHLANDS PARK	\$15,807	\$10,421	\$450	\$10,871	\$5,386
PEACH HILL PARK	\$18,083	\$12,241	\$450	\$12,691	\$5,842
<b>Sub-Total Phase I Parks</b>	<b>\$33,890</b>	<b>\$22,662</b>	<b>\$900</b>	<b>\$23,562</b>	<b>\$11,228</b>
Z-10: TIERRA REJADA	\$59,207	\$50,150	\$1,350	\$51,500	\$9,057
Z-5: TIERRA REJADA	\$20,842	\$15,241	\$450	\$15,691	\$5,601
Z-2: TIERRA REJADA	\$59,673	\$35,318	\$900	\$36,218	\$24,355
Z-12: SPRING & MILLER	\$60,889	\$35,656	\$1,350	\$37,006	\$25,233
Z-15: CHAMPIONSHIP DRIVE	\$38,046	\$59,285	\$1,575	\$60,860	-\$21,239
Z-22. MPK HIGHLANDS	\$125,237	\$87,080	\$3,375	\$90,455	\$38,157
<b>Sub-Total Phase I LMD</b>	<b>\$363,894</b>	<b>\$282,730</b>	<b>\$9,000</b>	<b>\$291,730</b>	<b>\$81,164</b>
<b>TOTAL PHASE I:</b>	<b>\$397,784</b>	<b>\$305,392</b>	<b>\$9,900</b>	<b>\$315,292</b>	<b>\$92,392</b>

The total cost for Phase I is \$315,292, \$92,392 less than budgeted. However, as discussed previously, additional irrigation equipment will be required in Zone 15 that was not anticipated. The additional cost to complete Zone 15 is \$21,239.

### **FISCAL IMPACT**

Staff did not anticipate obtaining rebates from the Metropolitan Water District, Save-A-Buck rebate program when this project was presented to City Council on April 20, 2011. The rebate program is based on the actual installation of the equipment and the original deadline was scheduled for the end of April. However, staff was recently informed that the Save-A-Buck rebate program will be extended until July 15, 2011. The MWD program distributes cash rebates for selected water saving irrigation equipment. HydroPoint Systems, Inc., specifically WeatherTRAK ET Pro2 controllers qualify for this program. Staff has reserved the qualifying rebates and anticipates the following returns:

<b>MWD SAVE-A-BUCK REBATE PROGRAM</b>			
Location	Cost	Rebate	Cost with Rebate
MAMMOTH HIGHLANDS PARK	\$10,871	-\$1,450	\$9,421
PEACH HILL PARK	\$12,691	-\$1,600	\$11,091
<b>Sub-Total Phase I Parks</b>	<b>\$23,562</b>	<b>-\$3,050</b>	<b>\$20,512</b>
Z-10: TIERRA REJADA	\$51,500	-\$1,725	\$49,775
Z-5: TIERRA REJADA	\$15,691	-\$875	\$14,816
Z-2: TIERRA REJADA	\$36,218	-\$2,175	\$34,043
Z-12: SPRING & MILLER	\$37,006	-\$3,150	\$33,856
Z-15: CHAMPIONSHIP DRIVE	\$60,860	-\$4,200	\$56,660
Z-22. MPK HIGHLANDS	\$90,455	-\$11,650	\$78,805
<b>Sub-Total Phase I LMD</b>	<b>\$291,730</b>	<b>-\$23,775</b>	<b>\$267,955</b>
<b>TOTAL PHASE I:</b>	<b>\$315,292</b>	<b>-\$26,825</b>	<b>\$288,467</b>

As previously discussed, the installation and equipment bid for Zone 15 was higher than anticipated due to inaccurate inventory information of the existing irrigation equipment. Staff is requesting an aggregate budget increase of \$21,239 from the Assessment District 15: 01-2 Toll Bros T4928 Fund (2315) to complete Phase I. This budget increase will not impact the General Fund.

**STAFF RECOMMENDATION (ROLL CALL VOTE)**

1. Approve the replacement of forty-four (44) existing irrigation controllers with WeatherTRAK ET Pro2 controllers at various City parks and Landscape Maintenance Districts; and
2. Award a Sole Source Product and Installation contract (Municipal Code Section 3.04.120) to HydroPoint Data Systems, Inc. and authorize City Manager to execute a contract at a cost of \$315,292 with approval for a contingency not to exceed \$31,529, subject to final language approval by the City Manager and City Attorney; and
3. Adopt Resolution No. 2011- \_\_\_\_.

**Attachments:**

1. Resolution No. 2011 - \_\_\_\_.
2. Agreement with HydroPoint Data Systems, Inc.
3. WeatherTRAK Professional Services RFP (Valley Crest Bid)

RESOLUTION NO. 2011-\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING THE FISCAL YEAR 2010/11 BUDGET TO ALLOCATE \$21,239 FROM THE ASSESSMENT DISTRICT 15: 01-2 TOLL BROS T4928 FUND (2315) FOR THE REPLACEMENT OF SEVEN (7) IRRIGATION CONTROLLERS

WHEREAS, on June 16, 2010, the City Council adopted the Operating and Capital Improvement Budget for Fiscal Year 2010/11;

WHEREAS, on February 27, 2009 Governor Arnold Schwarzenegger issued an Executive Order requesting all urban users to increase conservation efforts and reduce water consumption by 20%. This requirement parallels the Department of Water Resources and State of California Assembly Bill 32 (AB32), which mandates Green House Gas (GHG) and Water Use Reductions by 2020; and

WHEREAS, on April 20, 2011 a staff report was presented to said Council recommending the need to replace fifty-one (51) existing irrigation controllers in several City parks and Landscape Maintenance Districts with WeatherTRAK ET Pro2 controllers in the amount of \$467,041; and

WHEREAS, on the same staff report an aggregate budget increase of \$334,772 from various Landscape Maintenance District funds and \$132,269 from the General Fund (1000) reserve were approved to complete the purchase and installation of all irrigation controllers in various locations; and

WHEREAS, a staff report has been presented to said Council recommending the need to install various irrigation equipment at seven (7) controller locations in the Landscape Maintenance District Zone 15 - Toll Brothers Track 4928; and

WHEREAS, a budget increase of \$21,239 from the Assessment District 15: 01-2 Toll Bros T4928 Fund (2315) is required to complete the installation of seven (7) irrigation controllers identified in the staff report; and

WHEREAS, Exhibit "A" hereof describes said budget amendment and its resultant impact to the budget line item.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. A budget amendment allocating \$21,239 from the Assessment District 15: 01-2 Toll Bros T4928 Fund (2315) for the purchase and installation of seven (7) irrigation controllers in Landscape Maintenance District Zone 15 as more particularly described in Exhibit "A" attached hereto is hereby approved.

Honorable City Council  
May 18, 2011  
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SECTION 2. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 18<sup>th</sup> day of May, 2011.

\_\_\_\_\_  
Janice S. Parvin, Mayor

ATTEST:

\_\_\_\_\_  
Maureen Benson, City Clerk

Attachment: Exhibit A – Budget Amendment

**EXHIBIT A**

**BUDGET AMENDMENT FOR  
ASSESSMENT DISTRICT 15: 01-2 TOLL BROS T4928 FUND (2315)  
FOR THE PURCHASE AND INSTALLATION OF IRRIGATION CONTROLLERS  
FY2010/11**

**FUND ALLOCATION FROM:**

<b>FUND</b>	<b>ACCOUNT</b>	<b>AMOUNT</b>
AD01-2 TOLL BROS T4928	2315-5500	\$ 21,239.00
	<b>TOTAL</b>	<b>\$ 21,239.00</b>

**DISTRIBUTION OF APPROPRIATION TO EXPENSE ACCOUNTS:**

<b>Budget Unit/Account Number</b>	<b>Current Budget</b>	<b>Revision</b>	<b>Adjusted Budget</b>
2315-7900-7905-9504	\$ 45,897.00	\$ 21,239.00	\$ 67,136.00
<b>Sub-Total</b>	<b>\$ 45,897.00</b>	<b>\$ 21,239.00</b>	<b>\$ 67,136.00</b>

Finance approval: \_\_\_\_\_



**AGREEMENT BETWEEN THE CITY OF MOORPARK AND  
HYDROPOINT DATA SYSTEMS, INC., FOR LANDSCAPE CONSTRUCTION SERVICES  
AT VARIOUS MOORPARK PARKS AND LANDSCAPE MAINTENANCE DISTRICTS**

**THIS AGREEMENT**, is made and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011, between the City of Moorpark, a municipal corporation ("City") and HydroPoint Data Systems, Inc., a corporation ("Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**WHEREAS**, City has the need for landscape construction services related to the installation of forty-four (44) WeatherTRAK ET Pro2 controllers at various Moorpark parks and landscape maintenance districts; and

**WHEREAS**, Contractor specializes in providing such services and has the proper work experience, certifications and background to carry out the duties involved.

**NOW, THEREFORE**, in consideration of the mutual covenants, benefits and premises herein stated, the parties hereto agree as follows:

1. TERM

The term of the Agreement shall be from the date of execution to completion of the work identified in the Scope of Services and in conformance with Exhibit B, unless this Agreement is terminated or suspended as referred to herein.

2. SCOPE OF SERVICES

City does hereby retain Contractor in a contractual capacity to provide landscape construction services, specifically as it pertains to the installation of forty-four (44) WeatherTRAK ET Pro2 irrigation controllers at various Moorpark parks and landscape maintenance districts, as set forth in Exhibit B: Contractor's Bid Proposal, which exhibit is attached hereto and incorporated herein by this reference as though set forth in full. Where said Scope of Services is modified by this Agreement, or in the event there is a conflict between the provisions of said Scope of Services and this Agreement, the language contained in this Agreement shall take precedence.

Contractor shall perform the tasks described and set forth in Exhibit B. Contractor shall complete the tasks according to the schedule of performance which is also set forth in Exhibit B.

Compensation for the services to be performed by Contractor shall be in accordance with Exhibit B. Compensation shall not exceed the rates or total contract value, Three Hundred Fifteen Thousand Two Hundred Ninety-One dollars

(\$315,291.00), without the written authorization of the City Manager. Payment by City to Contractor shall be as referred to Section 5 herein.

### 3. PERFORMANCE

Contractor shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement.

### 4. MANAGEMENT

The individual directly responsible for Contractor's overall performance of the Agreement provisions herein above set forth and to serve as principal liaison between City and Contractor shall be Ben Slick and no other individual may be substituted without the prior written approval of the City Manager.

The City's contact person in charge of administration of this Agreement, and to serve as principal liaison between Contractor and City, shall be the City Manager or the City Manager's designee.

### 5. PAYMENT

The City agrees to pay Contractor monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, based upon actual time spent on the above tasks. This amount shall not exceed Three Hundred Fifteen Thousand Two Hundred Ninety-One dollars (\$315,291.00), for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Contractor at the time City's written authorization is given to Contractor for the performance of said services. The City Manager, if authorized by City Council, may approve additional work not to exceed ten percent (10%) of the amount of the Agreement.

Contractor shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Contractor's fees it shall give written notice to Contractor within thirty (30) days of receipt of any disputed fees set forth on the invoice. Consultant shall provide appropriate documentation, as determined by the City, for all reimbursable expenses.

6. TERMINATION OR SUSPENSION WITHOUT CAUSE

The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

The Contractor may terminate this Agreement only by providing City with written notice no less than thirty (30) days in advance of such termination. In the event of such termination, Contractor shall be compensated for such services up to the date of termination. Such compensation for work in progress shall be prorated as to the percentage of progress completed at the date of termination.

In the event this Agreement is terminated or suspended pursuant to this Section, the City shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Contractor shall submit an invoice to the City as referred to herein.

7. DEFAULT OF CONTRACTOR

The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

If the City Manager or the City Manager's designee determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Contractor a written notice of the default. The Contractor shall have five (5) working days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. LIQUIDATED DAMAGES

If the Contractor fails to complete the work, or any portion thereof, within the time period required by this Agreement or as duly extended in writing by the City Manager, he/she shall forfeit and pay to the City of Moorpark, as liquidated damages, the sum of Twenty-Five dollars (\$25.00) per day for each calendar day the work, or portion thereof,

remains uncompleted after the above specified completion date. Liquidated damages shall be deducted from any payments due or to become due to the Contractor under the terms of this contract [Government Code Sec. 53069.85]. Progress payments made by the City after the above specified completion date shall not constitute a waiver of liquidated damages by the City.

#### 9. OWNERSHIP OF DOCUMENTS

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Notification of audit shall be provided at least thirty (30) days before any such audit is conducted. Such records, together with supporting documents, shall be maintained for a period of ten (10) years after receipt of final payment.

Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Contractor. With respect to computer files, Contractor shall make available to the City, at the Contractor's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

#### 10. INDEMNIFICATION AND HOLD HARMLESS

Contractor hereby assumes liability for and agrees to defend (at Indemnites' option), indemnify, protect and hold harmless City and its project contractors, and engineers, officers, agents, and employees ("Indemnites") from and against any and all claims, charges, damages, demands, actions, proceedings, losses, stop notices, costs, expenses (including attorneys' fees), judgments, civil fines and penalties, liabilities of any kind or nature whatsoever, which may be sustained or suffered by or secured against the Indemnites arising out of or encountered in connection with this Agreement or the performance of the work including, but not limited to, death of or bodily injury to persons or damage to property, including property owned by or under the care and custody of City, and for civil fines and penalties, that may arise from or be caused, in whole or in part, by any negligent or other act or omission of Contractor, its officers, agents, employees or subcontractors including but not limited to, liability arising from:

a) Any dangerous, hazardous, unsafe or defective condition of, in or on the premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by Contractor, its officers, agents, employees, or subcontractor;

b) Any operation conducted upon or any use or occupation of the premises by Contractor, its officers, agents, employees, or subcontractors under or pursuant to the provisions of this Agreement or otherwise;

c) Any act, omission or negligence of Contractor, its officers, agents, employees, or subcontractors;

d) Any failure of Contractor, its officers, agents, or employees to comply with any of the terms or conditions of this Agreement or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation; and

e) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in Sub-sections a, b, c, and d, existing or conducted upon or arising from the use or occupation by Contractor on any other premises in the care, custody and control of City.

Contractor's obligations under this Section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this Section.

Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or Section.

This Indemnity shall survive termination of the Agreement or Final Payment hereunder. This Indemnity is in addition to any other rights or remedies that the

Indemnitees may have under the law or under any other Contract Documents or Agreements. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may, in its sole discretion, reserve, retain, or apply any monies to the Contractor under this Agreement for the purpose of resolving such claims; provided, however, City may release such funds if the Contractor provides City with reasonable assurance of protection of the Indemnitees' interests. City shall, in its sole discretion, determine whether such assurances are reasonable.

#### 11. INSURANCE

Contractor shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit A attached hereto and incorporated herein by this reference as though set forth in full.

#### 12. INDEPENDENT CONTRACTOR

Contractor is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

#### 13. LEGAL RESPONSIBILITIES

The Contractor shall keep itself informed of local, state and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this Section.

#### 14. ANTI DISCRIMINATION

Neither the Contractor, nor any subcontractor under the Contractor, shall discriminate in employment of persons upon the work because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or gender of such person, except as provided in Section 12940 of the Government Code.

The Contractor shall have responsibility for compliance with this Section [Labor Code Sec. 1735].

15. UNDUE INFLUENCE

Contractor declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City will receive compensation, directly or indirectly from Contractor, or any officer, employee or agent of Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

16. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of the City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

17. CONFLICT OF INTEREST

Contractor covenants that neither they nor any officer or principal of their firm have any interests, nor shall they acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Contractor further covenants that in the performance of this Agreement, they shall employ no person having such interest as an officer, employee, agent, or subcontractor. Contractor further covenants that Contractor has not contracted with nor is performing any services directly or indirectly, with the developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, now or within the past one (1) year, and further covenants and agrees that Contractor and/or its subcontractors shall provide no service or enter into any contract with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, while under contract with the City and for a one-year time period following termination of this Agreement.

18. NOTICE

Any notice to be given pursuant to this Agreement shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

To: City Manager  
City of Moorpark  
799 Moorpark Avenue  
Moorpark, California 93021

To: Robert Torre  
HydroPoint Data Systems, Inc.  
1720 Corporate Circle  
Petaluma, CA 94954

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

19. CHANGE IN NAME

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City in order that proper steps may be taken to have the change reflected in the Contract Documents.

20. ASSIGNMENT

Contractor shall not assign this Agreement or any of the rights, duties or obligations hereunder. It is understood and acknowledged by the parties that Contractor is uniquely qualified to perform the services provided for in this Agreement.

21. LICENSES

At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services in this Agreement.

22. VENUE AND GOVERNING LAW

This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

23. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous

agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

24. CAPTIONS OR HEADINGS

The captions and headings of the various Articles, Paragraphs, Sections, and Exhibits of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective Articles, Paragraphs, Sections, and Exhibits hereof.

25. AMENDMENTS

Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the City Manager.

26. TIME OF COMPLETION

City and Contractor agree that time is of the essence in this Agreement. City and Contractor further agree that Contractor's failure to perform on or at the times set forth in this Agreement will damage and injure City, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, City and Contractor agree that any failure to perform by Contractor at or within the times set forth herein shall result in liquidated damages as defined in Section 8 for each and every day such performance is late. City and Contractor agree that such sum is reasonable and fair. Furthermore, City and Contractor agree that this Agreement is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

27. PRECEDENCE

Contractor is bound by the contents of Exhibit B. In the event of conflict, the requirements of the Agreement shall take precedence over those contained in Exhibit B.

28. INTERPRETATION OF AGREEMENT

Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

29. WAIVER

No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such

waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

30. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the Contractor warrants and represents that he/she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MOORPARK

HYDROPOINT DATA SYSTEMS, INC.

By: \_\_\_\_\_  
Steven Kueny, City Manager

By: \_\_\_\_\_  
Robert Torre, Senior Vice President

Attest:

\_\_\_\_\_  
Maureen Benson, City Clerk

## EXHIBIT A

### Insurance

Prior to the beginning of and throughout the duration of the Work, Contractor will maintain insurance in conformance with the requirements set forth below. Contractor will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to the City.

Contractor shall provide the following types and amounts of insurance:

1. Commercial General Liability

Commercial General Liability Insurance shall be provided by an Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits shall be no less than one million dollars (\$1,000,000) per occurrence for all covered losses and no less than two million dollars (\$2,000,000) general aggregate.

Contractor's policy shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any of the following:

- a. Explosion, collapse or underground hazard (XCU)
- b. Products and completed operations
- c. Pollution liability
- d. Contractual liability

Coverage shall be applicable to City for injury to employees of contractors, subcontractors, or others involved in the project. Policy shall be endorsed to provide a separate limit applicable to this project.

2. Workers' Compensation

Workers' Compensation insurance shall be provided on a state-approved policy form providing statutory benefits as required by law with employers' liability limits no less than \$1,000,000 per accident for all covered losses.

3. Business Auto Coverage

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or the exact equivalent shall be provided. Limits shall be no less than \$1,000,000 per accident, combined single limit. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees will use personal autos in any way on this project, Contract shall provide evidence of personal auto liability coverage for each such person.

4. Excess or Umbrella Liability

Excess or Umbrella Liability insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of contractor, subcontractors, or others involved in the Work. The scope of coverage provided is subject to the approval of city following receipt of proof of insurance as required herein. Limits are subject to review.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with A.M. Best rating of A- or better and a minimum financial size of VII.

Contractor and City agrees as follows:

1. Contractor agrees to endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees, agents, using standard ISO endorsement No. CG 2010 with an edition date of 1985. Contractor also agrees to require all contractors, subcontractors, and any one else involved in any way with the project contemplated by this Agreement to do likewise.
2. Any waiver of subrogation express or implied on the part of the City to any party involved in this Agreement or related documents applies only to the extent of insurance proceeds actually paid. City, having required that it be named as an additional insured to all insurance coverage required herein, expressly retains the right to subrogate against any party for sums not paid by insurance. For its part, Contractor agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors, or others involved in any way with the project contemplated by this Agreement to do likewise.

3. All insurance coverage maintained or procured by Contractor or required of others by Contractor pursuant to this Agreement shall be endorsed to delete the subrogation condition as to the city, or to specifically allow Contractor or others providing insurance herein to waive subrogation prior to a loss. This endorsement shall be obtained regardless of existing policy wording that may appear to allow such waivers.
4. It is agreed by Contractor and City that insurance provided pursuant to these requirements is not intended by any party to be limited to providing coverage for the vicarious liability of City, or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this or any other Agreement (express or implied) in any way relating to City is intended to apply to the full extent of the policies involved. Nothing referred to here or contained in any agreement involving City in relation to the project contemplated by this Agreement is intended to be construed to limit the application of insurance coverage in any way.
5. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discover period) that may affect City's protection without City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of binders of coverage, or endorsements, or certificates of insurance, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of insurance is not delivered as required, or in the event such insurance is canceled or reduced at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other Agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Contractor or deducted from sums due Contractor, at City option.
8. Contractor agrees to endorse, and to required others to endorse, the insurance provided pursuant to these requirements, to require 30 days notice to City and the appropriate tender prior to cancellation or reduction of such liability coverage and notice of any material alteration or non-renewal of any such coverage, and to require contractors, subcontractors, and any other party in any way involved with the project contemplated by this Agreement to do likewise.
9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Contractor or any subcontractor, and any other party involved with the project who is brought onto or involved in the project by

Contractor, is intended to apply first and on a primary non-contributing basis in relation to any other insurance or self insurance available to the City.

10. Contractor agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request, all agreements with subcontractors and others engaged in this project will be submitted to City for review.
11. Contractor agrees that all layers of third party liability coverage required herein, primary, umbrella and excess, will have the same starting and expiration date. Contractor agrees further that all other third party coverages required herein will likewise have concurrent starting and ending dates.
12. Contractor agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, architect, engineer, or other entity or person in any way involved in the performance of Work on the project contemplated by this Agreement to self-insure its obligations to City. If Contractor's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Contractor, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
13. The City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Contractor 90 days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate additional compensation proportional to the increased benefit to City.
14. For purposes of applying insurance coverage only, all contracts pertaining to the project will be deemed to be executed when finalized and any activity commences in furtherance of performance under this Agreement.
15. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
16. Contractor will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. The insurance shall include but not be limited to products and completed operations and discontinued operations, where

applicable. Termination of this obligation is not effective until City executes a written statement to that effect.

17. Contractor agrees to waive its statutory immunity under any workers' compensation statute or similar statute, in relation to the City, and to require all subcontractors and any other person or entity involved in the project contemplated by this Agreement to do likewise.
18. Requirements of specific coverage features are not intended as limitations on other requirements or as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be all-inclusive.
19. Any provision in any of the construction documents dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties to be interpreted as such.
20. All liability coverage provided according to these requirements must be endorsed to provide a separate aggregate limit for the project that is the subject of this Agreement and evidencing products and completed operations coverage for not less than two years after issuance of a final certificate of occupancy by all appropriate government agencies or acceptance of the completed work by City.
21. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
22. Contractor agrees to obtain and provide to City a copy of Professional Liability coverage for Architects or Engineers on this project through Contractor. City shall determine the liability limit.



Thursday, May 12<sup>th</sup>, 2011

Mr. Jeremy Laurentowski  
 Superintendent, Landscape / Parks Maintenance  
 City of Moorpark, CA

Dear Jeremy;

HydroPoint Data Systems, Inc. is pleased to provide you with pricing for a turnkey implementation of WeatherTRAK Central Irrigation Control system for select Parks, Medians and LMD's in the City of Moorpark.

HydroPoint conducted a site walk to examine every controller, and created a bid package. We organized a site walk on 5/4, and accompanied three licensed landscape contractors on a site walk in order to help them prepare a bid for installation according to our Scope of Work. The vendors that walked the sites were Gothic Landscape, Metro Landscape and Valley Crest Landscape Maintenance companies. The results of the bids, per our installation Scope of Work were:

- \$178,850 from Gothic Landscape
- \$ 79,534 from Valley Crest Landscape Maintenance
- No Bid submitted from Metro Landscape

Based on a review of the bid submissions, we have selected Valley Crest as the lowest responsible bidder on this project. They will perform as our installation partner for the project. As part of this bid, HydroPoint will supply the following:

- 44 Smart Water Manager controllers and appropriate enclosures
- 10 years of Subscription services, which includes 10 year warranty, Technical Support daily weather updates, Internet portal, real time alerts, alarms and reports
- Rain Sensors (wired and wireless, based on configuration required)
- Master Valves (2") & Flow Sensors (1 ½")
- Iso-Flow management devices (where needed)
- Labor necessary to project manage schedule and system commissioning
- Factory verification of controller programming
- Factory verification of flow sensor programming
- Training of City Staff

As part of this bid, Valley Crest will supply the following:

- Installation labor, with the understanding that the project is subject to prevailing wage laws
- Grounding rods and clamps
- GFCI (where needed)
- Metal rain sensor enclosures
- Quick Pads
- Valve boxes & Pea Gravel
- 14 gauge wire
- All other electrical and/or installation incidentals required to ensure all installations are up to City electrical code.

Attached to this letter is a formal quotation, with our standard Terms and Conditions. A pricing summary for a turnkey installation of forty four (44) WeatherTRAK Central Internet Management Smart Water Manager controllers (including the pilot controller at Mammoth Highlands Park) is outlined below:



<u>WeatherTRAK Solution Component</u>	<u>Cost:</u>
44 WeatherTRAK Controllers	\$133,253
1 Year Subscription for 44 controllers	\$9,900
10 Year Warranty for 44 controllers	\$22,880
19 Master Valves	\$7,151
19 Flow Sensors	\$8,509
2 Iso-Flow management devices	\$660
43 Rain Sensors	\$2,617
<b>Sub Total - Materials</b>	<b>\$184,970</b>

<u>Turnkey Installation for 43 WeatherTRAK Controllers</u>	<u>Cost:</u>
14 Wall Mount, 19 Pedestal & 11 Chassis	\$95,441
19 Pedestal	
11 Chassis	
19 Master Valves	
19 Flow Sensors	
2 IsoFlow management devices	
43 Rain Senors (wired and wireless models)	
HydroPoint deployment services, including program validation	\$13,860
<b>Sub Total - Installation</b>	<b>\$109,301</b>

**Project Sub Total**

CA State Sales Tax (8.25% applied to \$154,193 taxable)	\$12,721
Shipping (all components listed above)	\$8,300

<b>Grand Total for Turnkey Solution:</b>	<b>\$315,291</b>
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Here is a breakdown by Landscape Maintenance District:

<u>Site Name</u>	<u>Hardware</u>	<u>ETE</u>	<u>X-War</u>	<u>P.M.</u>	<u>Install</u>	<u>Tax</u>	<u>Ship</u>	<u>Total</u>
MAMMOTH HIGHLANDS PARK	\$5,585	\$450	\$1,040	\$630	\$2,456	\$543	\$166	\$10,871
PEACH HILL PARK	\$5,639	\$450	\$1,040	\$630	\$4,135	\$465	\$332	\$12,691
Z-2: TIERRA REJADA	\$17,276	\$900	\$2,080	\$1,260	\$12,613	\$1,425	\$664	\$36,218
Z-5: TIERRA REJADA	\$6,111	\$450	\$1,040	\$630	\$6,624	\$504	\$332	\$15,691
Z-10: TIERRA REJADA	\$22,352	\$1,350	\$3,120	\$1,890	\$19,865	\$1,927	\$996	\$51,500
Z-12: SPRING MILLER	\$16,337	\$1,350	\$3,120	\$1,890	\$11,135	\$1,348	\$1,826	\$37,006
Z-15: CHAMPIONSHIP DRIVE	\$30,055	\$1,575	\$3,640	\$2,205	\$19,744	\$2,480	\$1,162	\$60,860
Z-22 MPK HIGHLANDS	\$48,835	\$3,375	\$7,800	\$4,725	\$18,869	\$4,029	\$2,822	\$90,455
	\$152,190	\$9,900	\$22,880	\$13,860	\$95,441	\$12,721	\$8,300	\$315,291

Attached, please find a quote for all materials with our standard terms and conditions. We look forward to working with you on this project!

Best Regards,

Ben Slick  
Vice President, Business Development



**WeatherTRAK**  
Smart irrigation. Made simple.

# Proposal / Quote

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

Quote Moorpark-Phase 1-LMD

**Bill To**  
City of Moorpark

**Ship To**  
Valley Crest Landscapes

5/27/2010

Account Executive	Project	Payment Terms	Quote Expiration Date
Ben Slick - 408.981.3616	Phase 1: Irrigation Controller Replacement Program	Net 30	6/11/2011

Quantity	Part #	Description	Unit Cost	Total
2	WTPRO2S-C-24-CWM	ET Pro2S Central 24 Station Powder Coated Wall Mount	\$ 1,900.60	\$ 3,801.20
7	WTPRO2S-C-30-CWM	ET Pro2S Central 30 Station Powder Coated Wall Mount	\$ 2,160.60	\$ 15,124.20
1	WTPRO2S-C-42-CWM	ET Pro2S Central 42 Station Powder Coated Wall Mount	\$ 2,583.10	\$ 2,583.10
3	WTPRO2S-C-12-SWM	ET Pro2S Central 12 Station Stainless Steel Wall Mount	\$ 1,845.35	\$ 5,536.05
1	WTPRO2S-C-18-SWM	ET Pro2S Central 18 Station Stainless Steel Wall Mount	\$ 2,056.60	\$ 2,056.60
2	WTPRO2S-C-12-SPT	ET Pro2S Central 12 Station Stainless Steel Pedestal	\$ 3,649.10	\$ 7,298.20
1	WTPRO2S-C-18-SPT	ET Pro2S Central 18 Station Stainless Steel Pedestal	\$ 3,860.35	\$ 3,860.35
3	WTPRO2S-C-24-SPT	ET Pro2S Central 24 Station Stainless Steel Pedestal	\$ 4,071.60	\$ 12,214.80
2	WTPRO2S-C-30-SPT	ET Pro2S Central 30 Station Stainless Steel Pedestal	\$ 4,331.60	\$ 8,663.20
1	WTPRO2S-C-42-SPT	ET Pro2S Central 42 Station Stainless Steel Pedestal	\$ 4,754.10	\$ 4,754.10
3	WTPRO2S-C-48-SPT	ET Pro2S Central 48 Station Stainless Steel Pedestal	\$ 4,965.35	\$ 14,896.05
1	WTPRO2S-C-18-SPH	ET Pro2S Central 18 Station Stainless Steel Pedestal	\$ 3,008.85	\$ 3,008.85
2	WTPRO2S-C-24-SPH	ET Pro2S Central 24 Station Stainless Steel Pedestal	\$ 3,220.10	\$ 6,440.20
2	WTPRO2S-C-36-SPH	ET Pro2S Central 36 Station Stainless Steel Pedestal	\$ 3,691.35	\$ 7,382.70
1	WTPRO2S-C-42-SPH	ET Pro2S Central 42 Station Stainless Steel Pedestal	\$ 3,902.60	\$ 3,902.60
1	WTPRO2S-C-48-SPH	ET Pro2S Central 48 Station Stainless Steel Pedestal	\$ 4,113.85	\$ 4,113.85
2	WTPRO2S-C-30-CH4	ET Pro2S Central 30 Station Chassis	\$ 2,241.85	\$ 4,483.70
3	WTPRO2S-C-36-CH4	ET Pro2S Central 36 Station Chassis	\$ 2,453.10	\$ 7,359.30
4	WTPRO2S-C-42-CH4	ET Pro2S Central 42 Station Chassis	\$ 2,664.35	\$ 10,657.40
1	WTPRO2S-C-48-CH4	ET Pro2S Central 48 Station Chassis	\$ 2,875.60	\$ 2,875.60
1	WTPRO2S-C-30-CH7	ET Pro2S Central 30 Station Chassis	\$ 2,241.85	\$ 2,241.85
33	WT-RS	Rain Sensor - Wired Model	\$ 44.85	\$ 1,480.05
11	WT-WRS	Rain Sensor - Wireless Model	\$ 103.35	\$ 1,136.85
19	WT-MV-200G-SNO	1.5" PVC Tee Model Flow Sensor	\$ 376.35	\$ 7,150.65
19	WT-FS-150-DI	1.5" PVC Tee Model Flow Sensor	\$ 447.85	\$ 8,509.15
2	IsoFlow	IsoFlow Management device	\$ 330.00	\$ 660.00
44	CIM-PRO2C-1248-1Y	Pro2Central ET Service - 1 Year	\$ 225.00	\$ 9,900.00
44	XTD-WARR	10 Year extended warranty on WeatherTRAK controllers	\$ 520.00	\$ 22,880.00
	Professional Services as described below:			\$ 13,860.00
	Program / Project Management			
	Landscape Contractor Coordination			
	Training			
	Program Worksheet and Controller Programming Management			
	Post Installation Verification & Controller Inspection Report			
	Contractor Installation Performend by Valley Crest Landscapes / Managed by HPDS			\$ 95,440.80
	Estimated Freight - Subject to Change			\$ 8,300.00
	Estimated Sales Tax (actual taxes will be billed when invoiced)			\$ 12,721.00
			<b>\$</b>	<b>315,292.40</b>

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.

Customer

Date

## HydroPoint Data Systems WeatherTRAK Professional Services RFP / Agreement

Today's Date **5/6/2011**

THIS SERVICE AGREEMENT ("Agreement") is made between **HydroPoint Data Systems**, (herein referred to as "HPDS") and **<Contractor>**, (herein referred to as "Contractor"). Contractor is to perform services at the property(ies) listed in Appendix A. Such Property(ies) is/are owned by the **City of Cupertino** hereinafter referred to as "Owner"

WHERE AS, HPDS engages Contractor to perform services at the Property under the following terms and conditions. All services performed pursuant to this Agreement shall be in accordance with the terms and conditions set forth in this Agreement.

**RFP MUST BE RETURNED BY: 5/6/11**

<b>Start Date</b>	05/15/11	<b>End Date</b>	07/31/11
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**HydroPoint Information**

<b>Contact</b>	Chris Warfield
<b>Phone</b>	(800) 362-8774 ext. 135
<b>Address</b>	1720 Corporate Circle, Petaluma, CA 94954

<b>Email</b>	cwarfield@hydropoint.com
<b>Fax</b>	(707) 769-9695
<b>Other Contact Info</b>	Rachel Ayala - (800) 362-8774 ext. 146

**Contractor Information**

<b>Company</b>	ValleyCrest Landscape Maintenance
<b>Contact</b>	Scott Godfrey
<b>Phone</b>	805-642-9300
<b>Address</b>	3275 E. Thousand Oaks Blvd #200 Thousand Oaks, Ca 91362

<b>Email</b>	sgodfrey@valleyCrest.com
<b>Fax</b>	805-642-6990
<b>Contractor Lic #</b>	266211
<b>Other Contact Info</b>	(List alternate contacts if available) Mark Hilands - 805.797.2177 or Frank Annino - 805-732-492

**Scope (See Detail Scope - page 4 - for complete requirements)**

Task <input checked="" type="checkbox"/> Off	Labor, Equipment and Deliverables of Job	
	<b>General Requirements</b>	
	1. Review RFP, fill in bid, fill in schedule	
	2. Provide Insurance certificate naming Owner and HPDS as add'l insured	
	<b>Job Requirements</b>	
	1. Fill out program worksheet, including existing run time schedule	Leave copy with controller and send copy to HPDS
	2. Label field wires and remove old controller(s)	
	3. Install WeatherTRAK controller(s) & connect 120v service and field wires	
	4. Activate WeatherTRAK Service (call 800# with serial # and address)	
	5. Program WeatherTRAK controller(s)	
	6. Install and activate Wireless Rain Sensor(s) to controller	Receiver must be mounted outside of metal enclosure
	7. Additional construction as noted in Controller List	
	8. Phone ahead (24-72 hrs) notification for each property prior to arrival	
	9. Schedule/status reporting to HydroPoint project manager	

**Pricing**

City of Moorpark Install Items	Unit Qty	Unit Price	Total Price
14 x Wall Mount ET Pro2 Smart Water Manager	14	\$686.00	\$9,604.00
18 x Stainless Steel Pedestal ET Pro2 Smart Water Manager	18	\$1,101.00	\$19,818.00
11 x ET Pro2 Smart Water Manager Chassis (retrofit into existing pedestal)	11	\$646.00	\$7,106.00
43 x Wired & Wireless Rain Sensors	43	\$150.00	\$6,450.00
19 x Flow Sensors	19	\$973.00	\$18,487.00
19 x Master Valves	19	\$951.00	\$18,069.00
<b>TOTALS</b>			\$79,534.00

**Sales and Use Tax – Pricing quoted by Contractor is understood to include any and all applicable sales, excise, use, or other local taxes.**



**DETAIL SCOPE OF WORK  
INSTALL AND PROGRAMMING**

**REMOVAL**

- 1) Record program settings from old controller (Days, times, starts) and send to HPDS contact
- 2) Conduct Ohm reading to identify NC or shorts prior to retrofit  
\*these should be fixed as possible, but if not repaired note that WeatherTRAK will handle just like previous controller and may not water these zones\*
- 3) Label field wires before removing
- 4) Shut off power to controller
- 5) Remove old controllers off of wall / out of pedestal
- 6) Cap electrical for units that will not be replaced with a new unit
- 7) Return each removed unit to property management office at each site at end of day

**INSTALLATION**

**Contractor shall physically ground each controller with full length grounding rod, ground plate or (for interior locations only) attached to a cold water ground, with minimum #6 bare copper wire.**

- 8) Install / mount WeatherTRAK ET controller per manufacturer's specifications
- 9) Connect 120v service to meet local code requirements
- 10) Securely connect 24v field wires
- 11) As Specified - Install rain sensors in sensible places that will capture rain water effectively without overhead interference and with receivers mounted outside of any metal enclosures. Connect rain sensor wires to RS port on controller then activate the rain sensor per Toro instructions.
- 12) FLOW SENSOR – If a flow sensor is present or added, connect wires to terminals labeled FLOW
- 13) Run a valve test and troubleshoot wiring on any stations showing shorts or no-connects

**FLOW SENSOR & MASTER VALVE INSTALLATION**

- 1) Survey site to determine best location to install Flow Sensor & Master Valve (Flow sensor & master valve supplied by HPDS)
- 2) Determine main line size to spec appropriate Flow Sensor & Master Valve. Locate Water meter(s) and record meter number/location
- 3) Depressurize mainline
- 4) Excavate and cut main line, install Flow Sensor & Master Valve using best practices for location and installation & manufacturers instructions
- 5) Trench between controller and Flow Sensor & Master Valve for wire installation (wire to be supplied by installer)
- 6) Install appropriate valve box and backfill at Flow Sensor & Master Valve (valve box to be supplied by installer)
- 7) Connect Flow Sensor & Master Valve wires to correct terminals in ET Pro2 Smart Water Manager and validate operation
- 8) Backfill wire trench, restore landscape to original condition before site disruption
- 9) Complete Flow Commissioning worksheet and return to HPDS contact

**PROGRAMMING**

- 14) Complete Program Worksheet, leave copy with controller and send copy to HPDS contact via fax or e-mail
  - a. Run each zone manually and walk site to complete WeatherTRAK Program Worksheet (provided with each controller). Program worksheet is a simple punch list that allows users to record zone by zone site data including:
  - b. Sprinkler type, soil type, plant type, sun exposure and slope
- 15) Program Set Up
  - a. Enter Set up information including
  - b. Date, time, time-zone and max active stations
- 16) Program Days and Times
  - a. Enter desired water day patterns, start times and water windows to meet site needs
- 17) Program Stations in Auto Mode
  - a. Program WeatherTRAK controller in Automated Mode by setting each station to Auto and then entering data from Program Worksheets,
  - b. Sprinkler type, soil type, plant type, sun exposure and slope (precipitation rate and root depth are adjustable for maximum conservation)

**NOTE: If new landscape is in place, those stations/zones should be programmed in User No ET Mode for a period of time (15-45 days) to establish roots before being switched to Auto Mode. In User mode WeatherTRAK can be set for establishment run times just like an ordinary controller.**
- 18) Leave "copy" of worksheet with each controller and one copy with the site manager/customer
- 19) Set up Flow parameters where installed, RUN Learned Flow and set up thresholds appropriately
- 19) Check Alerts
  - a. Go to Alerts screen and verify that no alerts are present
  - b. If Alerts are present troubleshoot / modify settings as needed or decide that Alert is acceptable
- 20) Preview
  - a. View each stations program in the Preview Screen for 'reasonable' program times and days. Make adjustments

## SERVICE ACTIVATION

21) Activate service to controllers by calling WeatherTRAK Customer Service at (800) 362-8774. Please have ready:  
a. serial number, customer name, controller address. (takes 7-10 minutes)

## Terms and Conditions

**1. General Provisions:** All work shall be performed by irrigation maintenance technicians trained in the installation and service of irrigation equipment. Contractor shall use competent, trained employees to perform Services and shall adequately supervise its employees. All planned service work under this Agreement will be performed during normal business hours. All of the work performed by Contractor hereunder will be performed in a good and workmanlike manner. All materials used by Contractor shall conform to regularly accepted local industry standards. Contractor shall further maintain any necessary local state, and federal licenses and permits necessary to perform the work stated in this Agreement.

Contractor to provide schedule for installations identifying scheduled dates of commencement and completion. There shall be no changes to this schedule unless a written Change Order is submitted to Operator (attn: Chris Warfield). All laborers and workers, while on site, shall act in a professional manner. Contractor shall control/prevent: noise, including music, use of offensive language, smoking or drinking of alcoholic beverages on site, physical violence. If Operator determines that any laborer needs to be removed due to his/her failure to comply with the terms of this provision, contractor shall remove laborer from the site immediately.

Contractor shall not use Owner dumpsters and/or trash receptacles for disposal of trash and/or debris generated by construction activities including but not limited to parts, waste materials, packing containers, food wrappers, soda cans and/or any other items brought to the site by the Contractor.

All work shall be subject to tests and inspections at all reasonable times and at all places prior to acceptance.

**2. Sub Contractors:** Subcontracting is allowable. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the work. Contractor reserves the right to determine whether to use Subcontractors to perform the services called for in this Agreement. Contractor shall be responsible for the Subcontractor's performance in accordance with the terms of this Agreement.

**3. Insurance:** Prior to work, Contractor agrees to provide Operator with proof of General Liability Insurance, Automotive Liability Insurance, Worker's Compensation Insurance, and any other insurance required by law or Owner, as specified in writing prior to commencement of work. Contractor will furnish insurance with \$1,000,000 limit of liability. **CERTIFICATE OF INSURANCE SENT TO:**  
HPDS – 1720 Corporate Circle, Petaluma, CA 94954 Attn: Chris Warfield or e-mailed to cwarfield@hydropoint.com or Faxed to 707-769-9695 for records.

**4. Additionally Insured:** Contractor shall name OWNER & OPERATOR as additional insured. OWNER, its affiliates, parent and subsidiary entities, including, without limitation, and any of OWNER subsidiaries and affiliates that may directly or indirectly own or manage the property at or for which CONTRACTOR performs any Work, and their respective partners, managers, members, employees, officers, directors, trustees, shareholders, counsel, representatives, agents, successors and assigns ("Additional Insured's") shall be named as additional insured's under the Commercial General Liability policy and the automobile policy.

**5. Communication:** Contact from either party shall be responded to in a timely fashion defined as within one business day or sooner.

**Escalations:** Contractor shall escalate and communicate schedule, equipment, work, health and safety related issues to the Operator contact as soon as possible. Additionally, Contractor shall notify local property contact immediately of any health or safety related accidents or issues related to the work performed.

**Notification:** Contractor shall call each site one to three business days in advance of starting work at a new site to announce arrival. Contacts and numbers are provided in this agreement.

**6. Access to Job:** Operator shall work with property Owner to secure access to all parts of jobsite where Contractor is to perform work as required by the Contract or other functions related thereto, during normal business hours and other reasonable periods of time.

**7. Damages:** Contractor acknowledges that in the event it fails to achieve final completion by the scheduled date of completion (unless it is specifically related to acts beyond contractor's control), fails to complete installation without workmanship defects, or in the event Operator suffers charges from any property damages caused by contractor, Operator reserves the right to back charge contractor for work performed by Operator or agent hired by Operator. Damages would be limited to the amount that Operator incurred or was charged to solve any related service or installation issues, after such notice was give to the contractor to remedy first. Contractor shall have 7 business days to remedy the damage or problem from the time Contractor receives written notification.

Except as otherwise provided herein, Contractor will repair or replace any plant materials or equipment covered by this Agreement which is directly damaged by Contractor in the course of performing its services under this Agreement. Repair or replacement by the Contractor shall constitute Operator's sole and exclusive remedy, and is subject to timely notice and inspection by Contractor.

**8. Payment:** Contractor will submit invoices for each site at Final Completion of scoped work. Operator will remit payment to Contractor within 30 days of receiving invoice from Contractor. Operator may withhold / delay payment to Contractor on a property by property basis only if payment for each phase on that property is delayed or withheld by Owner as the result of dispute related to failure of Contractor to deliver on scope of deliverables for each phase as defined in this contract. Contractor may charge interest of 1.5% or \$5.00, whichever is greater, per month or 18% per annum on past due accounts.

### **Reimbursement:**

Contractor shall not be entitled to additional reimbursement expenses outside of costs agreed to in this proposal, without written authorization from Operator

**9. Tools and Equipment:** Other than parts and supplies outlined in the Controller and Equipment List section of this agreement, Contractor is to furnish all required tools and supplies to perform work as scoped in the agreement. Operator will not provide reimbursement for such equipment outside of the agreed cost in this agreement unless agreed to in writing in a change order or addendum to this contract. See attached "Recommended tools & Parts List" Any parts purchased by HPDS will be deducted from final payment to Contractor.

**10. Additional Services:** Any additional work outside the scope of this agreement will be authorized and paid only upon written, signed change orders and will become an extra charge over and above the estimate.

**11. Miscellaneous**

A. If at any time, any term or provision of this Agreement shall be held invalid or unenforceable, such clause or provision must first be modified to the extent necessary to make the Agreement legal and enforceable. The remaining terms and provisions of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

B. This Agreement shall be construed and governed under the laws of the State of California.

C. All the previous oral and written promises and/or agreements relating to the services to be provided pursuant to this Agreement are hereby superseded. This Agreement contains the entire Agreement of the Parties regarding the subject matter hereof. This Agreement may not be modified or amended except by a written instrument executed by both parties hereto.

D. This Agreement shall be binding upon and insure to the benefit of Contractor and the Operator and their respective legal representatives, successors and assigns. If one or more of the terms or provisions contained in this Agreement shall be for any reason held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement.

E. Confidentiality. The parties agree that the terms of this Agreement shall remain confidential.

**12. Contractor Disclaimer:** This proposal was priced based upon a verbal representation and/or site visit and visual inspection. It is recognized that the price quoted for the work described, is the result of that verbal understanding and / or visual inspection and therefore Contractor will not be liable for any additional costs or damages for additional work that is required, but not described herein. Contractor will not be held responsible for unknown or otherwise hidden defects.

### Acceptance of this Contract

Contractor agrees to perform the work stated on this Contract at rates and prices stated above. Payment will be made in accordance with Term #8. HPDS reserves the right to withhold payment in the event that work is not complete or in accordance with scope.

Contractor

Hydro Point Data Systems Inc

FAX: \_\_\_\_\_

FAX: **(707) 769-9695**

By: \_\_\_\_\_  
Signature / Title

By: \_\_\_\_\_ SVP of Finance  
Signature / Title

\_\_\_\_\_  
Printed Name / Date

Robert Torre / \_\_\_\_\_  
Date